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VOL.

No. 655

CANADA
PROVINCE OF
QUEBEC
MONTREAL

Court of King's Bench
(APPEAL SIDE)

7

On appeal from a judgment of the Superior Court, in the District of Montreal,
rendered by the Honourable Mr Justice Albert DeLorimier on the
28th day of June, 1933.

CANADIAN
LAW
LIBRARY

GATINEAU POWER COMPANY,

a body politic and corporate, duly incorporated, having its head
office and principal place of business at the City and District
of Montreal,

(Defendant in the Superior Court),

APPELLANT,

—AND—

FREEMAN T. CROSS,

of the Village of Farm Point, in the Province of Quebec,
Lumber Merchant,

(Plaintiff in the Superior Court),

RESPONDENT.

THE CASE

VOLUME 7

DEFENDANT'S EVIDENCE (1st Hearing)

UNIVERSITY OF LONDON
W.C.1
-6 JUL 1953
INSTITUTE OF ADVANCED
LEGAL STUDIES

BROWN, MONTGOMERY & McMICHAEL
Attorneys for Appellant

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Attorneys for Respondent

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25, RUSSELL SQUARE,

LONDON,

W.C.1.

In the
Superior Court
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Defendant's
Evidence.
E. M. Woolcombe,
Examination
Sept. 25th, 1931.

— 1 —

No. C-80504
CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

SUPERIOR COURT

Present: His Lordship Mr. Justice Delorimier

10

FREEMAN T. CROSS,

Plaintiff.

—vs—

GATINEAU POWER COMPANY, LIMITED,

Defendant.

20 DEPOSITION OF EDWARD M. WOOLLCOMBE, A WITNESS
PRODUCED AND EXAMINED ON BEHALF OF
THE DEFENDANT.

On this twenty-fifth day of September, in the year of Our Lord
one thousand nine hundred and thirty-one, personally came and
appeared

30 EDWARD M. WOOLLCOMBE,

of the City of Ottawa, in the Province of Ontario, engineer, aged 29
years, a witness produced and examined on behalf of the Defendant,
who, being duly sworn, deposes as follows:—

EXAMINED BY MR. KER, K.C.,
OF COUNSEL FOR DEFENDANT:

Q.—You are an engineer by profession?

40 A.—Yes.

Q.—When did you graduate, from what University, and what
other qualifications have you in your profession?

A.—I graduated from McGill University, in the Faculty of
Engineering, in 1923. I am a member of the Association of Pro-
fessional Engineers of Quebec.

Q.—You graduated in 1923?

A.—Yes.

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Q.—From 1923 forward where, and under what circumstances, did you carry on your profession?

A.—For a year following graduation I was employed with the Calgary Power Company and the Montreal Engineering Company. Then for a year I was with the Foundation Company of Canada, on construction. Following that I was with the Canadian International Paper Company and the Gatineau Power Company.

Q.—Chiefly on the power developments on the Gatineau River?

A.—Yes.

10 Q.—And in general in connection with their power development work?

A.—Yes.

Q.—What position are you now holding with that Company?

A.—I am Assistant to the Manager of the Development Department.

Q.—And, owing to the illness of the Manager you are at the present time actually managing that department?

A.—Yes.

20 Q.—You have a personal knowledge of all the matters connected with the Company's developments on the Gatineau River?

A.—In general, yes.

Q.—When was the engineering work upon the development of the Chelsea and Farmers' Rapids powers commenced by your Company?

A.—In the summer of 1925. There had been some preliminary work done prior to that of which I had no direct knowledge.

30 Q.—What was the result of that preliminary work and of those investigations on the decision as to the Chelsea and Farmers' Rapids development?

A.—The decision was that the development would be proceeded with.

Q.—What was the next step?

A.—The next step was the application to the Quebec Government for approval of the plan of the site, and the filing of plans showing the lands to be affected.

Q.—That being done, I presume, on advice of your Counsel, in compliance with the Water Courses Act?

A.—Yes.

40 Q.—Have you with you copies of the plans which were submitted to the Government of the Province of Quebec for approval in that connection?

A.—Yes. One of those plans showing the actual structures, which is not directly connected with this matter, has already been filed. I have here the other plans showing the lands affected.

Mr. Ker: These are all large scale plans, and they are in

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sections. The only sections with which we are concerned are the sections of the Cascades and the Pêche. We are prepared to file all the sections from Chelsea up to the head of the development if my learned friends so desire. If, however, they are prepared to admit that the plans for the whole development have been approved, it will not be necessary for us to file them all. If this is not done we will have to file the plans with the copies of registration for the whole development. It will be only necessary to do this for the purpose of the Record, to show the deposit and approval of the plans for the whole development, which is alleged by the Defence.

Mr. St. Laurent: I would not care to agree that any be not filed, because I do not know what bearing they may have.

Mr. Ker: In that event, we will have to file them all.

BY MR. KER (continuing):

20 Q.—Will you then, Mr. Woolcombe, please file the plans and specify what each is as you produce it?

A.—Exhibit D-7 is a plan showing the lands affected by the Chelsea Power development on the Gatineau River, in the County of Hull, Townships of East and West Hull, ranges 9 and 10; on a scale of one inch to 200 feet. It is dated Montreal, March 23rd, 1926, and it bears the certificate of the Registrar of the County of Hull to the effect that a duplicate copy of this plan has been deposited in the Registry Office of the County of Hull at Hull, Quebec, March 24th, 1926.

30 Q.—Does the first card include the power house section—where the power house is built?

A.—Yes.

Q.—Is there any reference on that plan to the power house?

A.—The location of the power house is indicated.

Q.—Have you a copy of the power house plan?

A.—One has already been filed.

Q.—Will you look at the plan which has been filed as Plaintiff's Exhibit P-36, and will you state whether it is the power house plan?

40 A.—This is the plan showing the general arrangement and details of the Chelsea development, deposited in the Registry Office on March 24th, 1926.

Q.—The same date as the other?

A.—Yes.

Q.—What is the next card or section proceeding up the river?

A.—The next bears the same general title and covers the Township of Hull, Eleventh and Twelfth Ranges.

Q.—The Eleventh and Twelfth Ranges are covered by the plan

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which you now produce as Exhibit D-8?

A.—Yes.

Q.—What is the next card, proceeding up the river?

A.—The next one covers Ranges Thirteen and Fourteen in the Township of Hull.

Q.—And this you will produce as Defendant's Exhibit D-9?

A.—Yes.

The next covers Ranges Fifteen and Sixteen in the Township of Hull. I produce this as Defendant's Exhibit D-10.

10 Q.—Ranges Fifteen and Sixteen are the Ranges concerned chiefly with the property known as the Cascades, which is claimed by the Plaintiff?

A.—Yes, and the property known as Meach Creek—the Farm Point property.

Q.—If I understand correctly Ranges Fifteen and Sixteen, shown on Exhibit D-10, do not carry you up quite as far as the Pêche?

A.—No.

20 Q.—But they cover the river between Cascades and Meach Creek, and include both?

A.—Yes.

Q.—What is the next?

A.—The plan I produce as Exhibit D-11 covers Ranges One and Two in the Township of Wakefield, in the County of Hull.

Q.—There being only sixteen ranges in Hull, you run over next into Wakefield?

A.—The next township, going up the Gatineau after you leave the Township of Hull, is the Township of Wakefield.

30 Q.—And the card Exhibit D-11 includes Ranges One and Two in the Township of Wakefield?

A.—Yes.

Q.—And at that point the water runs out as far as this development is concerned? It levels itself off? There is no further plan higher up the river connected with this development?

A.—This plan bears the title " Ranges One and Two ", but, as a matter of fact, a small part of Range Three is shown at the extreme end of the plan; the limit of the flooding effect extending slightly into Range Three.

40 Q.—These are the plans which were submitted to the Government after having been deposited in the Registry Office of the County of Hull, and after due notice of their deposit had been given according to law?

A.—Yes.

Q.—What evidence have you of the approval granted to the development as indicated by those plans?

A.—I have a certified copy of an Order-in-Council of the Quebec

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Government, dated May 20th, 1926, and approved by the Lieutenant Governor on May 21st, 1926, signed by A. Morissette, Clerk of the Executive Council, in which approval is given to the plans I have filed.

Q.—To the same plans as those you have just filed?

A.—Yes.

Q.—The plans you have filed are photostatic copies?

A.—No, they are white prints.

Q.—They are not the originals, of course?

10 A.—No. The originals were deposited with the Quebec Government.

Q.—Just to keep the Record from becoming confused: I am informed the identical plan you have produced as Exhibit D-10—the ranges concerned in this case—has already been produced by the plaintiff as his Exhibit P-35. Will you look at Exhibit P-35 of the plaintiff, and say if it is identical with your Exhibit D-10?

A.—Yes, it is.

20 Q.—The only difference being that Exhibit P-35 is a blue print, and yours is a white print?

A.—Yes.

Q.—Will you file the Order-in-Council of which you have just spoken as Exhibit D-12?

A.—Yes.

Q.—What is the heading of this Exhibit?

A.—“ Copie du rapport d'un comite de l'honorable conseil executif en date 20 Mai, 1926, approuve par le lieutenant gouverneur 21 Mai, 1926.”

30 Q.—The Order you are now producing as D-12 is the original of the Order which has been produced as Exhibit D-1 with Defendant's Plea? In other words, Defendant's Exhibit D-1 is an English copy of the official copy now produced as D-12?

A.—Yes, that is correct.

Q.—After the approval of your plans and the issue of the Orders in Council, what was the next step?

40 A.—We went ahead and completed the construction, and finally put the plant into operation. In the meantime we proceeded to acquire the necessary lands which were affected by the flooding caused by the rise in water level. That is, of course, with the exception of the lands in question here.

Q.—Have you a plan which would show the lands that you acquired under that continued development, between Cascades and the Pêche Rapids?

A.—Yes, I have.

Mr. St. Laurent: I assume, Mr. Ker, you are going to prove the acquisition otherwise than by the plans?

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Mr. Ker: We have our Deeds numbered against the plans.

Mr. St. Laurent: I object to the filing of any plan for the purpose of making evidence of acquisition of any property. I have no objection to a plan being filed for the purpose of illustrating what may have been acquired providing the acquisition be properly proven.

10 BY MR. KER (continuing):

Q.—Will you produce this plan as Defendant's Exhibit D-13, and will you describe what it is?

A.—I produce it as Exhibit D-13.

The plans which were deposited in the Registry Office, Exhibits D-7, D-8, D-9, D-10 and D-11, were on a scale of 200 feet to the inch, and for purposes of convenience we made a composite plan on a scale of 800 feet to the inch, which indicates generally the same information that is shown on the plans filed in the Registry Office.

20 BY THE COURT:

Q.—That was done for convenience?

A.—Yes, your Lordship.

This plan covers the entire stretch of the river from Chelsea to the bridge over the Gatineau River at Wakefield at La Pêche Rapids.

The line marked A-B is the range line between the 14th and 15th Ranges, marked "A" on one side of the river, and "B" on the other side.

30 That, generally, represents the downstream limit of the rapids at Cascades.

The part of the plan between that line and the line C-D indicates the stretch of the Gatineau River proceeding upstream from Cascades to the Pêche Rapids above Wakefield.

BY MR. KER (continuing):

Q.—What is the portion colored in yellow on this plan?

40 A.—The portion colored in yellow indicates the extent of the lands and riparian or flooding rights acquired by the Company and owned by the Company.

The part colored red indicates the lands owned by Mr. Cross which have been flooded.

Q.—Or which are in question in this case?

A.—Yes.

Q.—The last red part downstream being the Cascades?

A.—Yes.

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Q.—The next one up on the west side of the river being the Meach Creek?

A.—Yes.

Q.—And the third one, at the very upstream end of the map being the one acre on the Pêche which was purchased after the flooding took place?

A.—Yes.

The portion marked E on the east side of the river, colored in red, represents a piece of property purporting to be owned by Mr. Cross on that side of the river.

On this plan I have colored in yellow the lands and rights acquired by the Company at and above the Cascades. That does not mean to say that between Chelsea and the Cascades we have acquired no rights, because a considerable extent and area of land was acquired down below.

Q.—Going downstream from your line A-B you have all the land and riparian rights necessary for your development right down to Chelsea?

20 (Mr. St. Laurent, K.C., of counsel for plaintiff, objects to the question as irrelevant and illegal.)

(The objection is reserved by the Court.)

A.—Yes.

Q.—Will you mark on the plan where Chelsea is located?

A.—The Chelsea power house is indicated at the point marked "Dam" and by the words "Power house spillway Chelsea Falls" at the extreme right hand edge of the plan.

30 Q.—I notice that on the west side of the river there are certain small areas of land along the shore which do not seem to be colored in your ownership color. Will you explain what are the circumstances with respect to those pieces?

A.—From about the line between the first and second ranges in the Township of Wakefield, marked E- on the west side to F on the east side, both the highway and the railway are close to the west shore of the river, and, in addition, the banks are for the most part fairly high. Added to that is the fact that the Company was not able in many cases to determine whether the actual river shore at this location was owned by the proprietors on the west side of the highway; and for that reason no rights were acquired.

40 Q.—I understand the physical condition was such that you could not determine whether this was really highway or whether it was not highway?

A.—Yes, in certain cases.

Q.—Because the highway was so close to the river?

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A.—Yes.

Q.—What authority had you with regard to closing the highway?

A.—The Company entered into an agreement with the Minister of Roads of the Province of Quebec, whereby certain portions of the highway would be diverted and certain other portions would be raised.

10 Q.—May I take it your judgment has never been questioned in regard to those small pieces of land? No one has made any claim for those little frontages between the highway and the river?

A.—In one or two instances there have been claims made on us. In the Village of Wakefield there have been claims made, some of which have been settled by the Company taking a servitude giving us the right to flood.

Q.—Were those things before or after relocation?

A.—There is no relocation.

Q.—There are certain numbers in ink on this plan. What do they represent?

20 A.—These indicate the Company's reference file numbers to the Deeds covering the properties shown.

Q.—They are your file numbers of the Deeds by which you acquired those rights?

A.—Yes.

30 Q.—Pursuing the matter of the acquisition of land necessary for this development, and particularly within the range and scope of territory within the Cascades and the Pêche, will you produce, in order from the downstream towards the upstream end at La Pêche, various Deeds of acquisition covering the riparian rights and land which are affected by the development between those points?

A.—I will start on the west shore, going upstream; and then go down on the east shore. My Deeds are in that order.

Q.—You are beginning from the line A-B which separates the 14th and 15th Ranges?

A.—No, I am beginning from the range line between the 14th and 15th Ranges, starting on the west side of the river, from the point B.

Q.—That is immediately below the Cross property on the west side of the river?

40 A.—Yes.

Deed No. 471 is a Deed of Sale before Louis Bertrand, Notary, executed on the 8th May, 1928, by Dame Bridget Smith, wife of Michael Byrnes, to the Gatineau Power Company. I file this as Exhibit D-14.

This Deed covers part of lots 20-C and 20-D in the 15th Range, which, by the way, are below the Cascades. In addition to that it

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also covers a part of lot 21-C and 22-C-1 upstream, above Mr. Cross' property.

Q.—Mrs. Byrnes is the same person who sold to Mr. Cross?

A.—Yes.

This sale was made following expropriation proceedings and award thereupon made by the Quebec Public Service Commission November 11th, 1927, in case No. 98 of the Records of the Quebec Public Service Commission.

10 Q.—What is the next Deed on the west side of the river?

A.—Deed No. 169; a Deed of Sale executed before Louis Bertrand, Notary, on March 30th, 1926, by William Patrick Flynn to Canadian International Paper Company, covering part of lot 20-C. There is a statement in the Deed to the following effect: " It is moreover understood that although all the Deeds referring to the title to the piece of land presently sold describe it as part of lot 20-C in said 15th Range, the actual description of said piece of land should be part of lot 21-C in the said 15th Range ".

Q.—Will you file this as Exhibit D-15?

20 A.—Yes.

Q.—It is the fact, is it not, that at this point there intervenes the property in question here belonging to Mr. Cross on the west side of the river?

A.—Yes.

I have not filed the Deed covering the property opposite No. 535 on this plan, because it is the Deed from the Canada Cement Company to the Gatineau Power Company which has already been filed as one of the Plaintiff's Exhibits.

Q.—That is the Deed produced as Plaintiff's Exhibit P-42?

30 A.—Yes. That is the Deed before Marler.

Q.—And it is the Deed from the Canada Cement Company to yourselves for all the property on both sides of the river at that point?

A.—Yes. No. 535, shown on the east side of the river, also refers to the property purchased from the Canada Cement Company on that side. That property is included in the Deed Exhibit P-42.

Q.—Passing over the Cross property, will you please produce the next Deed?

40 A.—No. 513; a Deed from Dame Jean Fraser, executed before Louis Bertrand, Notary, on February 18th, 1930.

Q.—How far up does that carry you?

A.—This Deed, which I file as Exhibit D-16, covers a part of lots 22-C-1 and 21-C on the 15th Range. We are now going up to lot 22 in the Fifteenth Range on the west side of the river.

Q.—What is the next after lot 22; Deed 471?

A.—That has already been filed. That is the property purchased from Mrs. Byrnes.

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Q.—Therefore, the next portion up the river is included in your Deed No. 471, which has already been filed as Exhibit D-14?

A.—Yes.

Q.—Proceeding upstream, what is your next acquisition of property?

A.—The next is a Deed of Sale before Louis Bertrand, Notary, on September 20th, 1927.

Q.—By whom?

10 A.—By David Caves, to the Gatineau Power Company.

Q.—What is the number?

A.—No. 341.

Q.—Will you file this Deed as Defendant's Exhibit D-17?

A.—Yes.

BY MR. KER, K.C.:

Q.—Before the adjournment we were dealing with Exhibit D-17?

20 A.—Yes.

Q.—What lots and range does that deed refer to?

A.—Part of lots 21-A, 22-A and 22-B in the 15th Range, and part of lot 23-B in the 16th Range, and part of lot 22-C-2 in the 15th Range.

I may say that this deed covers property on the east side of the river, in addition to property on the west side, and also that the date of this deed is the 27th of September, 1927; that there is mentioned in the deed that the sum above mentioned has been paid in full settlement of the award, interest and costs granted by the Quebec Public Service Commission on the 27th of May, 1927, in case bearing

30 No. 94 instituted under the Water Courses Acts, Chapter 46.

Q.—What was the amount paid?

A.—\$4,254.38.

Q.—With respect to this Exhibit D-17, which you have produced, I would like you to digress just a moment in your order of deeds, and I will ask you to take communication of the exhibit produced by the Plaintiff as P-38 at enquête, and under reserve of the objections made to the production of this document, will you state whether

40 David Caves, who is mentioned as having been referred to in Mr. Cross' little note book, is the same David Caves as that to whom this deed of yours refers?

A.—The David Caves referred to in this document P-38 is stated therein to hold the property with lot 22-C-2 in the 15th Range, which is part of the property conveyed.

Q.—Those are the only differences in this Exhibit P-38 just referred to as having any connection with David Caves?

A.—That is right.

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Q.—Was the land mentioned in Exhibit D-17 the greater extent mentioned in other land necessary for the flooding connected with the Chelsea development?

A.—Yes.

Q.—Would it have been equally necessary in connection with any such proposed development as has been heard of by Mr. Cross up to Pêche Rapids?

A.—Yes.

10 Q.—The cost to you for that property was \$4,000?

A.—\$4,254.38.

Q.—There is no sum mentioned in this memorandum as being a price of any kind, is there, given under No. P-38?

A.—No.

Q.—Is the person, David Caves, who was the vendor in the deed D-17, the same individual who was referred to in a certain agreement, or supposed agreement, filed by the Plaintiff as P-39?

A.—The lot 21-A in the 15th Range referred to in this document P-39, is part of the property which was conveyed to the Company in document D-17.

20 Q.—Are there any other parts of lots mentioned in that agreement which were conveyed by that deed D-17?

A.—22-A and 22-B are mentioned in this Exhibit P-39, and form part of the properties conveyed in Exhibit D-17.

Q.—You must have a memorandum of the next parcel upwards?

BY MR. ST. LAURENT:

30 Q.—P-38 and P-39 refer to the same lots with the exception that in your conveyance D-17 you have in addition 21-B of the 16th Range?

A.—Yes.

Q.—That is correct?

A.—Yes.

BY MR. KER:

40 Q.—Will you take the next number up the river on the west side?

A.—No. 312.

Q.—These numbers you are giving are your office file numbers of these deeds, and they are marked against the parcels?

A.—Not quite. This deed No. 312 is a deed passed before Louis Bertrand, from Stephen H. Cross to the Gatineau Power Company dated the 23rd December, 1926, referring to part of Lot No. 23-C in the 16th range, part of Lots 23-A and 24 in the 15th range, part of Lot No. 19-A in the 14th range, although the last portion is not

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marked on this plan, because it is downstream from the Cascades.

Q.—And the price was how much?

A.—\$25,000.

Q.—Was that land referred to in that deed a necessary portion of your flooding rights for this development?

A.—Yes.

Q.—Will you file this last deed as Exhibit D-18?

A.—Yes.

10 Q.—As a matter of record will you state whether or not all these deeds refer to all the river rights connected with the property in their terms, without reading the deeds? Do those deeds contain a clause respecting the riparian ownership rights or water powers in the river. Will you read the clause which refers to it and which is the same in each deed?

A.—(Reading) “To have and to hold the said above described properties with the rights, appurtenances, and accessories thereunto belonging, and any and all rights the seller may own or possess in the bed or fore-shore of the Gatineau River, or in the water course thereof unto the said purchaser, its successors or assigns and absolute
20 ownership forever from this date.

Q.—And that clause is repeated in every one of your deeds?

A.—I would prefer to verify that point as I go through.

Q.—Take the next one upstream, on the west side.

A.—No. 476, a deed passed before Louis Bertrand, Notary, on the 23rd May, 1928, from Levi C. Reid to the Gatineau Power Company, referring to part of Lot 23-C in the 16th range, and part of 23-B in the 16th range. I file that deed as Exhibit D-19.

Q.—What was the consideration in that deed?

30 A.—\$11,243.05, which represents the amount of a judgment rendered by the Court of Appeals of the Province of Quebec on the 16th April, 1928, confirming an award of the Quebec Public Service Commission in a case of expropriation.

Q.—Is my understanding correct—and I am merely depending on my memory—that that included land on the east side of the river as well?

A.—It does.

Q.—That number is also shown on the east side of the river?

A.—Yes.

40 Q.—Will you take the next one?

A.—The next one is 449, being a deed passed before Louis Bertrand, Notary, on the 15th of March, 1928, by George D. Howith, to the Gatineau Power Company, and referring to an island lying in the Gatineau River, in the 16th range opposite Lot No. 24-C of the said 16th range. This scale was also made following expropriation proceedings. I file this deed as Exhibit D-20.

Q.—What was the amount paid?

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- A.—\$450.
Q.—Did that also include the small island in the river?
A.—That is the island.
Q.—Will you take the next one?
A.—This is No. 333, being a deed passed before Louis Bertrand on the 17th of June, 1927, from Dame Laura McLaughlin to the Gatineau Power Company, and referring to part of Lot No. 24-C in the 16th range of the Township of Hull. I file this deed as Exhibit D-21.
- 10 Q.—What was the consideration there?
A.—\$3,750.
Q.—Now the next one?
A.—No. 318, being a deed passed on the 20th day of January, 1927, before Louis Bertrand, Notary, from Dame Dorothy Phenner to the Gatineau Power Company referring to part of Lot No. 24-C in the 16th range of the Township of Hull. I file this deed as Exhibit D-22.
- 20 Q.—If I remember that matter, that was by private agreement. It was not a result of an expropriation award?
A.—No.
Q.—What was the price paid?
A.—\$4,000.
Q.—Will you take the next one?
A.—No. 595, deed before Louis Bertrand on the 20th of February, 1930, by Edward K. Emerson, Victor Lee Emerson and Victor F. Emerson to the Gatineau Power Company of part of Lots 24-D and 24-C, and may be part of Lot 25-C in the 16th range. I file this deed as Exhibit D-23.
- 30 Q.—Was that under expropriation?
A.—No. The history of this transaction is that this property is located at a point where the bank is fairly high and in the first proceedings in the early stage of development it was not considered that it would be affected. As time went on claims were made to the company, and to avoid a damage action the property was purchased.
Q.—That accounts for the late date of it?
A.—Exactly.
Q.—How much was paid?
A.—\$5,500.
- 40 Q.—What is the next one?
A.—No. 515, a deed passed before Louis Bertrand on the 20th of October, 1928, from Dame Bertha Hamilton to the Gatineau Power Company, referring to part of Lot 24-C in the 16th range of the Township of Hull. I file this deed as Exhibit D-24.
Q.—That was also by private agreement, apparently?
A.—Apparently so.
Q.—And what was the price?

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A.—The price was \$4,500.

Q.—Just en passant, it may be of interest if you can perhaps tell us just what the nature of these properties along the shore was? They were for the most part, I believe, summer cottages on the shore of the river?

A.—A great number were. There were, of course, certain farm lands.

Q.—You see there are a number of them right together and that would account for that?

10 A.—Yes.

Q.—Will you take the next one going up?

A.—The next is No. 198, being a deed passed on the 5th of June, 1926, before Louis Bertrand, from John Dean to the Canadian International Paper Company and referring to part of Lot No. 25-A in the 16th range. I file this deed as Exhibit D-25.

Q.—What was the price paid?

A.—\$4,700.

Q.—This is 1926?

20 A.—Yes, 1926.

Q.—That appears to have been by private treaty?

A.—Yes.

Q.—What is the next?

A.—No. 212, deed of sale before Louis Bertrand on the 5th of June, 1926, from John Shouldice, being part of Lot 4-E in the first range of the Township of Wakefield. I file this deed as Exhibit D-26.

Q.—What was the price?

A.—\$156.

30 Q.—Just digressing for a moment from this deed, will you look at this exhibit (under the same reserve to the objection already made), Exhibit P-38, and indicate whether the John Shouldice who is referred to therein, and the lot number which is referred to therein, as pertaining to his transaction, is the same as referred to in that deed?

A.—Yes. The property referred to in P-38 is the same property as referred to in D-26.

Q.—I see the price referred to in this matter here against Shouldice's name is \$20.

A.—Yes.

40 Q.—That is in Exhibit P-38?

A.—Yes.

Q.—What is the next number?

A.—The next is No. 239, being a deed before Louis Bertrand of the 28th August, 1926, by Alfred E. Day to the Gatineau Power Company. I am referring to part of Lot 4-A in the first range in the township of Wakefield. I file this deed as Exhibit D-27.

Q.—What was the price?

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A.—The price being \$1,600.

Q.—To again digress for a moment in order that I may take up the thread of the matter: Will you look at the deed filed as Exhibit D-19, which is a deed from Levi Reid, and will you state whether or not that Levi Reid is the same Reid as the one referred to in this pocket book memorandum produced as Exhibit P-38?

10 A.—This Levi Reid is referred to in the first paragraph of Exhibit P-38, but there is no mention of the property, or the number of the lot belonging to Mr. Reid, so I am unable to answer that question.

Q.—Will you look at Exhibit P-40, which is dated May, 1926, and state whether that appears to be the same Levi Reid?

A.—In this Exhibit P-40, Levi Reid declares that he is the owner of lot 23 in the 16th range, and the property purchased by D-19 covers part of lot 23 in the 16th range.

Q.—In any event Exhibit P-40 purports to be a purchase of riparian rights, but not of land?

A.—Yes.

20 Q.—Will you take the next one?

A.—The next is No. 661.

(Counsel for Plaintiff points out there is still another one.)

Q.—There was one other case that you mentioned, John Dean, whom I see is mentioned in this memorandum Exhibit P-38. His land is referred to in P-38 as 24-C and 25-A in the 16th range?

A.—Part of lot 25-A was conveyed to the company by our document No. 198, and Exhibit D-25.

30 Q.—This Dean deed is dated the 5th June, 1926?

A.—Yes.

The next is No. 661, and if I may explain, this document is a deed of servitude whereby the company is released from all claims for damages, and is granted the right to hold the waters of the Gatineau river to a stated elevation. This property is located just south of the Village of Wakefield, and the servitude was taken some time after the development had been completed and the water was raised.

40 Mr. Scott: What is the date?

Mr. Ker: 1931, the thirteenth day of May it is called, but I presume it means May.

His Lordship: What side?

Witness: On the west side.

BY MR. KER:

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Q.—It is practically in the village of Wakefield?

A.—It is below the village of Wakefield near Rockhurst.

Q.—It was not originally thought by the investigation to be affected?

A.—A claim arose through damage to the building and cellar, from seepage.

Q.—And it was not foreseen in the first instance when the plan was being taken?

A.—No.

10 Q.—The grantor is Herbert B. Stevenson and Harry N. Stevenson to the Gatineau Power Company. The statement is that it is a servitude in perpetuity consisting of the right to raise and maintain the waters of the Gatineau River at an elevation of 321 referred to on a Geodetic Bench Mark, and to keep the water on that property and the property affected by servitude, that is the servient land is lot No. 3 of the second range of Wakefield, and the dominant lots referred to in the servitude are lots 8-A, 8-B and 8-C. Am I right in saying that those dominant lots are the power house properties which are the source of the development?

20 A.—I file this deed as Exhibit D-28.

Q.—Take the next one?

A.—The next one 669 is a document of a similar nature, the circumstances being similar.

BY MR. SCOTT:

Q.—Who is it from?

30 A.—From Dame Louisa Descoteaux; on the 10th July, 1931, the Gatineau Power Company established a servitude on part of lot 2-B of the 2nd range of the township of Wakefield, the dominant lots being the same lots as set out in Exhibit D-28, this deed being D-29.

BY THE COURT:

Q.—Was any price paid for both servitudes?

A.—\$300.

40 BY THE COURT:

Q.—For D-28?

A.—For D-29.

BY MR. KER:

Q.—D-28?

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A.—A servitude is created, and the rights are granted in consideration of the sum of \$1,014, in D-28.

Q.—How is it that that is so late in coming to light? Was the damage caused there just brought to your attention recently?

A.—The same circumstances as arose in D-28.

The next is No. 648, also a servitude, being dated the 21st of March, 1931, from Frederick Ernest Hamilton to the Gatineau Power Company, establishing a servitude on Lot 1-B-31, and 1-B-32 in the 2nd range of the township of Wakefield, the consideration
10 being \$1,877.50. I file this deed as Exhibit D-30.

Q.—This is another upon which claim was made after the development had been in operation?

A.—Yes.

Q.—Through seepage or some other matter?

A.—Yes.

Q.—What is the next one?

A.—No. 663, dated 18th May, 1931, a servitude from Robert
20 M. Earle and George H. Earle to the Gatineau Power Company establishing a servitude on lot 1-B-41, 1-B-26 in the 2nd range of the township of Wakefield, the consideration being \$3,200. I file this deed as Exhibit D-31.

The next is 660, dated the 15th of May, 1931, a servitude from Leger Henri Vaillancourt to the Gatineau Power Company, establishing a servitude on part of lot 1-B in the 2nd range of the township of Wakefield, the consideration being \$600. I file this deed as Exhibit D-32.

Q.—With regard to these last three servitudes you have mentioned as being taken recently, they are in the township of Wakefield?
30

A.—Yes.

Q.—Which is at the extreme top portion of the development?

A.—Yes.

Q.—And the claims in respect to these matters you say only came to light recently, and were disposed of as they came to light?

A.—Yes.

Q.—Will you then proceed to the final one on the west side of the river?

A.—The next one is 174, being a deed of sale passed on the
40 12th of April, 1926, from Joseph Shouldice to Canadian International Paper Company, referring to part of lot No. 2-C, in the 3rd range of the township of Wakefield. I file this deed as Exhibit D-33.

Q.—What does that description cover on the plan D-13? Does it or does not cover the west bank?

A.—The west bank and bed of the Gatineau river opposite lot 2-C in the 3rd range.

Q.—And over the full western range of the Pêche Rapids—

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over the full range of the Pêche Rapids on the west side?

A.—From the bridge down to the range line.

Q.—From Wakefield bridge down to the range line?

A.—Yes.

Q.—It is in this locality that the lot in question in this case, the last one up the river referred to by Mr. Cross as the Wakefield lot, is situated?

A.—Yes.

10 Q.—What is the date of the deed?

A.—12th April, 1926.

Q.—The deed from Mr. Selwyn to Mr. Cross is dated the 20th of March, 1927, a year after?

A.—I do not remember the exact date.

Q.—That takes you to the head of the Pêche Rapids on the west side of the river?

A.—Yes.

20 Mr. St. Laurent: This is a sale for all rights, claims and pretensions he has or may have?

Mr. Ker: I do not pretend for a moment that this is from the same vendor that Mr. Cross got his. It is perfectly clear he did not. I am filing this deed exactly as the company got it and it is a deed purporting to be of the west shore.

Mr. St. Laurent: Purporting to be a deed of sale for all rights, claims and pretensions he has or may have.

30 BY MR. KER:

Q.—What was the price of that?

A.—As I remember, \$200.

Q.—How much land was involved in it?

Mr. St. Laurent: I object to this question. The deed speaks for itself.

(The Court reserves the objection.)

40 BY MR. KER:

Q.—What is the next one?

A.—The next is No. 175, being a deed of sale passed on the 12th April, 1926, from Cain Connors or O'Connor, to the Canadian International Paper Company, with a deed of correction in the description, passed on the 4th March, 1930. I can explain that. The prop-

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erty set out in the deed of the 12th April, 1926, was stated to be part of lot 2-C in the 3rd Range of the Township of Wakefield, and in which deed of correction it is stated to be part of lot 2-B in the 3rd Range of the Township of Wakefield. I file this deed as Exhibit D-34.

Q.—What was the price?

A.—\$500.

Q.—That is No. 175?

A.—Yes.

10 Q.—What is the next one, going down?

A.—The next one is No. 186, being a deed of sale executed on the 19th April, 1926, before Louis Bertrand from William C. Taggart, to the Canadian International Paper Company, referring to parts of lots Nos. 1, 2 and 3 in the 2nd Range of the Township of Wakefield. I file this as Exhibit D-35.

Q.—How much was paid for that?

A.—\$705.

Q.—What is the next one, coming down?

20 A.—The next one is a deed of sale on the 11th of June, 1926, before Louis Bertrand by Elie Scharf, No. 216, and referring to lots 4-A and 5-B in the 2nd Range, and 4-B and 5-A in the 1st Range of the Township of Wakefield, the price being \$7,500. I file this deed as Exhibit D-36.

Q.—What is the next?

A.—No. 215, being a deed passed on the 11th June, 1926, before Louis Bertrand from William James Garnett Craig to Canadian International Paper Company, referring to parts of lots 5-B, 5-C and 4-D in the 1st range of the Township of Wakefield, the consideration being \$2,700. I file this deed as Exhibit D-37.

30 Q.—Just before we leave that, would you look and see if that is the same William James Garnett Craig that is referred to in this note book memorandum P-38, of course, always under reserve of the objections that we made to the production of such a document as that?

A.—Lot 4-D in the 1st Range in the Township of Wakefield referred to in P-38 is referred to in D-37.

Q.—Is that the only lot that is referred to in P-38?

A.—No. Lot 4-3 in the 1st Range of the Township of Wakefield is referred to in P-38.

40 Q.—Is lot 4-C referred to in your deed?

A.—That is the only one which appears in the two documents.

Q.—What other lots are mentioned in your deed which are not mentioned in the other?

A.—The lots mentioned in our deed are 5-B, 5-C and 4-D, whereas the lots mentioned in the document P-38 are stated to be 4-C and 4-D.

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Q.—Are the lots mentioned in your deed necessary for the development?

A.—Yes.

BY MR. ST. LAURENT:

Q.—Just part of them?

10 A.—Yes. Part of the lots are mentioned. The entire farm was purchased.

BY MR. KER:

Q.—Will you take the next one?

A.—The next one is No. 247, a deed of the 21st of September, 1926, from Arthur Stephenson to the Gatineau Power Company, referring to lots 5-D in the 1st Range of the Township of Wakefield, the consideration being \$250. I file this deed as Exhibit D-38.

Q.—What is the next one?

20 A.—No 250, a deed of sale passed before Louis Bertrand of the 21st September, 1926, from Stewart Stevenson to the Gatineau Power Company, referred to as part of lot 5-D in the 1st Range of the Township of Wakefield, the consideration being \$315. I file this deed as Exhibit D-39.

Q.—What is the next one?

30 A.—The next one is No. 207, being a deed of the 31st of May, 1926, before Louis Bertrand, Notary, from the Soldiers' Settlement Board to the Canadian International Paper Company, referring to lot 24-A in the 16th Range, and part of 23-A in the 16th Range, part of lot 22-A in the 16th Range, and part of lot 24-B in the 16th Range, the consideration being \$10,000. I file this deed as Exhibit D-40.

Q.—That is the Soldiers' Settlement Board?

A.—The Soldiers' Settlement Board of Canada.

Q.—I think that was made in view of the occupation of some soldiers?

A.—I do not remember the circumstances.

Q.—Just to make the record read correctly, some of those sales are to the International Paper Company. Will you state how that is?

40 A.—The development of Chelsea was first instituted by the Canadian International Paper Company, and later the Gatineau Power Company was formed to take over the development.

Q.—A sister company?

A.—Yes.

Q.—These rights purchased by the Canadian International Paper Company are all in respect of this development and for that purpose?

A.—Yes.

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Q.—What is the next one?

A.—The next was 472, a deed before Louis Bertrand dated the 29th June, 1928, from Stanley O. Fillion to the Gatineau Power Company, referring to part of Lot 24-A in the 16th range, that is the 16th range of the Township of Hull, the consideration being \$1,600. This sale was made following expropriation proceedings. I file this deed as Exhibit D-41.

Q.—What is the next?

10 A.—The next is 314, before John Mulcair, Notary, by Albert Wilkinson to the Gatineau Power Company, referring to part of Lot No. 24-B in the 16th range of the Township of Hull, the price being \$250. The deed is dated the 13th of November, 1926. I file this deed as Exhibit D-42.

Q.—What is the next one?

20 A.—The next is No. 206, being a deed before Louis Bertrand on the 31st of May, 1926, from Alphonse LeMoyne to the Canadian International Paper Company referring to part of Lot No. 24-B in the 16th range of the Township of Hull, the consideration being \$1,600. I file this deed as Exhibit D-43.

Q.—What is the next one?

A.—The next is No. 205, being a deed passed on the 31st of May, 1926, before Louis Bertrand from Doctor Joseph Damase Pagé, referring to part of lot 24-B in the 16th range of the Township of Hull, the consideration being \$2,000. I file this deed as Exhibit D-44.

The next is No. 192, being a deed passed on the 14th of May, 1926, before Louis Bertrand, by Paul A. Lefort, referring to part of lot 24-B in the 16th range of the Township of Hull, the consideration being \$235. I file this deed as Exhibit D-45.

30 The next is No. 421, being a deed passed before Louis Bertrand on the 30th August, 1926, from Stewart Stevenson to the Gatineau Power Company referring to part of lot 24-B in the 16th range of the Township of Hull, the consideration being \$725. I file this deed as Exhibit D-46.

The next is No. 193, being a deed passed before Louis Bertrand on the 14th of May, 1926, by Dame Maude Gertrude Gildersleeve with regard to part of lot 24-B in the 16th range of the Township of Hull, the consideration being \$1,500. I file this deed as Exhibit D-47.

40 The next is No. 244, being a deed passed before Louis Bertrand on the 15th September, 1926, from Robert C. Berry to the Gatineau Power Company referring to part of lot No. 24-B in the 16th range of the Township of Hull, the price being \$6,000. I file this deed as Exhibit D-48.

The next is No. 191, being a deed passed before Louis Bertrand on the 14th of May, 1926, from Cecilia A. Young to the Canadian International Paper Company referring to part of lot No. 24-B in the 16th range of the Township of Hull, the consideration being \$2,800.

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I file this deed as Exhibit D-49.

The next is No. 194, being a deed before Louis Bertrand from Cecil Robert Lee, dated the 14th of May, 1926, to Canadian International Paper Company, referring to part of lot 24-B in the 16th range of the Township of Hull, the consideration being \$1,500. I file this deed as Exhibit D-50.

10 The remaining parcels colored yellow on the east side, downstream from the last mentioned deed, have already been covered, because they are covered by those which I have already filed, which cover property on both sides of the river.

Q.—Namely, numbers?

A.—476-A, 341, and the deed from the Canada Cement Company to the Canada Power Company, which is filed by the plaintiff as Exhibit P-42.

20 Q.—I do not think that in the first few deeds you mentioned the price or consideration. I do not think with regard to the first one down at the bottom of the river, D-14, which is about two or three deeds before we took the price question, Bridget Smith. That was the first deed you filed this morning. Will you say what the consideration of the deed D-14, Bridget Smith, was?

A.—\$694.65.

Q.—And D-15 is \$3,500.

A.—Yes.

Q.—That is Flynn?

A.—Yes.

Q.—D-16 is Jean Fraser?

A.—Yes.

30 Q.—Would you make a note of it, so we may have the record complete as to what the original price was?

A.—I will verify.

Q.—Now, Mr. Woolcombe, is it not a fact that some of these deeds are stated to have been pursuant to expropriation proceedings?

A.—Yes.

Q.—Those expropriation proceedings they had been quoted in the usual way according to law before the Superior Court?

A.—Yes.

40 Q.—Had you or had you not received from the Superior Court before proceedings were actually heard, immediate possession of the lands in question?

A.—That was the procedure.

Q.—And the fixing of the indemnity was made later?

A.—By the Quebec Public Service Commission.

Q.—In other words the Superior Court had granted you immediate possession as required by law, on your depositing certain money and then later the case was entered before the Quebec Public Service

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Commission, and an award rendered and the deed taken pursuant to the award?

A.—Yes.

Q.—So that am I right in saying that the dates of these deeds would indicate that an award had been made in these expropriation cases?

A.—Yes.

10 Q.—But that you had had previously possession of the property before the Superior Court, previous to that date?

A.—In the cases where I have stated that the deeds were as a result of the expropriation proceedings, or where they were a result of expropriation proceedings.

Q.—In all those cases you got immediate possession before the hearing before the Quebec Public Service Commission?

A.—Yes.

Q.—I observe that on this plan D-13, or in connection with this development, certain roads of the railway were affected?

A.—Yes.

20 Q.—At what points in part of the plan D-13 colored yellow did you affect the railway right-of-way of the Canadian Pacific Railway, beginning at what point, and carrying on to what point?

A.—The Canadian Pacific Railway right-of-way was raised in the lower stretch below Cascades. The railway was diverted, but from just below Cascades upstream for some distance, the railway grade was raised.

Q.—In other words, it was not necessary to divert it, but it was necessary to raise it?

A.—To raise the embankment.

30 Q.—On its old location?

A.—Yes.

Q.—And I presume you had to make an arrangement with the Canadian Pacific Railway to that end?

A.—Yes.

Q.—Have you any documents indicating what arrangement you made with the Canadian Pacific Railway in respect of the re-location and raising of the railway right-of-way?

40 A.—I have here photostatic copies of two agreements, one dated the 6th of May, 1926, between the Canadian Pacific Railway Company and the Canadian International Paper Company.

Q.—Which latter agreements, I understand, are assigned or taken over by the Gatineau Power Company?

A.—By an agreement dated the 25th September, 1929, between the Canadian International Paper Company, the Gatineau Power Company and the Canadian Pacific Railway Company.

Q.—The original arrangement regarding the movement of the railway property to this development was between the Canadian In-

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ternational Paper Company, who were the proprietors at that time, and the Canadian Pacific?

A.—Yes.

Q.—Under what date?

A.—May 6th, 1926.

Q.—Will you produce the photostatic copy (which I presume my learned friends will accept as a photograph) as Exhibit D-51?

A.—Yes.

10 Q.—And this agreement provided for an arrangement under which you re-located the road below Cascades, and raised it from Cascades on as far as was necessary?

A.—Yes, the railroad.

Q.—I am speaking now of the railroad entirely. To what point approximately from the lower line A-B, which you wrote across this map this morning, which was the beginning of the part of the land connected with this case, or how far up the river did you have to raise the C.P.R.?

20 A.—The raise of the C.P.R. was between mileages 14.6 and 16.9. The location of this line, or the point "B", is at approximately mile 15.

Q.—So that from the lower downstream limit, the yellow colored portion of this map, you had to raise the railway for about a mile up?

A.—Nearly two miles.

Q.—How much did you have to raise it?

A.—It varied with the grade of the railway as it then was.

Q.—It ran out eventually just like the water would run out at a certain point?

A.—Yes.

30 Q.—You had to just keep on grading it until you got to the level again, due to the formation of the land?

A.—Yes, there were not any uniform raises in level required because the railway itself naturally was not perfectly level all along there beforehand.

Q.—Have you any idea about what amount you would have to raise it at the beginning of this section? How much would you have to raise it there at the lowest part?

A.—Opposite Cascades?

Q.—Yes.

40 A.—The raise there was somewhere in the neighborhood of five or six feet. I am not prepared to say exactly how much the level was raised.

Q.—And it ran along with perhaps gradual less raisings for two miles?

A.—Yes.

Q.—Up the river?

A.—Yes.

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Q.—The highway at the Cross property in question here known as the Cascades, at that point crossed the railway and ran after that between the river and the railway?

A.—Yes.

Q.—And consequently, did you have to do anything to the highway?

A.—Yes, the highway was also raised.

Q.—That is, about in the same proportion, a distance of about two miles?

10 A.—Yes.

Q.—Approximately the same distance as you had to raise the railway?

A.—Yes.

Q.—Below the Cascades, down in the lower region, what happened to the highway down there?

A.—Below the Cascades the highway was diverted.

Q.—Had it to be re-located just like the railway?

A.—Yes, as a matter of fact, the highway was diverted, and goes down to its former location, but raised above the Cascades.

20 Q.—How far is it raised above the Cascades?

A.—I am sorry. What I intended to convey was, that the diverted part of the highway joins the old highway.

Q.—The undiverted part of it?

A.—Just below the Cascades, then the road runs down the hill towards the river, crossing the railway, and then required to be raised.

Q.—Then required to be raised for a distance of how far approximately?

30 A.—Approximately the same distance as the highway. I am not giving you exact figures.

Q.—We will call another witness as to that, but I just want to get a clear picture.

A.—If you wish details of the railway and highway re-location or raising, I am sorry, I cannot give you the exact data.

Q.—What I am attempting to prove is, to get a clear picture of what work was necessary. We will show what was actually done later. What was the nature of the highway? Was it a municipal highway or a provincial highway?

A.—It was a provincial highway.

40 Q.—It is now known as the Hull-Maniwaki highway and runs up to Mont Laurier and back to Ste. Agathe?

A.—There is a highway runs up to Maniwaki, and the road across to Mont Laurier, and then you can come down to Montreal.

Q.—It is a provincial road now?

A.—Yes.

Q.—And was at that time?

A.—Yes.

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Q.—And what steps did you take to put yourself right with the authorities in respect of the relocation and changes necessary in that provincial highway?

A.—We entered into an agreement with the Minister of Roads of the Province of Quebec.

Q.—Have you a copy of that agreement?

A.—I have not got a certified or photostatic copy of that. I can produce one.

10 Q.—Have you an original copy, which could be made available?

A.—I can make available a photostatic copy.

Q.—Would you mind making a note of that, because it is important we should get that, and the cost, both of that railway relocation and elevation, and the cost of the road re-location and elevation were both borne by the developing company?

A.—Yes.

Q.—By the Gatineau Power Company?

A.—Yes.

20 Q.—Referring to the plan filed as Exhibit P-1 by the Plaintiff, will you indicate by the letter " X " on plan P-1, the point where the Canadian Pacific Railway right of way runs northward from the point " X ". Mark this also point " X ". On the plan at the point " X " then, will you mark the direction and extent of the Canadian Pacific Railway right-of-way?

A.—The extent of the Canadian Pacific Railway right of way is indicated between the two lines shown with the little letters " aa ".

Q.—Does the Canadian Pacific Railway from the point " X " take up its entire right-of-way upon the land, or does it not?

30 A.—I never actually surveyed that section of the Canadian Pacific Railway, and I would not like to make any definite statement in that regard.

Q.—Would you also annex on the plan D-13, to indicate where it runs from?

Witness: You wish me to mark the corresponding points?

Counsel: On D-13.

A.—What I have marked as " X " on that one?

40 Q.—Will you put an " X " there which corresponds in general to the location of your " X " on the large plan?

A.—The exact boundaries in the right-of-way, this being a comparatively small scale plan, are not shown within absolute accuracy, but the approximate position is where I have indicated " X ".

Q.—Have you any record of any deed yourselves covering the right-of-way of the C.P.R. at that point—a deed of acquisition, of the Canadian Pacific Railway?

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A.—There is a deed of sale from Thomas Moore to the railway which was built through there and which is already filed as Plaintiff's Exhibit P something, I don't know what number it is.

Q.—Will you take communication of Exhibit P-24, and state whether that is the deed of the Canadian Pacific Railway right-of-way at the point covering that portion of the road beginning with " X " on the plan? In other words, is that the same Canadian Pacific Railway which is referred to in your agreement with that railway respecting its movement and other rights which you get with regard
10 to it?

A.—There is only one railway.

Q.—And that is the deed of the right-of-way of the railway to which reference is made in this agreement between yourselves and the Canadian Pacific Railway at point " X " ?

A.—Yes.

Q.—Therefore this memorandum D-51 has reference in that piece of its right-of-way beginning at the point " X " on the plan, among others?

A.—This agreement does not begin at the point " X " .
20

Q.—I say among others. Has that agreement reference to that portion of the right-of-way among others which begins at " X " on the plan?

A.—Oh, yes.

Q.—What did your company do when it found that certain land which would be affected by this development was owned by the Plaintiff in this case?

A.—It procured an Order-in-Council from the Quebec Government authorizing the expropriation of certain parcels of land belong-
30 ing to the plaintiff.

Q.—A copy of that Order-in-Council has been produced as D-3?

A.—Yes.

Q.—Is that a copy of the Order-in-Council?

Mr. St. Laurent: Orders-in-Council are too important documents to allow evidence to be made of them by verbal testimony. My learned friend can easily have a certified copy.

Mr. Ker: Shall I say then, subject to verification, that he will
40 produce the original later.

Mr. St. Laurent: You intend to put one in.

Mr. Ker: Yes, I do. I merely want to preserve the consecutiveness of the case subject to verification of a copy of the original.

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Q.—So far as you are aware, is this a copy of the original Order-in-Council which you allege was obtained in order to procure the lands of the Plaintiff. That is what you referred to?

A.—Yes.

Mr. Ker: I will file a certified copy as D-52.

10 Mr. St. Laurent: That is the same Order-in-Council referred to in your plea?

Mr. Ker: The same as D-3. D-52 will be the original and a copy is produced as D-3 with the return.

BY MR. KER:

Q.—Does that Order-in-Council purport to refer to what is known in this case as the Cascades property?

A.—It refers to lots 21-B and 21-C in the 15th range.

20 Q.—Which is, in fact, the portion in question here as the Cascades property?

A.—Yes.

Q.—And does it refer to any other properties?

A.—Yes. It refers to properties part of lot 16-B in the 13th range in the township of Hull.

Q.—Does it also refer to the Meach Creek properties which are referred to in this case?

A.—Yes.

30 Q.—What paragraph of the Order-in-Council refers to the Meach Creek property?

A.—Paragraph 3.

His Lordship: Of the Order in Council?

Mr. Ker: Of the Order in Council.

BY MR. ST. LAURENT:

Q.—As paragraph 4, which refers to the Cascades property?

40 A.—Yes.

BY MR. KER:

Q.—What is the date of that Order in Council?

A.—The 16th of December, 1926, approved by the Lieutenant-Governor of the 17th of December, 1926.

Q.—And having produced those Orders in Council, as you were obliged by law to do, what was your next step?

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A.—We were advised by our counsel that we should apply to the Quebec Public Service Commission for authority to expropriate these parts set out in the Order in Council. We did apply to the Quebec Public Service Commission.

Q.—You applied to the Quebec Public Service Commission to authorize expropriation. What portion of land is referred to in the Order in Council? Which parcel of land?

A.—Paragraph 3.

10 Q.—That is, the Meach Creek portion?

A.—Yes.

Q.—Why did you do that?

Witness: Why did we apply to the Quebec Public Service Commission?

Counsel: Yes.

A.—Because we were instructed that under article 28-K of the Quebec Public Service Commission Act it was necessary to do so.

Q.—For what reason?

20 A.—Because there was a hydro-electric development which was going to be affected by backing up of the water.

Q.—What was the next step? You made application, I believe, to the Quebec Public Service Commission?

A.—Yes.

Q.—And asked for authority to expropriate that land mentioned in paragraph 3?

A.—Yes.

Q.—Under section 28-K of the Quebec Public Service Commission Act?

A.—Yes.

30 Q.—What was the result of that application?

A.—The Commission issued an Order which, in general terms, was to the effect that it could not authorize.

Mr. St. Laurent: You intend to file it?

Mr. Ker: I will prove it by copy of the Order which was issued, but I would like to get the consecutive story of this in such a way that we can understand it.

40 BY MR. KER:

Q.—At any rate the Quebec Public Service Commission refused to allow you the right to expropriate that piece of Meach Creek under section 28-K?

A.—Yes.

Q.—Representing, as a matter of fact, in their opinion, that it did not refer to industries at all, but that it referred to undeveloped

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horsepower of less than 200 horsepower.

Mr. St. Laurent: I object to any verbal evidence.

(The Court reserves the objection.)

A.—Yes.

BY MR. KER:

10 Q.—Under the oath you have already taken, during the evidence before the adjournment, you had outlined various matters which had taken place previous to the development in question in this case, and you have stated that the plans were filed in the Registry Office and in the Department at Quebec, but Orders in Council had been issued approving those plans, and that thereafter you had acquired properties either amicably or by expropriation for the purposes of that development. You were to produce the original of the Orders in Council, copies only having been produced; you were asked to produce originals of the Orders in Council authorizing the development at Chelsea and Farmers' Rapids. Have you with you certified copies of the Orders in Council?

A.—I did produce an Order in Council referring to Chelsea.

20 Q.—Have you a certified copy of the Order in Council which you were to produce to replace the copy authorizing the Farmers' Rapids development?

A.—Yes.

Q.—That is the one in conjunction with the Chelsea which you now produce as Exhibit D-53?

30 A.—Yes.

Mr. Ker: This is an Order No. 878, dated May 26, and approved by the Lieutenant-Governor-in-Council on the 21st May, 1926. This is to replace Exhibit D-2 which was an uncertified copy with the Plea.

BY MR. KER:

40 Q.—You further were to produce a certified copy of the Order in Council approving the expropriation of certain properties of the plaintiff, an uncertified copy of which was produced as Exhibit D-3 with Plea. Will you kindly produce a certified copy of that Order in Council?

Mr. Ker: This Order in Council, my Lord, is already filed as D-52 to replace D-3, filed with the Plea. It is Order in Council 2357, dated 6th December, 1926, approved by the Lieutenant-Governor-in-

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Council on the 17th December, 1926.

BY MR. KER:

Q.—Pursuant to the Order in Council authorizing the expropriation of Mr. Cross' property, what was the next step you took?

10 A.—On the 12th February, 1927, a notice with an offer was served on the plaintiff. The service is on the 14th February, 1927, notifying him that certain parcels of land are required for flooding purposes, and making him an offer of \$12,155 for the parcels of land set out in the description attached.

Q.—Do those parcels refer to what is known as the Cascades property and the Meach Creek property referred to in these proceedings?

A.—Yes. They refer to properties to a somewhat greater extent than have been set out in the Plaintiff's Declaration in this case.

Q.—Are the plans which accompanied that available?

20 A.—I have not a copy of that. I understand that plan has already been filed as one of the plaintiff's exhibits.

Q.—I see this document you are now producing forms part of record 106 of the Quebec Public Service Commission. Following that offer, having been refused, what was the next proceeding?

A.—The next proceeding was, that on the 22nd February, 1927, a petition was made to the Quebec Public Service Commission requesting the Commission to proceed to fix the indemnity to be paid to the plaintiff for the lands and premises in question.

Q.—That is at expropriation?

A.—Yes.

30 Q.—Will you produce that as Exhibit D-54.

A.—Yes.

40 Mr. St. Laurent: Why does my learned friend wish to encumber the record with these exhibits. The fact is, they endeavoured to expropriate and were prevented from doing so by Order of the Quebec Public Service Commission, and that is admitted, so I don't know that we are concerned with the exact text of the proceedings that were had before the Quebec Public Service Commission. My learned friends say they endeavoured to expropriate, and that there was an Order made by the Quebec Public Service Commission which prevented them from proceeding, that they appealed to the Court of King's Bench, and the Court of King's Bench decided they had no jurisdiction to maintain the appeal and they went to the Supreme Court, and the Supreme Court likewise decided they had no jurisdiction to maintain the appeal. That is common ground between the parties. I do not know that we are required to complete the record of those proceedings.

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10 Mr. Ker: The circumstances are these: These exhibits are produced for this purpose. The defendant alleges in perfect good faith, it having been authorized by an Order in Council to proceed to expropriation in these matters, and that they were prevented by Order of the Quebec Public Service Commission from actually expropriating. I think it only fair for us that we should be able to show we used every endeavour, that we made offers, that we followed up those offers by evidence according to law, official copies of which were actually produced with the actual time fixed for hearing in the expropriation proceedings. It is merely to show clearly what the defendant company has actually done in this case by way of taking proceedings in these matters.

I would like to show the consecutiveness of all the events which had led up to these proceedings.

His Lordship: Is the fact covered by your Plea?

20 Mr. Ker: It is not only covered by the plea, but it is also pleaded by the plaintiff.

His Lordship: I will reserve the objection.

Mr. St. Laurent: The facts are referred to. It is merely because it struck me that perhaps we did not need to have the record here. We are practically agreed as to what took place.

30 Mr. Ker: I think we should show distinctly how much the offers were. The proceedings did not show what the offers were; they merely show proceedings in expropriation were taken, and refused by the Quebec Public Service Commission. I think we should show we have made offers.

His Lordship: I have ruled you may continue under reserve of the objection.

BY MR. KER:

40 Q.—Have you any document indicating that that case was actually fixed by the Quebec Public Service Commission for hearing?

A.—Yes.

Q.—Will you produce it as Exhibit D-56?

A.—Yes.

Q.—You produced at the last sitting a plan indicating in yellow (I think it was D-14 if I am not mistaken) the lands which you had acquired above Mr. Cross' property on either side of the river. Have you anything to add to that in the way of further information which

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you have since checked up and secured, with respect to properties concerned?

A.—Yes. Certain of the deeds which I filed were taken in the name of the Canadian International Paper Company, and were later transferred by the Canadian International Paper Company to the Gatineau Power Company, and I have here a notarial copy of the deed of sale transferring those properties.

10 Q.—In other words, I understand you to say that certain of the deeds which you have already produced were deeds from the proprietors unto the Canadian International Paper Company?

A.—Yes.

Q.—Does this deed you are now producing include transfer from the International Paper Company to the defendant of all those parcels?

A.—Yes, and for convenience I will tell you the exhibit numbers which are referred to in this deed.

Q.—Are they all included? Whatever are taken into the Canadian International Paper Company, are they all included in that?

20 A.—Yes.

Q.—Will you file that deed as Exhibit D-57?

A.—Yes.

I can tell you the items in this deed which refer to the exhibit numbers that have already been filed. Will that do all right?

Q.—Yes?

A.—Item 82 in D-57 refers to D-50.

Q.—That is a deed from whom to whom?

A.—I don't remember.

Q.—Never mind, it refers to D-50.

30 A.—Yes.

Item 79 refers to D-49.

Item 78 refers to D-40.

Item 81 refers to D-47.

Item 80 refers to D-45.

Item 83 refers to D-44.

Item 84 refers to D-43.

Q.—That is, exhaustive of all these exhibits which will appear in the name of the Canadian International Paper Company?

A.—This one item 86 refers to D-37.

40 Item 91 refers to D-36.

Item 89 refers to D-35.

Item 88 refers to D-34.

Item 71 refers to D-15.

Item 85 refers to D-25.

Item 90 refers to D-26.

Item 87 refers to D-33.

The balance of the exhibits which you have filed were directed

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to the Gatineau Power itself?

A.—Yes.

Q.—Of those exhibits which you produced indicating acquisitions of land, certain of those, I understand, that were taken by those deeds, were the result of the expropriation proceedings and certain were taken by private agreement with the parties?

A.—Yes.

Q.—This Exhibit D-57 is a deed of sale passed before Marler, from the Canadian International Paper Company to the Gatineau
10 Power Company?

A.—I think it is actually before McLean.

Q.—Before McLean, of Marler and Marler, dated the 26th day of August, 1926. Just before we leave that, this, I take it, was a conveyance unto the Gatineau Power Company of all the loose ends which had previously been held in the Canadian International Paper Company, sister company?

A.—Of the Chelsea and Farmer Power sites, and the properties which had been acquired by the Canadian International Paper
20 Company.

I may say that deed also transfers the rights of the Canadian International Paper Company arising out of the Order-in-Council approving the Chelsea and Farmers' developments.

Q.—You stated that certain of those deeds had been taken by reason of expropriation proceedings, and others by reason of private agreement?

A.—Yes.

Q.—In the expropriation proceedings, what did you do in the way of procuring, or otherwise, possession, before the Court, of the
30 properties which you were expropriating before the cases were actually heard?

A.—We secured an Order of the Court granting immediate possession pending the fixation of the indemnity by the Quebec Public Service Commission.

Q.—On your giving security to that effect?

A.—Yes.

Q.—Will you produce as one exhibit all the Orders of immediate possession which refer to any case which you took by expropriation proceedings?

A.—I may say that in one case immediate possession was secured by agreement between the attorneys for the expropriating
40 party and the owner of the property.

Q.—That written agreement is here?

A.—That is that one.

Q.—All the others were on Order of the Court?

A.—Yes.

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Q.—I take it this was some time before the raising up of the water?

A.—Those are dated in December, 1926.

Q.—Will you file this as Exhibit D-58?

A.—Yes.

Q.—Have you anything to add to the matter of lands colored in yellow since the last hearing?

A.—I have an additional deed of servitude from Mr. Wilbert H. Trowse to the Gatineau Power Company, and referring to lot
10 No. 4-A in the First Range in the Township of Wakefield, for and except parts of land owned by Alfred Day and George William Richardson.

Q.—Is that already colored in yellow?

A.—Yes.

Q.—Will you produce that as Exhibit D-59?

A.—Yes.

Q.—Are there any others?

A.—I also have a deed from McAuliffe and Davis Lumber Company Limited unto Gatineau Power Company referring to lot No.
20 24-B, subdivision 10, Range 16, of the Township of Hull.

Q.—Is that portion colored in yellow?

A.—Yes.

Q.—Will you file that deed as Exhibit D-60?

A.—Yes.

I also have the original of the option agreement by William John Frederick Maxwell to the Canadian International Paper Company whereby Maxwell agreed to sell part of lot 4-F, Range 1, Township of Wakefield, for \$100.

30 Q.—Will you file that as Exhibit D-61?

A.—Yes.

Q.—This is an option which is dated October, 1926?

A.—We found difficulty in getting title to that property because of some cloud on the title, and for that reason the deed was not completed before the hearing commenced. Our lawyers advised us that there were certain things that had to be done by Maxwell to clear his title to that property.

Q.—Has it been cleared now?

A.—Yes.

40 Q.—I suppose you have, perhaps, taken a servitude already on it?

A.—I understand a servitude has been taken.

Q.—In the name of the Gatineau Power Company?

A.—Yes.

Q.—You were to secure the authentication of the plan D-34 by Notary Bertrand. Mr. St. Laurent drew attention to the fact that

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the plan which accompanied the deed was not sufficient. Has that been done?

A.—Yes.

Q.—And I understand the deed has been returned with the certification?

A.—Yes.

Q.—Have you anything else to remark with respect to your previous evidence on that?

10 A.—I would like to make a statement in respect of lot 4-C in Range 1 in the Township of Wakefield. That property lies directly opposite the river, is on the west shore of the river, and lies directly opposite the property of Mr. Garnett Craig, whose farm on the east side the Gatineau Power Company purchased.

Q.—The piece on the west is colored yellow?

A.—The piece on the west is colored yellow, but as a matter of fact the deed from Garnett Craig does not mention that piece of land.

Q.—You were in possession of part of the land you expected to purchase?

20 A.—Yes. We had absolutely no claim made against the Company since that time by Mr. Craig, but I just wanted to point out the fact there is no mention of that lot.

Q.—You took steps to have that error in the deed rectified?

A.—Yes.

Q.—That is, both sides of the river were owned by the same man, I take it?

A.—Yes.

30 Q.—Some mention was made of a memorandum taken from a pocket book in which an Act of Deposit was made, and which was admitted under reserve of the Defendant's objection to the production of such document, and that document referred to certain rights purported to have been given to Mr. Cross by one Richardson, on the river. Under reserve of any objection we made to the production of that document, would you say whether you have any memorandum indicating anything about the property which Mr. Richardson by that agreement purported to give to Mr. Cross? I refer to this because Mr. Cross in his evidence stated, when being pressed to say who was present when that memorandum was signed, he only mentioned Mr. Richardson. Have you anything to indicate what hap-
40 pened to that property?

A.—I have here a document which is certified by the Registrar of the County of Hull to be a copy of the instrument registered at 3.30 on the 16th November, 1927.

Q.—Would you state what that purports to be?

A.—It reads

Q.—Do not read the whole thing. It merely states that the registration had not been made with the consent of Mr. Richardson?

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A.—It states that the document, or declaration, prepared by T. A. Labelle, Notary, at the request of Mr. Cross, was registered in the Registry Office on the 26th May, 1926, and that such document purports to affect among others the properties of one George William Richardson, and it then describes the properties, and it says:

10 “And whereas the said George William Richardson claims that the said registration should not have been made and has required the cancellation thereof, now therefore, I, the said Freeman T. Cross, hereby, and by these present, require that the said registration be cancelled and radiated insofar as the above properties referred to belonging to the said George William Richardson are concerned, etc.”

BY MR. ST. LAURENT:

Q.—What is the date of that?

20 A.—The 16th November, 1927. It was registered on the same date.

BY MR. KER:

Q.—That is the radiation by Mr. Cross of any rights which he may have acquired or purported to have acquired under the pocket book memorandum referred to here?

A.—Yes.

Q.—Will you file this as Exhibit D-62?

30 A.—Yes.

Q.—At page 42 of your deposition you were asked to give the consideration, which was not referred to in the deed D-16? At the bottom of page 41 you are asked the question:

40 “ Q.—I do not think that in the first few deeds you mentioned the price or consideration. I do not think with regard to the first one down at the bottom of the river, D-14, which is about two or three deeds before we took up the price question, Bridget Smith. That was the first deed you filed this morning. Will you say what the consideration of the deed D-14, Bridget Smith, was?

A.—\$694.65.

Q.—And D-15 is \$3,500?

A.—Yes.

Q.—That is Flynn?

A.—Yes.

Q.—D-16 is Jean Fraser?

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A.—Yes ”.

Would you make a note of it so we may have the matter complete. Have you verified that?

A.—Well, the consideration of D-16 was \$100.

Q.—In connection with this development, I think you stated you had to do certain work both upon the railway and upon the highway?

A.—Yes.

10 Q.—Would you explain to the Court the circumstances under which that work was done in the way of contractual relations between the parties?

A.—At the last hearing you asked me to produce a certified copy of the agreement between the Company and the Minister of Roads for the Province of Quebec, which covered the arrangements made for the diversion of the whole Maniwaki highway, and I have here a photostatic copy of that agreement which is dated the 4th October, 1926, and signed by the Minister of Roads, and the then
20 Vice-President of the Canadian International Paper Company.

Q.—Would you produce that as Exhibit D-53?

A.—Yes.

Q.—Would you indicate whether that contract covers the actual portion of the road which did not require to be diverted, but which required to be raised?

A.—No, it does not cover that.

Q.—Then, in amplification of that deed, will you say what authority you had for the interference with the part of the public highway above the Cascades which did not have to be diverted, but
30 had to be raised?

A.—The arrangement made was between the Gatineau Company and the Department of Roads. A profile of the existing highway was prepared, and on that profile is marked the line to which the road was required to be raised. I have a copy of that plan here, which is signed by Alex. Fraser, the Chief Engineer of the Department of Roads.

Q.—That is your authority for the raising of the road? You did not need a contract when it was not to be diverted?

A.—Yes.

40 Q.—That is very faint?

A.—I am very sorry, but that is the best proof I have of this.

Q.—Can you certify that that is a copy of the original?

A.—Yes.

Q.—Will you file this profile as D-64?

A.—Yes.

Q.—What is the date of that profile?

A.—If I recollect it is May, 1926.

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Q.—It just says May, 1926?

A.—Yes.

Q.—It represents a plan of the work necessary to raise the road in connection with your development above Cascades?

A.—Yes.

10 Q.—You were also to file a certified copy of the Order of the Quebec Public Service Commission in respect of their interpretation of paragraph 28-K of their Act, prohibiting you from proceeding to expropriate the Meach Creek property. Will you be good enough to file that as Exhibit D-65?

A.—Yes.

20 Q.—The Plaintiff has produced as one of his exhibits his deed of acquisition of the Cascades properties referring to lots 21-B, 21-C, 20-C and 20-D, and he has also further produced a deed of correction between himself and his original auteur in which it is stated that the lots 20-C and 20-D should have been lot 21-D instead of those two lots 20-C and 20-D of the 15th Range. At any rate, he took over lot 21-D in replacement of one of his lots mentioned in his deed. This was in January of this year. Would you be good enough to say whether you have any information based upon investigations made as to who, then, was the original owner of this lot 21-D, and, if so, will you file any document you may have bearing on it?

A.—I have Registrar's certificate of search of lot 21-D from the date of the re-opening of the registers of the Registry Office of the County of Hull, following the destruction of previous records by the Hull fire of the 26th April, 1900, brought to the 19th September, 1931.

30 Q.—Would you state who that certificate indicates as being the owner of that lot?

40 Mr. St. Laurent: I object to this question, as to proof of ownership by the registrar's certificate. The registrar's certificate can prove what documents are registered, but cannot prove ownership. That has to be proved by the documents themselves, and then there would be this further objection, that it would be for the Court to determine from the document the witness may see fit to offer whether or not so and so is the owner of the land. I submit the form of the question is objectionable, because the witness is not competent to say who owns the land, and consequently the material to which the question refers is not proper material to prove ownership.

Mr. Ker: Here is a document which is issued by an official in charge of the registration, which purports to bear on its face a note of all the entries referring to that lot since the opening of the Registry Office. He can express his opinion from that certificate as

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to who that certificate indicates to be the owner of that lot. In the final analysis it is for your Lordship to decide who that may be, but it seems to me the question is perfectly legal.

His Lordship: I think you are right, Mr. Ker. I will allow the question.

Of course, that might not prove it.

10 Mr. Ker: Possibly not. I believe it is a matter entirely of proof.

Witness: The first document noted in this certificate is the Will of James Reid, deceased 11th February, 1891, at Hull, bequeathing to his son Thomas M. Reid amongst others two acres of land situated on lots 20 and 21 in the 15th Range of the Township of Hull, and known as Cascades, together with a saw mill and all buildings and improvements thereon, and the carding machines now in the saw mill building.

20 Q.—That was the Will of Reid?

A.—Yes, there is mention in the margin of this registration of the Declaration on the 21st February, 1902.

Q.—That is, after the fire?

A.—Registered the 21st February, 1902, before N. Tétreault, N.P., by John Reid, that the property described and acquired by and bequeathed to Thomas M. Reid under Will above mentioned is now known according to the Official Plan and Book of Reference for the Township of Hull as amongst others lots Nos. 21-D in the
30 15th Range of the Township of Hull.

Q.—Is there any declaration adverse to that statement that you can find in the certificate?

Witness: Do you mean attacking that?

Counsel: Yes.

A.—No, other than the Declaration in 1931.

40 D-66? Q.—Would you produce that certificate of search as Exhibit

A.—Yes.

Q.—Have you a copy of the Will you have just read of the old gentleman Reid?

A.—I have here the certificate of the Registrar of the County of Hull that this is a copy registered in the Registry Office.

Mr. Ker: I would ask permission to produce this copy certi-

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fied by the Registrar in view of this fire which took place. This is the only possible way that one can get any registration of these things. This is a document registered at length in the Registry Office, re-registered after the fire, of which the original was apparently destroyed. It is certified by the Registrar as being a true copy, and I submit, that this is now the best proof. My learned friend has produced innumerable documents certified to by the Registrar and I have made no objection to them. I submit I cannot make any better proof. The original Will has been destroyed.

10

His Lordship: Is that proven? If it is registered, that does not prove you cannot get a copy from the Notary.

Mr. St. Laurent: It is a notarial Will.

His Lordship: Do you not think you could file a copy of that Will. That would be the best proof.

20 Mr. St. Laurent: It is 4001 of the minutes of the Notary J. O. Archambault.

Mr. Ker: If I may be permitted to file this for the moment, and I will use every endeavour to secure a copy. I do not know who has the notary's repertoire.

30 Mr. St. Laurent: I do not think we require to put my learned friend to that trouble. I do not think this is an important document at all. It purports to be a bequest of a certain property which is not in question in this case, and it is followed up by a Declaration made by one John Reid that the proper description is not the description contained in the Will but another description.

40 Mr. Ker: I beg my learned friend's pardon. What this deed refers to is clearly this, that this man Reid who died in 1896 leaving a Will disposing of two acres of land, that is of lot 21, that is what he says in his Will. Later, under the usual procedure and practice, sanctified by the Civil Code, one of those heirs comes in and says, now the property has been subdivided the portion that is referred to in this Will is lot 21-D, which is a perfectly legal, declaration for him to make, according to law. The deed remained absolutely registered without any objection on the part of your clients for 30 years, and at the time my learned friend's clients purported to sell in 1916, it was staring him in the face; in 1931, when he purported to deal with lot 21-D that registration was staring him in the face.

In any event, I will endeavour to produce an authentic copy to replace this Exhibit D-67.

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Mr. St. Laurent: The defendant, knowing nothing of this document, does not wish to press the objection that a copy certified by the registrar must avail.

Mr. Ker: I will do my utmost any way to obtain a copy in spite of what you say.

BY MR. KER:

10 Q.—Have you a certified copy of the Declaration which is referred to in that registration?

A.—Yes.

Q.—Will you just identify that and produce it as Exhibit D-68?

A.—Yes.

Q.—And which Declaration is dated 21st February, 1902?

A.—Yes.

20 Q.—Can you give me an estimate of the lands which you purchased above the Cascades, between that, to the top of the development? I think one of the witnesses, for the Plaintiff, Mr. MacRostie, estimated the cost of those flooding rights to be \$60,000. Would you state what your company has actually paid, or what it is costing your company for the same rights?

A.—The total amount paid as set out in the deeds of servitudes which have been filed is \$118,112.62. That includes the two documents which I filed this morning.

Q.—Does that in any way include notarial or legal fees, for examination of titles?

A.—No.

Q.—Or the cost of actual deeds in taking those properties?

30 A.—No.

Q.—That is merely the amount paid out?

A.—Yes.

Q.—What would you estimate the taking of those deeds and the searches of titles at?

A.—On the Chelsea development as a whole, the supplementary cost of notarial fees, land surveyors' expenses, legal fees, and costs in expropriation proceedings have been approximately 15 per cent of the purchase price of the properties.

40 Q.—Would that, in your opinion, be applicable to this amount of \$118,112.62 as well?

A.—Yes, approximately.

Q.—That does not include anything in connection with the cost of raising the road from the railway?

A.—Oh, no.

Q.—You do not know anything about those costs. You are proving that by another witness, I understand?

A.—Yes.

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CROSS-EXAMINED BY MR. L. ST. LAURENT, K.C.,
OF COUNSEL FOR PLAINTIFF:

Q.—These purchases for expropriations have been, have they not, to elevation 325?

A.—Not entirely. In certain cases we have purchased the right to raise the water to 321.

Q.—In some of the servitudes?

A.—Yes.

10 Q.—But where you have acquired lands, and where you expropriated, you went to contour line 325?

A.—In general, yes.

Q.—And that would be for the purposes of putting the water up to elevation 321, and having a 4-foot emergency space above it, would it not?

A.—It was done to allow a safety factor so there would be no additional claim made.

Q.—That is the usual safety factor that is required by the department, is it not, four feet?

20 A.—Three feet.

Q.—So that you may go to 322 and have three feet as a safety factor?

A.—No, not necessarily that. It is to take care to a great extent of the natural slope of the river, that is to say, an extreme high elevation of say 321 at Chelsea might be somewhat higher at the upper reach, therefore, the three-foot margin was required above that.

30 Q.—And in the village of Wakefield, was it not at or about elevation 321 that it commenced to damage the buildings?

A.—I am not able to say that.

Q.—You are not able to say that?

A.—No.

Q.—With respect to this document you have filed as D-67, do you know anything personally about this Mr. James Reid, or Thomas M. Reid?

A.—No, I do not know them.

40 Q.—Nor anything about this sawmill and buildings, and improvements, and carding mill at Cascades, you don't know anything about those. You don't know where they were; when you went there I suppose, they no longer existed?

A.—I am not sure when they were demolished.

Q.—But they did not exist when you went there, to the best of your recollection?

A.—No, not to my recollection.

Q.—The document you filed as D-65, that Order of the Quebec Public Service Commission of the 22nd April, 1927, is, I presume,

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the document that is alleged in the plea as being the Order of the Quebec Public Service Commission which prevented your company from pursuing the expropriation to a conclusion?

A.—Yes.

Q.—I see that this Exhibit D-64 which I understood you to say is a profile emanating from the Department of Public Highways, is prepared by Mr. Walter Blue, P.E.Q., that is Provincial Engineer, Quebec?

A.—Yes.

10 Q.—Engineer for C.I.P. Company, would not that be Canadian International Paper Company?

A.—Yes.

Q.—The other signature is S. C. Ralph, Locating Engineer. Was he not also an engineer of the Canadian International Paper Company?

A.—Yes. I did not say that that emanated from the department at Quebec.

Q.—I misunderstood you?

20 A.—I said we prepared a profile of the existing road and submitted it to the Department at Quebec.

Q.—So this is merely a profile of the road, which was prepared by the engineers of the parent company of the Defendant, and was submitted to the Department?

A.—Yes.

Q.—Did I understand you to say that this was for the part above Cascades?

A.—Yes.

30 Q.—Was this intended to be a plan of what you wished to be authorized to do?

A.—It was intended to be a plan of what we were required to do.

Q.—What would be your proposal as to what you might do?

A.—It was an arrangement reached by agreement between the chief engineer of the Department of Roads and the Company.

Q.—Do you know anything about that agreement?

A.—I don't know personally of it.

Q.—You do not know personally about it at all?

A.—Mr. Ralph, the Locating Engineer, will be able to tell you everything about it.

40 Q.—All you do know is that your engineers prepared this, and that it went to the department, since you were able to get back a copy of it with Mr. Fraser's signature upon it. Do you know that raising passed also on the 325 elevation, or do you know that?

A.—No, I don't know that. We will have to get that information from Mr. Ralph.

Q.—Is he here?

A.—Yes.

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Q.—From Cascades upwards towards Wakefield, the ranges are No. 15 and No. 16, are they not?

A.—Cascades is in the 15th range.

Q.—It is just above the range line dividing the 14th from the 15th range?

A.—Yes.

Q.—Then from there upwards towards Wakefield, the lots are either in the 15th or in the 16th range, the 16th range being the top range?

10 A.—Yes.

Q.—And the last range of the township?

A.—Yes.

Q.—Beyond that range line you get into the other township of Wakefield?

A.—Yes.

Q.—Then, that being the case, will you tell us why we are concerned with this Exhibit D-63, which has to do with the rebuilding of the portion of the road through ranges 10, 11, 12, 13 and 14?

20 A.—I was asked by Mr. Ker what arrangements we had made with the Department of Roads, referring to the re-location and raising of the highway.

Q.—This agreement does not refer to anything than the property in which we are interested?

Mr. Ker: If my learned friend will pardon me, I quite agree it does not.

BY MR. ST. LAURENT:

30 Q.—Did your company acquire from George William Richardson any portion of these lots 4-a of the township of Wakefield, 3-D, 3-E and 4-B of the 2nd range of the township of Wakefield?

A.—No.

Q.—Those lots would be in the vicinity of the place marked in pencil " E " with a dash, would they not, 4-A on which there is in ink No. 239. Is not that 4-A of Range 1, and 4-B and 3-C are just above it?

A.—Yes.

40 Q.—I see there is some yellow colored property opposite 4-A. Can you tell me what justified you in putting the yellow color there?

A.—If you look at D-27—I don't know the exhibit number, it is the deed from Trowse, which I filed this morning.

Q.—The deed from Trowse is D-59. Those are the two deeds you rely on?

A.—Yes.

Q.—The Trowse servitude is on that part of lot 4-A. Is that in

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respect to part of lot formerly belonging to Alfred E. Day, and to one William George Richardson, or their representatives?

A.—Yes.

Q.—So it leaves the question quite open as to which is which?

A.—Exactly.

Q.—And the deed D-27 from Day gives as his vendor Wilton H. Trowse?

A.—Yes.

10 Q.—Is it W. H. Trowse in both cases?

A.—Yes.

Q.—And you are satisfied that it is the same man?

A.—I don't swear to it.

Q.—But to the best of your information and belief?

A.—Yes.

Q.—And you acted upon it as being the same man?

A.—We were not concerned with who Day's vendor was except our attorneys were examining this title for them.

20 Q.—We have not anything here which would assist us in determining what portion of the 4-R rightfully belonged to Trowse and what proportion to Richardson?

A.—I have not.

Q.—All we have is, they pretended to have some right there, and we do not know how much either one may have had. You got whatever rights Trowse may have, and you may have to determine some day what Richardson has, and to what extent?

30 A.—As a matter of fact I told you we had acquired no title from Richardson, but that Mr. Richardson took an action against the company for damages, and was awarded a sum, as I recollect, of \$4,500; he took an action for \$30,000 and got \$4,500, and it was in respect to this property, so I do not think we will have to determine exactly how much Trowse had.

Q.—And he took an action for damages to the property belonging to him which was flooded by your works?

A.—Yes.

Q.—And got an award, and was paid that award?

A.—Yes.

40 BY MR. KER:

Q.—As a matter of fact, you have not claimed that, because you had no title, although you paid the damages?

A.—Yes.

BY MR. ST. LAURENT:

Q.—I thought it was colored?

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A.—Not the upper part, not the upper stream belonging to Richardson. You will find Richardson's property described as 3-B.

Q.—4-18?

A.—Well, but 4-B and 3-C are not colored.

Q.—But as to 4-A you are not in a position to say what portion was Richardson's?

A.—No.

Q.—In any event he sued for all the property he had there, and got damages?

10 A.—Yes.

Mr. Ker: And he has been paid although not colored yellow.

BY MR. ST. LAURENT:

Q.—With respect to D-27, I see the consideration is one dollar and other valuable considerations. Can you tell us what the other valuable considerations were?

20 A.—No.

Q.—It is to your knowledge that the one dollar was the nominal, and that there was a very substantial consideration for a very valuable property?

A.—I have no knowledge whatever what sum or consideration was given.

Q.—This agreement with the C.P.R. was for the purpose of being enabled to raise the water to the elevation of 323?

A.—By this agreement the C.P.R. gave the company the right to raise to 323, insofar as their property was concerned.

30 Q.—As to those mileage indications between mileage 8.21 and 12.65, and mileage 13.26 and 14.6, can you identify them with any of the other plans we have got here?

A.—Only approximately.

Q.—Perhaps we could by using the plan if the railway line was completed?

40 A.—That railway was built in 1800 and something, and I am not sure whether they had a re-computation of their mileage, whether the mileages referred to in this agreement refer to the same starting point as the mileages shown on that original profile. I can indicate the positions of those approximately if you wish.

Q.—Where, to the best of your information, would mileage 12.65 come?

Mr. Ker: Mr. Ralph could give that.

BY MR. ST. LAURENT:

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Q.—Mr. Ker suggests that it might be more convenient to get that from Mr. Ralph?

A.—Mr. Ralph might be able to give you more accurate information.

Q.—You will remember that D-17 is the purchase by your company from Caves of certain portions of lots 21-A, 22-A and 22-B of the 15th Range, 23-B in the 15th Range and 23-C-2 of the 16th Range, 22-B-C-2 of the 15th Range?

10 A.—Yes, practically so. I have not the deed in front of me, but I think that is right.

Q.—This David Caves is the same David Caves who had given this Promise of Sale to Cross in 1916?

A.—I understand so.

Q.—Am I to understand that to the best of your knowledge the only orders for immediate possession are those you put in D-58: You do not know of any others?

A.—I checked the deeds which I filed on which there was the note that they were following expropriation proceedings, and I secured orders referring to these properties.

20 Q.—But you do not know of any other orders for immediate possession that were obtained from the Quebec Public Service Commission?

A.—There were a number of orders for immediate possession.

Q.—I mean above Cascades and Wakefield?

A.—I have not got any personal knowledge of any others.

Q.—There never were any with respect to Cross?

A.—Not to my knowledge.

Re-examination

30 RE-EXAMINED BY MR. KER, K.C.,
OF COUNSEL FOR DEFENDANT:

Q.—Is the Order-in-Council which you have filed an official copy of the Order-in-Council respecting Chelsea, approving plans which you have already filed as your Exhibits D-7, D-8, D-9, D-10 and D-11?

A.—Yes.

40 Mr. St. Laurent: I object to this evidence as not being the best proof.

(The Court reserves the objections.)

(And further deponent saith not.)

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DEPOSITION OF SIDNEY E. FARLEY, A WITNESS PRO-
DUCED ON BEHALF OF THE DEFENDANT

On this fourth day of November, in the year of Our Lord one thousand nine hundred and thirty-one, personally came and appeared

10

SIDNEY E. FARLEY,

of the City of Ottawa, in the Province of Ontario, Land Surveyor, aged forty-five years, a witness produced on behalf of the Defendant, who being duly sworn doth depose and say as follows:

EXAMINED BY MR. KER, K.C.,
OF COUNSEL FOR DEFENDANT:

- Q.—Mr. Farley, what is your profession?
20 A.—Land surveying in the Province of Ontario and Quebec. I do a certain amount of engineering.
Q.—You are a duly qualified Quebec Land Surveyor?
A.—Yes.
Q.—Are you also an Associate of the Society of Civil Engineers?
A.—Yes.
Q.—You reside in Ottawa?
A.—In Ottawa.
Q.—And you are qualified as a Land Surveyor of the Province of Quebec as well?
30 A.—Yes.
Q.—How long have you practised your profession?
A.—Upwards of twenty years.
Q.—In what locality?
A.—In the District of Ottawa and Hull, and along the Gatineau district.
Q.—Are you familiar with the power development on the Gatineau River at Chelsea Falls?
A.—Yes.
Q.—Belonging to the Defendant?
40 A.—Yes.
Q.—What professional connection had you with that work?
A.—I was in charge of all the surveys with reference to the purchase of lands, and fixing of all property boundaries, etc., in connection with the development.
Q.—You were not an employee of the Gatineau Power Company?
A.—No.

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Q.—You were acting as an independent professional man engaged by them for that purpose, if I understand correctly?

A.—Yes.

Q.—You are therefore familiar with the location of the development itself, and in a general way, and in a particular way, with the lands which have been affected by that development?

A.—Yes.

10 Q.—Were the surveys in general made under your supervision for that development?

A.—They were.

Q.—You are familiar with the property of Mr. Cross, the Plaintiff?

A.—Yes.

Q.—Have you had any occasion to make any such surveys of that property—I am speaking now particularly for the moment of the property known as the Cascades property which Mr. Cross claims to own?

20 A.—Well, I made a particular survey of all the lot lines, and made a detailed plan showing all the properties between the main Gatineau road and the river, showing the different properties owned by Mr. Cross, and those owned by the Gatineau Company, that of the railway, and showing also the Gatineau River.

Q.—In fact, you minutely surveyed the whole locality in that place?

A.—I did.

Q.—Have you prepared a plan of the property of Mr. Cross at the Cascades?

30 A.—Yes, I have here a detailed plan of the property as surveyed by myself at the Cascades.

Q.—As surveyed by yourself?

A.—Yes.

Q.—Will you kindly produce this plan as Exhibit D-69?

A.—Yes.

Q.—Looking over this plan, Mr. Farley, I see that it includes land on the east side of the river, known as lot 21-B?

A.—Yes.

Q.—What is the nature of that small piece?

40 half of lot 21, the 15th range.

Q.—And it is registered as lot 21-B?

A.—Known as lot No. 21-B on the Official Cadastre.

Q.—What is the superficial area of that piece, approximately? Is it an acre, or half an acre?

A.—No, it is more than that. It is three or four acres, something like that.

Q.—Can you state the area of that lot 21-B which is submerged?

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A.—Yes, 8/10ths of an acre.

Q.—8/10ths of an acre is the amount which is being submerged by the Gatineau development on that lot?

A.—Yes.

Q.—Coming to the other side of the river for the moment, the west side, you have shown in red here a certain part of the shore line and also of the river as being in red; what does that signify? In fact, what does the red on the plan signify altogether?

10 A.—The red signifies the method we have adopted of dividing the bed of the river, and shows the ownership according to this division of the bed of the river by Mr. Cross.

Q.—And also of the land submerged?

A.—And includes the land submerged.

Q.—What is your estimate of the superficial area of the land submerged on the west side?

A.—Five acres.

Q.—Which is part of the road shown there?

A.—Five acres.

20 Q.—Five acres of the land on the west side and 8/10ths of an acre on the east side?

A.—That is right.

Q.—I notice up on the northern end of the map it is all red by itself. That also is a piece of land which you claim is owned by Mr. Cross?

A.—Yes.

Q.—And forming part of lot 21-C also?

A.—Yes.

30 Q.—Have you made any survey of the right-of-way of the Canadian Pacific Railway as it touches this particular property or runs through?

A.—Yes, I have made a survey of the property as it exists. At the point opposite nearly the northerly extremity of where the Gatineau road intersects the right-of-way of the railway.

Q.—Was this survey made before there was any raising of any water on the river?

A.—Yes.

Q.—And before there was any work done of raising the railway at all?

40 A.—Before there was any work done on the railway.

Q.—That is, in its natural condition as both river and railway existed you made a survey?

A.—Yes.

Q.—Have you any plan indicating what that survey showed as being the relation of the right-of-way of the Canadian Pacific Railway to the Gatineau river?

A.—I have a plan here, although it is dated January 24th, 1930,

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on which the field work was done in 1926—done on June 28th, as a matter of fact, 1926, which shows the relationship of the ordinary high water mark of the river with the centre line of the railway.

Q.—Just so that this second plan which you produce as Exhibit D-70 may be understandable in the light of the one D-69, would you mark a point “X” on both plans, so that one will key in with the other?

A.—I had better mark two points. Point “X” and “Y” on both plans are at identical points.

10 Q.—Will you state what the relation is between the river and the right-of-way between those points “X” and “Y”?

A.—The river between those two points is less than 40 feet, and would come within the limits of the right-of-way of the railway.

Q.—The right-of-way is 40 feet on either side of the centre line?

A.—The right-of-way is 40 feet each side of the centre line, and this plan indicates that the river impinges upon the right-of-way between those points.

20 Q.—Does that indicate to you that the C.P.R. right-of-way is riparian to the river at those points?

A.—That is the way I would interpret that.

Q.—Would you in a general way just describe the physical features in the river in this locality, distinguishing the Rapids and how they seem to fall?

A.—Coming down the river from say the division line between lots 21-C and 22-C-1, we find four distinct separate chutes or rapids. These rapids are better illustrated on the aerial photograph which we have.

30 Q.—Just a moment. You have an aerial photograph indicating these?

A.—Yes.

Q.—And which was taken before the water was raised at all?

A.—Yes.

Q.—Showing the land in its natural condition?

A.—Yes, made to the same scale as our own plan.

Q.—Would you produce this?

40 Mr. Ker: I think, your Lordship, this will show more clearly exactly what the situation is there.

BY MR. KER:

Q.—Will you produce this aerial plan as Exhibit D-71?

A.—Yes. There are four distinct divisions shown at points 1, 2, 3 and 4. The tops are shown by water, and the darker blotches are creeks in the river, all along the shore.

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Q.—The white water is shown there clearly and the rapids and the creeks are shown?

A.—On the darker blotches.

Q.—What do these lines that you have placed on the property indicate. Will you explain?

A.—On the east side of the river, the lines in white indicate the limits of the property of the Gatineau Power Company. Towards the lot 21-B we show the limits of the property of Mr. Cross.

10 Q.—That is the triangular lot?

A.—The triangular lot.

Q.—Is that to exactly the same scale and applied to this plan? They are both to the same scale?

A.—They are both to the same scale exactly.

Q.—And they are to a scale of one hundred feet to one inch?

A.—100 feet to one inch. This centre line is the middle thread of the river, and the other lines at the right angles to the mid-thread are the divisions that we propose to show.

Q.—Are the side lines of Mr. Cross?

20 A.—And the conditions of the river bed.

Q.—Those lines on the west side?

A.—That is merely an indication of the limits of the property.

BY MR. ST. LAURENT:

Q.—According to the method you selected this time?

Mr. Ker: And the other times.

30 BY MR. KER:

Q.—You might continue?

A.—On the west side of the river we find that the different property owners are outlined, and their names are shown.

Q.—Mr. Cross' deed refers to one Baker as being the southern boundary. Is that the property of Baker?

A.—Yes, the property of Baker is shown.

Q.—Would you show his Lordship where the railroad and the highway are?

40 A.—The railway is shown on this curved line. At one point here it is close to the river, and then it diverts some distance away from the river and runs along and comes close to the river again.

Q.—Will you put in there the points "X" and "Y" to which you have referred, where it runs into the river?

A.—Yes. The public road starts at the point "B" and runs along towards the rear of the property of Bridget Smith and crosses the railway at the point "C".

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Q.—That is at it existed long before the development, or before the railway or the road were raised?

A.—Yes.

Q.—Would you point out the property referred to as 21-C on the west side of the river?

A.—It runs between the railway and the river.

Q.—And also between the road and the river?

A.—And also between the road and the river.

10 Q.—Will you point out the lot 21-D about which there has been some statement here?

A.—Lot 21-D extends from the division line between that property shown as Bridget Smith and that of Flynn.

It has its northern boundary, bounded by Bridget Smith and on the south by the division line between lots 20 and 21. In other words, it is bounded by 20, and it is bounded on the east by the river.

Q.—Would you point out to his Lordship the two lots which are referred to as 20-B and 20-C, which were cancelled?

A.—They are shown on the plan as marked lots 21-C and 20-D.

20 Q.—Those are two lots which are shown in Mr. Cross' deed?

A.—Those are the lots referred to.

Q.—And this is the lot 21 which he purported to have acquired in January this year?

Mr. St. Laurent: I object to the form of the question in view of the fact the evidence is that the plaintiff did not acquire it in January, but purported to acquire the deeds of the properties he had acquired years back, corrected.

30 Mr. Ker: My contention is he never acquired it nor never had any ownership of it.

(The Court reserves the objection.)

BY MR. KER:

Q.—Who took this photograph?

40 A.—It is a certified enlargement made by the Department—H.A. 135-41, property of the C.G.A., Canadian Geological Aerial photographic section, Department of National Defence, Ottawa, certified by E. R. Owens, Flight Lieutenant, Commanding Officer.

Q.—Is that a true and absolute representation of the property as it existed at that time?

A.—As far as I know it, yes.

Q.—To reiterate, I understand you to say that the portions colored red on this plan D-69 correspond to the lines on the aerial photograph?

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A.—Yes, outlined in white.

Q.—In scale, and in exactitude?

A.—Yes.

Q.—That is, before any water was raised in the river?

A.—Yes.

Q.—Or any work done on the railway or on the river?

A.—Yes.

Q.—Had you any occasion to take any elevations of this property?

10 A.—Yes, I took some elevations on both sides of the river.

Q.—You mean, water elevations?

A.—Water elevations, on both sides of the river, on June 28th, 1926.

Q.—Before the water, of course, was raised?

A.—Before the water was raised. These elevations and their actual location are as shown on Exhibit D-69.

Q.—On D-69, would you just perhaps amplify that?

20 A.—On the east side of the river. On the east side of the river these water elevations are marked by figures along the east shore ranging on the property of Mr. Cross from 309 to 309.8.

Q.—And indicating that at those points of elevation there were about 11 inches of fall upon the property at that point?

A.—Yes.

Q.—On the other side you also took elevations which are marked. . . .

A.—In the same manner. They range at the foot of the Cross property on the south from 306 and 7/10ths to 309.9.

30 Q.—What, therefore, do you determine is the difference in elevation between the upstream end and downstream end of Mr. Cross' property by those water elevations?

A.—The fall in the river as indicated by the water elevations on the east side, I have taken at one foot. On the west side, not including the property which may be judged to be owned by the railway company, I have got a difference of elevation of 3.2 feet a total of 4-2/10ths, or an average of 2-1/10th feet.

Q.—It is an average over the whole property?

A.—It is an average over the whole property of 2-1/10th.

40 It might be remarked here, of course, that the property of Mr. Cross on the east side of the river is very much shorter than that on the west side. At least, it has not got the same extension along the river on both sides.

Q.—Would you indicate which of these Rapids Mr. Cross would be entitled to share in from the point of view of elevation, or riparian, or river bed ownership?

A.—If we eliminate Mr. Cross from the ownership of the river where the right-of-way borders the river. . . .

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Q.—That is the right-of-way of the Canadian Pacific Railway?

A.—Where the right-of-way borders the river, we find Mr. Cross has no part of the first Chute or Rapid. He would own a part of the second Rapid on the east side to the middle thread, all of the west half of the second Rapid, and a part of the upper part of the third Rapid, extending to the middle thread from the west shore.

Q.—And any part of the fourth Rapid?

A.—And no part of the fourth Rapid.

Q.—You were saying that without taking into consideration
10 the portion of the property, or the bed of the river facing the C.P.R. right-of-way, he has by your actual servitude measurement in elevations, an average of how much head on that water, or how much average difference in elevation?

A.—2-1/10th feet.

Q.—That is, in the big block coloured red on the lower part of the plan, if you took in the intermediate portion between the big block and the little block in the north, that is to say, if you gave him credit for the portion of the river to the middle thread, what would
20 be the difference in elevation?

A.—On the east side he would have the same thing, and on the west side he would have a difference of elevation of 5.8 feet, a total of 6.8, or an average of 3.4.

BY MR. KER, K.C.:

Q.—Just to review the last question or two we were dealing
30 with before the adjournment, in connection with the plan Exhibit D-69. You stated you had taken elevations which are marked upon the plan. Will you please state again what those elevations mean, and what you say as to the average of elevation, or drop, or head that exists between the northern and the southern boundaries of the large red coloured portion?

A.—3.2 feet.

Q.—That is on the west side?

A.—Yes. You are referring to the red coloured portion.

Q.—And, on the east side it is 11 inches?

A.—I took it as 1 foot.

Q.—Making an average of what?

40 A.—2.1 feet.

Q.—And in even giving Mr. Cross credit for that portion to which the C.P.R. is riparian, and this red portion standing by itself farther north, what was the difference in elevation on the west side?

A.—5.8 feet on the west side.

Q.—And the same 11 inches on the east side?

A.—Yes.

Q.—Making an average of how much?

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A.—3.4 feet.

Q.—Had you occasion to establish the elevation of the ordinary high water mark on the southern portion, or at the southern extremity of this large portion marked red on the plan?

A.—The ordinary high water mark?

Counsel: Where the vegetation shows.

10 A.—I fixed the shore of the river on the west side, as well as on the east side. This plan purports to represent the shore of the river at ordinary high water.

Q.—What is the elevation on the lower part, where the vegetation indicates the ordinary high water mark exists?

A.—At the lower portion I have it as 306.7; or about 307 at the lower portion was as near as I could arrive at the ordinary high water mark.

Q.—Of course, while this plan is coloured red and shows those various numbers, 306, etc., those elevations refer to elevations taken before the water was raised?

20 A.—Yes.

Q.—I think you said you surveyed this property minutely?

A.—Yes.

Q.—How did you proceed to establish the side lines of lot 21, and to work out the other physical features of the property as indicated on the plan?

30 A.—There is an iron bolt on the range line between the 14th and 15th ranges, between lots 20 and 21. I do not really know who planted this iron bolt, but it has been there, and I have used it several times in years gone by. It agrees also with the description in the Deed of the Canada Cement Company as described in a certain procès verbal in 1867 by Hamilton.

I ran a line from this iron bolt in a northerly direction across the river, and there tied on to other iron bolts planted on this same side of the line in 1867 by the same land surveyor at the northwesterly extremity of the property of the Canada Cement Company, situated on the east side of the river. I continued this line on to the end of the range, or at least to the northerly limit of that range—one mile.

40 Q.—How did you determine this point marked “Wooden Post”?

A.—That is the centre of the range. It is an equidistant point between the front and the rear of that range.

Q.—And it is the division line between the north and the south portions of the lot?

A.—It is intended to mark the division between the north and the south halves of lot 21.

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Q.—How did you proceed then? To extend your side lines of the lot in the ordinary way, I presume?

A.—As I just mentioned, I produced the side lines to the north end, and the division line between the north and south halves of the lot I ran in a direction to follow midway between the front and rear of the range, as far as the shore line of the river.

Q.—Have you had occasion to look at the Deed from Dame Bridget Smith (Mrs. Byrnes) to Mr. Cross?

A.—I have.

10 Q.—Is it to your knowledge that the property already sold to the Canadian Pacific Railway Company is mentioned in that Deed as excepted from this property?

A.—Yes.

Q.—Will you state whether or not in your opinion the exception that is made in that Deed in reference to the Canadian Pacific Railway is the line of the railway as indicated on your plan Exhibit D-69?

A.—I believe so.

20 Mr. St. Laurent: I think that is a question for the Court. We have the Deeds, and we have the plans, and I do not think the witness should be called upon to construe the Deeds.

Mr. Ker: I do not think the matter is of very great importance. I merely wanted to have the property identified.

Witness: Actually the Deeds were prepared from this plan, but we did not know of the right-of-way.

30 Mr. Ker: I may say I propose to make more proof with respect to the railway at this end. What I wanted to do now was to make sure it was the railway which was excepted from that Deed.

Mr. St. Laurent: There is no other railway there?

Mr. Ker: I will ask the witness.

BY MR. KER (continuing):

40 Q.—There is no other Canadian Pacific Railway, or other railway, in that vicinity?

A.—No.

Q.—Did you have occasion to examine the Canadian Pacific Railway Deeds or surveys?

A.—Yes, I have seen both the plans and the Deeds.

Q.—And the Deed of Acquisition of the C.P.R.?

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A.—Yes.

Q.—From Thomas Moore?

A.—Yes.

Q.—I notice on your plan Exhibit D-69 there is not included as belonging to Mr. Cross lot No. 21-D. Have you any remarks to make with respect to that?

10 A.—We had considerable difficulty in defining the bounds of that lot 21-D. It was conveyed to one Sully, I think, and the title, as a matter of fact, is pretty obscure throughout, and we are still doubtful as to who owns it. It has been mentioned in several documents, and corrections and changes have been made, and it is really very hard to define who owns it.

We find that Reid apparently conveyed a portion of lot 21-C, which was afterwards corrected to lot 21-D. There does not seem to be any connection between Reid and Moore, from whom Mr. Cross got his title.

Q.—I notice in the same Deed to Mr. Cross his southern boundary is described as the property of Charles E. Baker. Is that property indicated on the plan Exhibit D-69?

20 A.—Yes. The property of Baker is a small rectangular, or practically square, piece of property, marked "Charles E. Baker". The property of Mr. Cross on part of lot 21-C is described as being bounded on the south by the property of Charles E. Baker.

Q.—I see you have given him credit for a larger southern boundary than that on our plan?

A.—We have extended his southern boundary to the northern boundary of lot 21-D.

Q.—That is, to the southern boundary of lot 21-C?

30 A.—Yes, the same point.

Q.—Will you tell His Lordship whether you have made any survey or professional examination as a land surveyor of Mr. Cross' Farm Point properties?

A.—Yes, I have.

Q.—Will you explain the geographical location of Meach Creek and Mr. Cross' Farm Point lands in relation to the Gatineau River? I understand Meach Creek is a creek which runs into the Gatineau?

40 A.—Yes. Meach Creek, which forms part of the Farm Point property, empties into the Gatineau about a mile or a mile and a half above Cascades—above where the property shown on this plan is.

Q.—And the backing up of the water by reason of the operations of the Company was a backing up of the water of the Gatineau into Meach Creek?

A.—Precisely; resulting in flooding certain lands at Farm Point.

Q.—Which are known in this case as the Farm Point or Meach Creek properties?

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A.—Yes.

Q.—Will you tell His Lordship whether you have made a survey of those properties, and, if you have, perhaps you might produce a plan of them?

A.—Yes. I have a plan of the Farm Point property showing the flooded lands due to the raising of the water at Cascades.

Q.—Will you produce this plan as Defendant's Exhibit D-72?

A.—Yes.

10 Q.—You made this survey yourself?

A.—Yes.

Q.—According to that survey what area of land do you find affected by this flooding?

A.—I have divided this into different parcels, called Parcel 1, Parcel 2, Parcel 3, Parcel 4, and Parcel 5. The area flooded to elevation 321 on Parcel 1 is 16.7 acres; on Parcel 2, 3.9 acres; on Parcel 3, .72 of an acre; on Parcel 4, 1.72 acres; on Parcel 5, 1.6 acres.

Q.—Making a total of how much?

A.—24.64 acres.

20 Q.—And those are the parcels which you have designated as 1, 2, 3, 4 and 5 on this plan Exhibit D-72?

A.—Yes.

Q.—Do those parcels correspond generally, or exactly with the parcels for which expropriation proceedings were taken and offers made to Mr. Cross, at that place?

A.—Yes.

Q.—You are the same Mr. Farley who is mentioned in those proceedings?

A.—Yes.

30 Q.—A question arose from the evidence on behalf of the plaintiff as to a comparison—for the purpose of valuation, I take it—between a property on the Lievre River sold by the Gatineau Company, Limited (not the defendant) to the Maclaren Company?

A.—Yes.

Q.—Close to the Village of Masson?

A.—Yes.

Q.—Are you familiar with that property?

A.—Yes.

40 Q.—Have you had occasion to study it as a land surveyor and a professional engineer?

A.—Yes, I have taken certain elevations and computed certain power flows from it.

Q.—Have you anything which would indicate clearly to the Court just what that property consisted of?

A.—We have another aerial photograph showing the Lievre River.

Q.—Will you file it as Defendant's Exhibit D-73?

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A.—Yes.

Q.—This is an aerial photograph of a portion of the Lievre River, indicating in red lines the property sold by the Gatineau Company to the Maclaren Company, to which reference has been made in the plaintiff's evidence, and by Mr. MacRostie?

A.—Yes.

Q.—Will you explain to his Lordship how this plan, or photograph, was prepared?

10 A.—The plan was prepared by the Royal Canadian Air Force; the same as the other one. It is dated April 14th, 1927, and is signed " E. R. Owens, Commanding Officer Photographic Section R.C.A.F., Ottawa ". It shows in red the property conveyed by the Gatineau Company to the Maclaren Company, and shows in green the property owned by one Higginson.

Q.—Which was also sold?

A.—Which was also sold to the Maclaren Company.

Q.—And to which, I understand, reference was made by Mr. MacRostie?

A.—Yes.

20 Q.—Do you recollect the amount Mr. MacRostie stated that Higginson property had been sold for?

A.—I think it was \$25,000.

Q.—And do you recall the amount he stated as the amount the property hatched in red had been sold for?

A.—I understood \$200,000.

Q.—Have you had occasion to make an investigation based on the Deeds, to determine the value of river flow which was conveyed by the Deed from the Gatineau Company to the Maclaren Company?

30 A.—Yes; I have taken certain levels, and, on the basis of flow as given by Mr. MacRostie, I made certain computations of horsepower.

Q.—You say you have taken levels?

A.—Yes.

Q.—Will you state what has been the result of your investigations as to levels, between the northern point represented by the diagonal line stretching out into the river, and the southern point down as far as the railway?

40 A.—That is from the upper limit of lot 12-5 to the lower limit of lot 12-6. I have found an average head of 36.9 feet. Made up in this way: the elevation at the shore side at the upper end of lot 12-5 is shown on the plan as 200.81; the elevation, as near as I was able to obtain it, in the centre of the stream opposite this point is 214—giving me an average there of 207.4.

Q.—That is the average between midstream and the shore?

A.—207.4.

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Q.—And the elevation at the lower end of lot 12-6, which is where the railway intersects, is

A. (interrupting)—170.5.

Making a difference of 36.9 feet.

Q.—As against Mr. MacRostie's 30 feet?

A.—I think 30 feet was his figure.

I might say the river, as indicated in this photograph, falls in a series of steps towards the east bank. The direction of flow is quite clear, and the fall is in a series of steps. That is why we have a greater elevation in midstream than we have on the shore side.

10

Q.—Am I right in stating that throws the water, as it were, over to the east bank?

A.—Not necessarily; but the flow is naturally in that direction.

Q.—I see you have taken the centre line of the river between the large island, referred to as lot 13-3, and the mainland?

A.—Yes.

Q.—What proportion of the stream flow in the river does that represent?

A.—I have taken the figures as given by Mr. MacRostie, I believe, when he stated that the first and second channels, which that comprises, make up 92 per cent of the total flow.

20

Q.—Will you please indicate on the plan where the first channel is and where the second channel is?

A.—The first channel is between the small island and the shore, and I mark it in lead pencil.

Q.—And the second channel is between that and the large island?

A.—Yes.

Q.—And the third channel is outside of the large island?

30

A.—Yes.

Q.—Am I right in stating that your assumption of Mr. MacRostie's evidence was that 8 per cent of the flow went down the outside, or third, channel?

A.—Yes.

Q.—And that 92 per cent of the flow went down between the mainland and the big island?

A.—Yes, the two combined.

Q.—I think Mr. MacRostie's evidence was to the effect that he had given credit only for the flow between the small island and the mainland?

40

A.—Yes.

Q.—And that that represented some 32 per cent of the total flow?

A.—As I understand it.

Q.—According to the Deeds, and according to the surveys you

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have made, what is the actual flow which was conveyed by the Deed?
What part of the 92 per cent?

A.—50 per cent of the 92 per cent.

Q.—That is, 46 per cent of the flow was conveyed by that Deed?

A.—Yes.

Q.—Under a head of 37 feet, instead of 30 feet?

A.—Yes.

Q.—I do not think Mr. MacRostie said anything about the head
involved below the railway, but will you tell his Lordship what is the
10 difference in elevation between the southern part of lot 12-6 and the
lowest portion colored in red on the shore below the railway?

A.—24 feet.

Q.—What would you say was the aggregate of fall conveyed by
the Gatineau Company to the Maclaren Company by that Deed?

A.—I have it 60.9 feet.

Q.—And not 30 feet, as according to Mr. MacRostie's estimate?

A.—In any event, 60.9 feet is what I get.

Q.—60.9 feet, and 46 per cent of the flow?

20 A.—Yes.

Q.—Have you made any calculations as to what horsepower
that would represent?

A.—It is divided into sections.

Q.—Take the first section, down to the railway.

A.—From the upper limit of lot 12-5 to the lower limit of 12-6,
on an average head of 36.9 feet, and using the 46 per cent of 4,000
second feet, it would come to 7,700 water horsepower.

Q.—Do you recollect what was Mr. MacRostie's estimate of
the horsepower conveyed in that Deed?

30 A.—I think it was 4,000.

Q.—You have estimated it according to your measurements,
and according to your investigations, and you make it 7,700 horse-
power?

A.—Yes.

Q.—To the railway?

A.—Yes.

Q.—Have you made an estimate of the horsepower which would
be generated below the railway?

40 A.—It would have to be more approximate, because the prop-
erty of the Gatineau Power Company is bounded by the lot line,
and it is very difficult to establish the total amount of water—the
flow—within the lot line and the shore line.

Q.—Have you made an estimate, as accurately as you could,
of the horsepower which could be generated below the C.P.R.?

A.—Using the same 4,000 second feet, I arrived at 4,100 horse-
power below the railway bridge; of which the Higginson property
would take up about 1,300.

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Q.—4,100, of which you would have to give credit to the Higginson property to the extent of about 1,300?

A.—Yes.

Q.—Leaving a net remainder of how much?

A.—2,800.

Q.—2,800 horsepower below the C.P.R.?

A.—Yes.

Q.—What would you estimate as the total horsepower conveyed by that Deed?

10 A.—7,700, plus 2,800.

Q.—A total of how much?

A.—10,500.

Q.—10,500 horsepower, as against Mr. MacRostie's 4,000 horsepower?

A.—Yes.

Q.—In addition to this water, and the water rights, which were conveyed, I see there is a considerable area of land involved?

A.—Yes. It is correctly represented in the Deeds.

20 Q.—What is the little settlement we see?

A.—The Village of Masson.

Q.—Adjoining the land which was sold?

A.—Yes.

Q.—And those parts shown in red were also sold?

A.—Yes.

Q.—I see certain markings in respect to the Higginson property. What do they represent?

A.—It shows the old mill and the buildings, which were at one time in operation.

30 Q.—And, the whole property, including the mill, the buildings, the water rights, and everything else, was sold for \$25,000?

A.—I do not know what they were sold for. I heard they were sold for \$25,000.

Q.—That was the statement in Mr. MacRostie's evidence?

A.—Yes.

Q.—And, it is the amount given in Exhibit P-45?

A.—Yes.

Q.—The property hatched in green on Exhibit D-73 is the same Higginson property as is referred to in Exhibit P-45?

40 A.—Yes.

Q.—And, the buildings are included?

A.—Yes.

Q.—What was your estimate of the horsepower attributable to the property hatched in green on Exhibit D-73—the Higginson property?

A.—1,300.

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Q.—Do you recollect what was attributed to it by Mr. Mac-Rostie?

A.—I do not think he mentioned anything down there.

Q.—I was under the impression he mentioned the figure of 700. In any event, it will appear from his testimony.

Of course, you took those levels yourself?

A.—Yes.

Q.—Do you consider this plan absolutely represents the delineation of the property sold under that Deed?

10 A.—I do.

Q.—This property on the Lièvre, to which we have just been referring, is a complete drop in itself—a complete concentration in itself—between those lines?

A.—Yes.

Cross-examination

CROSS-EXAMINED BY MR. ST. LAURENT, K.C.,
OF COUNSEL FOR PLAINTIFF:

Q.—You are the Mr. Farley who signed, as surveyor, the plan
20 of which our Exhibit P-1 is a photostat?

A.—Yes.

Q.—Was this blueprint which was served on Mr. Cross, and on which certain properties were shown coloured in red, prepared under your supervision?

A.—Yes. It is a copy of the other plan.

Q.—That is, Exhibit P-19?

A.—Yes.

Q.—Was the colouring put in under your supervision?

30 A.—The whole thing was done under my supervision.

Q.—Will you look at this other blueprint of the same plan (Exhibit P-19) from the Public Service Commission Record and will you say if the technical description annexed to it, and which seems to have become a little damaged, is the technical description of the portions shown coloured in red on the plan? There is still enough of the technical description left to show your signature.

A.—Yes.

Q.—Have you still that technical description in your records?

40 A.—I would have to search to see whether I have or not. I am not quite sure.

Q.—Will you file, as Plaintiff's Exhibit P-54, a copy which we will make from this and which we will ask you to certify?

A.—Yes.

Q.—Being the description of the land coloured in red on the plan Exhibit P-19?

A.—Correct.

Q.—The Exhibit you will file as P-54 is the description of the

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land referred to in Exhibit D-54 as Group A?

A.—Correct.

Q.—You prepared this technical description yourself?

A.—Yes.

Q.—Is it not a fact that at that time you were, rightly or wrongly, assuming that the line between lot 20 and lot 21 is the line extending across the river, being the projection of the side lines shown on the plan?

A.—Not necessarily.

10 Q.—Are not your technical descriptions made up on that assumption?

A.—No: I do not think so. They are made up on the side lines, as far as they extend; but, the descriptions do not extend out into the water.

Q.—When you showed on Exhibits P-1 and P-19 a line projected across the river on either side of lot 20 and lot 21, you were (without, perhaps, attaching much importance to it) just projecting the side line straight across the river?

20 A.—It was merely intended to show the line on each side of the river was a continuous line.

Q.—But, in order to get the side line of that triangle, which is now 21-B, you have to project the line from the other side?

A.—The whole line. Right through.

Q.—Right through, across the river?

A.—Yes.

Q.—I presume you are aware that is the way the lot was originally laid out—the portion beyond the river being in line with the portion on the other side of the river?

30 A.—Yes.

Q.—Did you prepare the technical description of the property purchased by the Gatineau Power Company from the Canada Cement Company?

A.—No.

40 Mr. Ker: I do not think there was anything said in regard to the Canada Cement Company in my examination-in-chief of the witness, and this line of questioning would not arise from my examination-in-chief.

Mr. St. Laurent: The witness has testified as to the proper way to indicate the portion of the river that goes with the riparian property, and I am just following up his plan. The fact is the Gatineau Company purchased from the Canada Cement Company according to a description which extends the line straight across the river and not in this jigsaw fashion which has been suggested for

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the purposes of this case. That is my information, at least, and Mr. Farley is a surveyor and is able to tell us if the technical language used does not mean that.

His Lordship: I will allow the evidence under reserve of the objection.

BY MR. ST. LAURENT (continuing):

10 Q.—When you prepared this technical description of Group A you were treating, were you not, the land which that description covered (and which is colored red on the plan) as having to be expropriated from Mr. Cross?

A.—Yes.

Q.—And that included, did it not, the portion of land between the railway and the river down to the projection of the side line between lots 20 and 21?

A.—Down to the side line itself.

20 Mr. Ker: Of course, the plan my learned friend is now showing the witness is not a plan which was made by Mr. Farley. Put it to him on his own plan.

Mr. St. Laurent: I submit I am entitled to ask him if the other plan he made did not include a portion which is shown otherwise on this plan.

BY MR. ST. LAURENT (continuing):

30 Q.—Down to the side line between lot 20 and 21?

A.—Yes.

Q.—That included that portion which is not colored red on the plan Exhibit D-69, and which appears to be opposite the Flynn property?

A.—Correct.

Q.—Speaking with respect to lot 21-D, you said there appeared to have been some conveyance to a Mr. Sully?

A.—Yes. It was described, I believe, as lot 21-C.

40 Q.—Was it not Sully who was the vendor to Flynn?

A.—I believe so.

Q.—And the Flynn property was acquired by the Gatineau Company?

A.—Yes.

Q.—Will you look at Exhibit D-15, and say if that property was not, in that Exhibit, as in the previous titles, always described as bounded to the east by the Canadian Pacific Railway?

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A.—Yes, I believe I remember that. I remember that distinctly, yes.

Q.—In the Deed Exhibit D-15 it is described as being a part of lot 20-C. Is it not to your knowledge that was corrected, and it was made to read part of lot 21-C?

A.—Yes.

Q.—If you have any doubt about it, we will look at the document.

A.—I think it would be better.

10 It should be 21-D, as a matter of fact, instead of 21-C.

Q.—On what do you base your statement that it should be 21-D instead of 21-C?

A.—Because we know the location of 21-D in accordance with the Official Plan and Book of Reference. We know where the side line is between 20 and 21. We know where the Flynn property is with reference to that side line. The only place that property can be is where it is, and lot 21-D as described in the Book of Reference is bounded by that side line.

20 Q.—Bounded by the side line between 20 and 21?

A.—Yes.

Q.—And if you put the Flynn property in 21-D you get almost twice as large an area as the Book of Reference shows?

A.—Yes.

Q.—Whereas, if you leave it in 21-C

A. (interrupting)—It is not twice as large as the Book of Reference shows—it is half as large.

Q.—You have for 21-D twice as large an area as the Book of Reference shows for 21-D?

30 Witness: Where?

Counsel: In the Book of Reference. If you put the Flynn property into 21-D you get a 21-D that is almost twice as large as the cadastre shows.

A.—No, not at all—half as large.

40 Q.—I am not speaking about the Flynn property being the whole of 21-D. If you make all this area from the side line over to the Bridget Smith property 21-D, do you not get a 21-D that is much larger than the cadastral 21-D?

A.—No, I do not think so. It is just plotted from the cadastral plan.

Q.—When you spoke of 21-D as having apparently been conveyed, from the Registrar's Certificate, to one Reid, you were referring, I presume, to the certificate filed this morning as Defendant's Exhibit D-66?

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A.—Yes.

Q.—And you said there was no appearance of any conveyance between Moore and Reid?

A.—No.

Q.—Moore being the original grantee of 21?

A.—Yes.

Mr. Ker: I do not think Mr. Farley deposed to those facts at all. I think he was only questioned this afternoon in regard to lot 21-D. It was Mr. Woolcombe who explained the certificate of search.

Mr. St. Laurent: I think the witness will recollect he said there was no conveyance between Moore and Reid.

Witness: I have never been able to find any.

BY MR. ST. LAURENT (continuing):

20 Q.—Do you know, as a matter of fact, where the saw mill and the carding mill were?

A.—All I can say is I have seen some of the old buildings there—the remains of old buildings. I did not see them all. I could not say what extent they covered, but I certainly saw some of them.

Q.—Were they not below the Canada Cement Company's fall? Just at the foot of the Canada Cement fall?

A.—No, they would not be at the foot of the falls. They would be between the third and fourth chutes. Somewhere between the third and fourth chutes.

30 Q.—I now have the certificate of search I was looking for. It is Exhibit P-6. I show you the registration of the sale of March 30th, 1926, registered March 31st, 1926, by William Patrick Flynn to the Canadian International Paper Company; and I call your attention to the fact that it is there stated:

40 “ It is moreover understood that all the Deeds referring to the title to the piece of land presently sold described it as part of lot 20-C in the said 15th Range. The actual description of the said piece of land should be part of lot 21-C in the said 15th Range of the said Township ”.

A.—That is not correct.

Q.—It is a correct reading of the declaration they put in the Deed.

A.—Yes.

Q.—And to your knowledge there never has been any other correction but that one?

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A.—No.

Q.—And to the best of your knowledge Flynn acquired from Sully?

A.—Yes.

Q.—And Sully acquired from Moore, or Moore's representatives?

A.—From Reid. Sully acquired from Reid.

Q.—Sully acquired from Reid?

10 A.—I do not think Sully acquired from Moore.

Q.—You do not persist in your answer that Sully acquired from Reid, do you?

A.—No, until I see something.

Q.—Are you now looking at something which will refresh your recollection on it?

A.—Yes, I am.

I think Reid sold to Flynn.

Reid to Sully, and Sully to Flynn.

20 Q.—Have you any note by which you have been able to refresh your memory?

A.—Yes; from my own surveys of the property. I have it that Thomas Reid sold to Robert Reid. I have a record here of Thomas Reid, sale to Robert Reid, the property known as the Flynn property. Then the one to Sully.

Q.—That is the property bounded to the east by the C.P.R.?

A.—Yes, by the railway.

Q.—Have you taken the elevation of the water in the vicinity of the dividing line between lots 20 and 21?

30 Witness: On what side of the river?

Counsel: On the west side of the river.

A.—Not precisely at the side line. I have the water level about 150 feet up from the side line, but I think it is practically the same elevation as at the side line itself.

Q.—Does not your plan Exhibit D-69 show there is a drop just above the side line between 20 and 21?

40 A.—That is really only the commencement. It is practically the top of the fall.

Q.—What elevation did you get when you took the elevation of the water?

A.—306.7.

Q.—Was that the elevation of the water, or was that the elevation you determined as being the high water?

A.—That was a water elevation as of that date.

Q.—A water elevation as of June 28th, 1926?

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A.—A water elevation as of June 28th, 1926.

Q.—Do you know what was the flow at that time?

A.—Yes, I can give it to you. I think it was 14,000 second feet.

Q.—That is a large flow, is it not?

A.—Yes.

Q.—What was the unregulated flow there?

A.—I am not in a position to say.

Q.—I mean the mean summer flow.

10 A.—I can only speak from hearsay more than anything else.

Q.—You never determined it?

A.—No.

Q.—But it would be very much lower than the figure you have
just given us?

A.—Yes.

Q.—It would go down to something like 5,000 or below 5,000?

A.—Very probably.

20 Q.—I notice there has been a faint pencil line drawn on Exhibit
D-69 from the corner of the projection of the side lines of the Flynn
property across the river. If the bed of the river had to be distributed
in the fashion your pink colouring indicates, that portion between
the red and the faint pencil line would be a portion that would be
attributable to the frontage opposite the Flynn property?

A.—Correct.

BY MR. KER:

Q.—Was it you who put that pencil line on Exhibit D-69?

A.—No.

30 Q.—Do you know what it represents?

A.—I do not know, but it is practically what Mr. St. Laurent
says. I did not put it on. It is not a very regular line, as a matter
of fact.

BY MR. ST. LAURENT (continuing):

Q.—But it apparently indicates approximately the portion of
the bed which would go with the frontage opposite the Flynn prop-
erty, if the bed has to be apportioned in the way this plan shows?

40 A.—That is correct.

Q.—And that would take a considerable portion of the third
rapid?

A.—It would take a portion of the third rapid.

Q.—A very substantial portion of the third rapid?

A.—A portion of the third rapid.

Q.—If, on the other hand, the river bed going with the shore
there is that included within the projection of the side line on

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the other side of the river, practically all the second rapid would be within the projection of the side line?

A.—I would not say that, because the actual elevation on the east side below the line has a top of two feet, and you could not get all that two feet. You would get a portion of it in the centre.

Q.—Is it not a fact that where you have shown those figures on your plan the water gets down until there is dry rock showing?

A.—Well, yes, possibly.

10 Q.—So when the water gets down to the average summer flow, if the bed were to be apportioned by the projection of the side lines, practically all that second fall would be within those side lines?

A.—There would be no difference. We would still have the fall.

Q.—You would have the fall, but you would have no water? You would not have any water up on 307, or 306, or 308?

Mr. Ker: The plan shows certain lines indicating the fall of water. The aerial photograph shows absolutely what it looked like.

20 BY MR. ST. LAURENT (continuing):

Q.—It is a rocky shore—a ledge that goes out towards the river and which becomes dry in the low water periods?

A.—It is ordinary shore. It drops naturally towards the centre of the river.

Q.—You spoke of the railway with respect to the river, and you filed a plan as Exhibit D-70, on which you measured 40 feet from the centre line of the railway as it exists at present?

30 A.—I did not measure 40 feet. I measured the distance from the centre line of the railway to the ordinary high water mark.

Q.—The centre line of the present railway?

A.—Yes.

Q.—You do not know whether or not the present railway is located exactly where the rails were when the right of way was acquired?

A.—There was no change at this point. This was done before any raising of the grade was made. There was no change made along the railway at this point.

40 Q.—Do you know whether those rails are exactly where they were?

A.—They are higher up, but I know they are in the same place. I know it because I have been on the property time and again, and I saw the way the change was made.

Q.—But that railway was built a great many years ago?

A.—I did not quite catch your idea, Mr. St. Laurent. I thought you had reference to the change which took place after the construction began.

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Q.—This right of way was acquired for a width of 40 feet extending on either side of the centre line as located when the railway was built?

A.—Yes.

Q.—You have no knowledge as to whether or not the centre line of the present rails is exactly where the centre line was originally located?

A.—Of course, I cannot say.

10 Q.—What you measured from was the centre line of the present railway?

A.—Yes.

BY MR. KER:

Q.—Before it was elevated?

A.—There has been no change there in any case.

BY MR. ST. LAURENT (continuing):

20 Q.—If the portion of the bed of the river attributable to lot 21 is that enclosed between the projection of the side lines, in this upper red block there would be more shown in red than Mr. Cross would be entitled to? In other words, the projection of the line would cut off a portion of that red?

A.—Yes.

Q.—And extend it a little farther upstream?

A.—Yes, exactly.

30 Q.—The dividing line between the north half and the south half of lot 21 would not, in fact, strike the shore?

A.—If the division line between 21 and 22 were projected across the water it would be still within the water when it intersected the west side of the lot.

Q.—Did you take any elevation at the highest point up there?

A.—Yes.

Q.—What elevation did you get?

A.—As I mentioned before, 312.5 was the crest of the first chute.

Q.—312.5 at this flow of 14,000 cubic feet?

A.—Yes.

40 Q.—Are they the only elevations you have, or have you elevations at other and lesser flows?

A.—They are practically the only elevations I have.

Q.—You have not elevations at the other flows of the stream?

A.—No.

Q.—You told us you took an elevation of 306 down below. Did you fix the exact spot where that elevation was taken with respect to the side line or with respect to any permanent mark?

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A.—Yes. I had a survey line all along the shore,—what we call a traverse line—and I had those water elevations plotted precisely as they were taken, at the precise spots at which they were taken. They are so indicated on the plan.

Q.—Indicated on the plan, by scale, at the precise spots where they were taken?

A.—Yes.

Q.—You say the side line between lots 20 and 21, on both sides of the river, was fixed by reference to iron bolts?

10 A.—Yes.

Q.—Which have been there for a very long time?

A.—Yes.

Q.—And which correspond to some reference you found to an old procès verbal?

A.—An old survey made away back in 1867.

Q.—When did you come to the conclusion that the portion of the river to be attributed to the riparian owners had to be plotted in the way you have indicated in red on your plan?

20 A.—I do not know just when. I can tell you the way it came about. When we found we had to find who owned the river bed, the Company solicited the services of Mr. Paul Beïque, of Montreal, who made a thorough study of the division of the river bed. Mr. Beïque submitted his findings to the Company, and I saw them and I agreed with his results, and adopted them, and so placed them on the plan.

Q.—That was some considerable time after you had prepared the expropriation plans and the descriptions which went with them?

A.—Yes.

30 Q.—Do you remember ever having looked at the Letters Patent for the south halves of lots 20 and 21, said Letters Patent being of record here as Plaintiff's Exhibit P-4 with the Declaration?

A.—I had not seen the actual Patent.

Q.—Is it not a fact that the area of 200 acres given for those two half lots would be arrived at by treating them as rectangular lots, not deducting anything for the river?

A.—Not exactly, because if you divide the river the way we have it here you will arrive at practically the same area.

Q.—For 20 and 21?

40 A.—Yes.

Q.—Where would the south half of 20 come?

A.—What you lose at the north end, you gain at the south end.

Q.—You think you could arrive at practically the same area by dividing the river in this way?

A.—I believe so.

Q.—Did you ever see the Plan and Original Proclamation for the Division of the Township of Hull?

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A.—I believe I saw you hand it to Mr. Papineau. That was the only look I had at it.

Q.—You never examined that Proclamation?

A.—No.

Q.—Then it is not to your knowledgge that the original lots were divided in rectangular lots of such a length and such a width, without regard to where the river ran?

A.—I would not like to say.

10 Q.—I am not asking you whether it is a fact or not. My question is whether you ever went into the matter to ascertain that fact.

A.—I certainly discussed the question, and went into it.

Q.—Then you did know that was the way the lots were originally laid out?

A.—Yes.

Q.—That they were laid out without regard to where the river ran?

A.—General instructions were given to lay them out in certain rectangular shapes.

20 Q.—And they were laid out in that way, regardless of where the river ran?

A.—I would not say that, because no river was shown on the plan accompanying the instructions, so it was to be presumed at least that the law would be followed in laying out the river bed. The general instructions were there, but I can point out where the instructions were not followed.

Q.—You can point out where instructions were not followed?

A.—Yes.

Q.—Is that frequent with surveyors?

30 A.—In this case, in any event, it is a fact. We know there were changes—at least, that the instructions were not followed precisely at this locality.

Q.—What do you know about that?

A.—In the first place, the actual conditions are different from what is laid out on that diagram to which you have reference. The diagram showed the same lot numbers in the different ranges abutting each other. In this particular case, they do not.

40 Q.—Is not that a broader statement than you wish to make? In this particular case the side lines are broken lines, and not straight lines from the first range up?

A.—I mean the position of the side line itself is changed, and does not fit the same as that diagram shows. That is, the line between 20 and 21 in the 15th Range, for instance, does not hit the line between 20 and 21 in the 16th Range, but hits about the middle of 20.

Q.—I assume you do not want to say any more than what ap-

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pears on the cadastral plan. Or do you suggest the cadastral plan does not show what is actually the fact?

A.—Let me see the cadastral plan.

(The witness takes communication of the cadastral plan.)

Witness (continuing answer)—The corrections are shown here.

10 Q.—What you are referring to is the discrepancy which appears on this cadastral plan Exhibit P-14?

A.—Not only what appears on the cadastral plan. I know it is a fact on the ground.

Q.—The possession of the parties on the ground corresponds with what the cadastral plan shows?

A.—Yes.

20 Q.—You have produced certain aerial photographs. Am I correctly informed that these are not actual photographs in their present form, but are made up from quite a large number of photographs, taken at various angles, and then corrected to bring them as far as possible to a plane surface?

A.—It is one photograph. It is an enlargement of one photograph.

Q.—Are you suggesting it is possible to separate them out to scale?

A.—Yes; it may be brought very closely to scale.

Q.—What does that mean?

A.—My plan was drawn to a scale, and when it was set on that photograph it practically fitted right around.

30 Q.—Is it not a fact that the various parts shown on the photograph are taken from different angles with respect to the camera?

A.—No, it is one photograph.

Q.—But the various parts form different angles with the camera?

A.—I would not suggest there is not a possible slight distortion here and there, for instance; there is in every photograph

Q.—This was made from one photograph. It is not one of those reproductions in which the distortions are corrected to bring them to resemble a plan?

40 A.—This is one photograph.

Q.—And from your information it was made from the actual plate on which the photo was made?

A.—I would not say that. I do not know. I did not take the photograph, or make the enlargement. I do know, however, when I received the enlargement and applied my own tracing of the ground, which was made pretty accurately, they coincided very, very closely.

Q.—But you do not know in fact how the photograph was made?

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A.—It would not be the same.

Q.—So when we look at those figures which have been put on the aerial photograph we must bear in mind they are subject to that correction because of the difference in flow?

A.—Yes.

Q.—On your Exhibit D-69 you do not suggest that the Cross property did not go down beyond the Baker property on the east side of the railway?

A.—No.

10 Q.—You allowed it to go down just as far as lot 21-C went in your construction of the Deeds?

A.—Yes. I think it was intended to convey to that point.

Q.—It was intended to convey all the portion of 21-C that was between the railway and the river?

A.—Yes, that is correct.

Q.—So the southern boundary of Mr. Cross' beach would be the end of 21-C?

A.—That is correct.

20 Q.—Wherever that happens to come?

A.—Correct.

Q.—With respect to the Lièvre flow; you are suggesting 46 per cent. That is just estimating it is 50 per cent of what you understood to be the total flow between the big island and the shore?

A.—Yes.

Q.—Did you hear Mr. MacRostie say he had actually weired it on the property involved in the Maclaren sale?

A.—I believe he did say that.

Q.—And by actual measurement found it to be 32 per cent?

30 A.—Yes.

Q.—It, of course, sometimes does happen that the flow is not evenly distributed over the width of a channel?

A.—Yes.

40 Q.—Does it not appear from this aerial photograph, or from your own knowledge, that the flow in the Gatineau River in the vicinity of the Cascades is not evenly distributed over the whole width of the river, but that the channel wavers between the rocks and over the inequalities of the bed of the river—that at a certain part the flow is over on the east side, and then goes back towards the west side, and so on?

A.—We know the greatest amount of water is not always in the centre of the river.

Q.—I think you told us this morning that this aerial photograph shows the swift water on the four falls in white; and I understood you to say the dark patches in the vicinity of the white represented logs?

A.—Yes. I said the white spots represented the falling water,

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and the darker blotches were logs in the river.

Q.—Can you indicate by pencil lines what are the blotches that should be regarded as logs in the river?

A.—I indicate them encircled in yellow pencil.

Q.—You have run a yellow line around those blotches to which you referred this morning as showing logs stranded in the river?

A.—Yes. They are held up.

Q.—By rocks or other obstructions in the bed of the river?

A.—Yes.

10

Mr. St. Laurent: I may have a few other questions, your Lordship, in connection with the distribution of the power in the Lièvre River—the portion that would go with the Maclaren sale. If your Lordship would allow me to suspend with the witness until tomorrow morning I am sure it would take me much less time than if I were to proceed now. I am not quite clear on it, and if I had the advantage of considering it until tomorrow morning I am sure I would save the time of the Court.

20

It may well be I shall have no further questions to ask.

Mr. Ker: There are a few questions I would like to put arising out of the cross-examination.

Re-examination

RE-EXAMINED BY MR. KER, K.C.,
OF COUNSEL FOR DEFENDANT:

30 Q.—My learned friend has referred you to your survey of that portion of the C.P.R. which is contiguous to the river on lot 21-C, and you were asked if your measurement 40 feet out from the centre line referred to the centre line in the original Deed of the property to the C.P.R. You stated you were not there when the C.P.R. originally bought the property and when the line was built, but that you took it for granted it was so. Will you look at the plan produced by the plaintiff as Exhibit P-25, which is the original plan of the original right of way as laid out by the railway, and say if it corresponds with your own plan with respect to the 40-foot strip which runs into the river?

40 A.—As a matter of fact, it is much more emphatic than my own plan.

Q.—Just what do you mean by that?

A.—That the shore line is shown as taking off a greater width of right of way than my own plan shows.

Q.—Will you look at the photographic copy of a Deed of the C.P.R. right of way from Thomas Moore, Plaintiff's Exhibit P-24, and will you state the point at which that Deed refers to the right of

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way as running on to the property of the seller—Moore's property. At the intersection of lots 21-D and 21-C, is it not?

A.—That is the starting point of the description: between lots 21-C and 21-D.

Q.—At the beginning of the description, at the south end, is the line between 21-C and 21-D?

A.—Yes.

10 Q.—Which would appear to be the southern boundary of the property composing the right of way which was sold by Moore to the C.P.R.?

A.—Evidently.

Q.—It would also appear by that Deed that Moore did not purport to sell any part of lot 21-D to the C.P.R.?

A.—No, surely not.

Q.—Will you look at Exhibit P-25, which has been produced by the plaintiff (being a plan made in 1888) and will you state who the plan shows named as the owner of lot 21-D?

A.—Thomas Reid.

20 Q.—Not Moore?

A.—No.

Q.—You were examined on the question of the production or otherwise of the lot lines as indicating the rights of the riparian owner in the river bed, and I think counsel for plaintiff stated to you that if you produced the southern boundary line between lots 20 and 21 across the river that Mr. Cross would get more than he gets by your plan in the bed of the river.

A.—No, he would not. He would get practically the same thing.

30 Q.—In other words, irrespective of whether you produce the lot lines, or run the lines out at right angles, one would counterbalance the other from the point of view of head?

A.—Practically continuously.

Q.—As a matter of fact, if the lot line were produced according to the theory of Mr. Papineau, and I think also Mr. MacRostie, Mr. Cross would get less on the south than he gets by your plan?

A.—Yes.

Q.—Less of the third rapid?

A.—Yes.

40 Q.—And he would, perhaps, gain some of the second rapid on the east half?

A.—Yes.

Q.—So, as a matter of fact, your division of the river bed is giving him more of the third rapid than he would get by his own division?

A.—Yes.

Q.—My learned friend, Mr. St. Laurent, spoke to you of the plan produced as Exhibit P-1 with the Declaration, and you stated

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that plan had been prepared by you. Mr. St. Laurent asked you why you had carried out the lot line on the south—that is, why you had carried the lot line between lots 20 and 21 completely across the river?

A.—Yes.

Q.—What was your answer to that?

A.—It was to indicate the division line between those same two lots on the northeast side of the river was a continuation of the same line on the southwest side.

10 Q.—In other words, to pick up the point on the east side which corresponded in line with the west side lot line?

A.—Yes, that is correct.

BY THE COURT:

Q.—Is that the same range?

A.—Yes.

20 BY MR. KER (continuing):

Q.—When you went downwards on the north portion you only projected the line in dotted lines? You did not produce the lot line when you had no use for it on the other side?

Witness: Which lot line do you mean?

30 Counsel: I am speaking of the lot line running on the north of 21-B. In your plan Exhibit P-1 you did not produce the line in the same way as you produced the other across the river?

A.—No, we only dotted it on—I do not know just why.

Q.—In any event, you did not consider it was necessary to carry that line across the river?

A.—No.

Q.—When you made that plan were you, as a matter of fact, attempting in any way to divide the river bed?

A.—No, I never had a thought of the river bed.

40 Q.—As a matter of fact, is that plan correct, or is it not correct, so far as 21-D is concerned? When you made the plan were you in possession of the same information as you are now with respect to lot 21-D?

A.—Oh, yes, we had the information, certainly.

Q.—I am speaking of lot 21-D.

A.—No, I think, if I recollect properly, after this plan Exhibit P-1 was prepared we secured the Deed of the Railway Company across this lot, which helped us a great deal to fix the limits of lot

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21-D; which we did not have when this plan was prepared.

Q.—When you signed the technical descriptions in this plan for the expropriation proceedings I take it you were not in possession of the same information as you had now with respect to lot 21-D?

A.—No, we had not that information.

Q.—Would you say, then, the inclusion of lot 21-D, and the technical description respecting it, in the expropriation proceedings are correct or are not correct?

10 A.—I would say they include a portion of the land opposite lot 21-D which they should not include.

BY MR. ST. LAURENT:

Q.—Opposite what part of lot 21-D?

A.—The lower part of 21-D. Because lot 21-D is described as being bounded by the river.

20 BY MR. KER (continuing):

Q.—Am I right in understanding that lot 21-D should not have been included by you in the technical descriptions or in this plan in the expropriation proceedings?

A.—That is correct.

BY THE COURT:

30 Q.—Do you know when lot 21 was subdivided into lot 21-C and lot 21-D?

A.—It was subdivided when the cadastral plan was prepared.

Q.—Do you know what date that was?

A.—It was given in the evidence here. I think it was in 1882.

Mr. St. Laurent: November 28th, 1881, your Lordship.

BY THE COURT:

40 Q.—Will you refer to the aerial photograph taken November 8th, 1926, and tell me if those lots have been subdivided or resubdivided into other lots?

A.—No. Once the cadastral plan was made those were the only subdivisions.

Q.—Take lot 21-D, for instance. You see it is divided by a white line on the aerial photograph. What does that mean?

A.—It was sold in two different parts, but it all comprises one lot.

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Q.—Do you know by whom the south side of lot 21-D was bought?

A.—S. E. Wilson owns the south side; and Flynn—now the Gatineau Power Company—owns the other.

Q.—I see lot 21-C was also sold in two parts.

A.—Yes.

Q.—One part is marked on the aerial photograph as being owned by Bridget Smith?

A.—Yes.

10 Q.—And the other part by Baker?

A.—Yes.

Q.—Have those proprietors resold to the parties concerned in this case?

A.—Only in the case of Flynn. Flynn is now the Gatineau Power Company, and it is marked as such. The balance still remains with Bridget Smith.

The Cross piece is right in here (witness indicating) on the highway, right through to the river.

20 Q.—So, there is a third part of that lot 21C—the balance of the lot—which belongs to Mr. Cross?

A.—Yes.

Q.—Is that the Plaintiff?

A.—Yes.

Re-cross-
examination

BY MR. ST. LAURENT, K.C.:

30 Q.—Referring to the property on the Lièvre River sold by the Gatineau Company, Limited, to the Maclaren Company, I understood you to say the elevation you found of the water near the shore at the upper line of the property was 200.81?

A.—Yes.

Q.—And, what was the elevation you found at the foot of the property?

Witness: Do you mean on the range line, or where?

Counsel: At the bridge.

40 Witness: At the railway bridge?

Counsel: Yes.

A.—170.5.

Q.—So, between those two elevations you get practically a difference of 30 feet—between those two points?

A.—Yes.

Q.—You said you estimated a head of 36 feet and a fraction

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with respect to that property, because out in the midstream opposite the upper end of the property you found an elevation of 214?

A.—Yes.

Q.—So, you added practically 7 feet because of the difference?

A.—I calculated that at least one-half of that head could be utilized.

Q.—Do you know who owned the property just above that?

A.—It is owned by Maclarens.

10 Q.—Looking at the aerial photograph, the 200.81 is where you have put the figures on the photograph?

A.—Yes.

Q.—And just above the red hatched line commences the property which was owned by the Maclaren Company before?

A.—Yes.

Q.—And, I presume just over the line the portion indicated in the white would be about level water?

A.—Yes.

Q.—Quite a deep pool of fairly level water?

A.—It is comparatively level there.

20 Q.—Is it not a fact that any raising above 200.81 would have flooded in above the upper boundary line?

A.—A certain portion, up to possibly the centre of the east shore with the midstream line.

Q.—So that no greater elevation than 200.81 could be obtained there without affecting the property above that sold by the Gatineau Company, Limited?

A.—It would certainly raise the water on a portion of the river above that line.

30 Q.—With respect to the irregular piece which is below the railway bridge, if I correctly read this photograph, most of it is a water lot?

A.—Yes.

Q.—Most of it is out beyond the shore line—towards the midstream?

A.—Yes.

Q.—This has been coloured in red, I understand, on the photograph, from the description in the Deed?

A.—Yes.

40 Q.—And it is the dotted, or dash and dot, heavy black line down through the middle of the stream that you have indicated as the midstream line?

A.—That is right.

Q.—And, this red irregular piece does not, according to the description, extend out to the midstream line?

A.—No, it is bounded on the left by the lot line.

Q.—Those who made the Deeds, whether they were right or

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whether they were wrong, extended or projected the lot lines out into the bed of the river?

A.—I do not know that they projected them, but they mentioned it as bounded by the lot.

Q.—They dealt with the property as if it was bounded by the extension of the regular lines of the firm land?

A.—Yes.

Q.—Does that irregular piece finish at a point?

A.—That portion remaining and sold by the Gatineau Company to the Maclarens practically comes to a point.

Q.—So that the Higginson property extended out towards mid-stream as far as did that irregular piece at the top?

A.—Practically, yes. Very close to it.

Q.—So that any water flowing on to that irregular piece would, first of all, flow over the Higginson property, unless it came in from the side?

A.—It might come from the side.

Q.—I say, unless it came in from the side?

A.—Correct.

20

BY THE COURT:

Q.—Where is the Higginson property?

A.—It is coloured green on the photograph.

BY MR. ST. LAURENT (continuing):

Q.—I assume there was no way in which the head over that irregular piece could be made use of, on that piece?

30 A.—Not by itself.

Q.—It had to be included with something else?

A.—Yes.

Q.—When you were figuring on, I think you said, 4,100 horsepower down there, less 1,300 to be attributed to the Higginson property, you were calculating one-half of the flow, were you not? One-half of the flow of the stream there—the 46 per cent?

A.—No. I only calculated it was about 80 per cent of the 92 per cent.

Q.—Of the half?

40 A.—I took it really less. For instance, if there is 46 per cent going down there, I only took it 80 per cent of one-half of that.

Q.—What percentage did you actually take?

A.—I took 80 per cent of the 46 per cent, of 4,000 second feet.

Q.—What figure did you use?

A.—In flow, 1,470 feet.

Q.—Was that because the property did not extend out to mid-stream?

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A.—Yes. It was because we were trying to follow what was intended to be conveyed in the Deed.

Q.—When you took 80 per cent, was that just an arbitrary figure?

A.—It was taken really from an observation of the ground. There is no way of measuring it.

Q.—It was not ascertained by taking the proportion of the bed which that bit represented?

10 A.—No. It is a very difficult thing to ascertain, because the water flows into it from the side, and then out again.

Q.—With respect to the 46 per cent used for calculating the power available on the portion above the railway bridge: that was because you understood from Mr. MacRostie there was 92 per cent in all that went down in those two channels?

A.—Between the main island and the shore.

Q.—And you took one-half of the 92 per cent?

A.—Yes.

20 Q.—You are not disputing the fact that it may be true that in channel No. 1, between the smaller island and the shore, the quantity which actually passes is 32 per cent?

A.—No. Just between where do you mean?

Counsel: Between the smaller island and the shore.

A.—No.

Q.—You took no elevation at the top of that smaller island?

A.—No.

30 Q.—Would I be correct in assuming that in order to utilize any head over 200.81 it would have to be through the medium of inclusion of something else already belonging to the Maclarens?

Witness: Do you mean by that that it would flood the small portion of the river above the limit of lot 12-5? If that is what you mean, it certainly would.

Q.—In order to use anything more than the quantity passing between the smaller island and the shore would it not also be necessary to combine the property with other properties?

40 A.—I did not go into that aspect of it. I think there are other engineers who might go into that.

Q.—But you are a surveyor and an engineer, and you have seen the property. At first blush would it not strike you that was the only portion which could be utilized independently?

Witness: You mean above the bridge?

Counsel: Yes.

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A.—Yes. If I understand your question rightly, that is the whole portion above the bridge?

Counsel: Yes. Is it not true that it is only that portion of the water which passes between the small island and the shore which could be utilized independently of other properties?

10 A.—No, I do not think so. I do not see why the whole width of the stream to the midthread could not be utilized as a separate development.

Q.—You have not gone into the manner in which works would be placed in order to do that?

A.—No.

Q.—What method did you adopt to distribute between the Higginson property and the water lot conveyed by the Gatineau Company, Limited, to the Maclaren Company below the bridge?

20 A.—I just estimated, as near as possible, the quantity of water with reference to the whole river flowing between the lot line south of the bridge to what was described in the old Deed as Basin Street, or where the old highway bridge passed—that is, the southerly boundary of the Higginson property. The channel there is very well defined as to the amount of water that feeds the Higginson property, and from observation I came to the conclusion that about an equivalent amount was owned by the Gatineau Power Company.

Q.—You say there is a well defined channel, which shows what quantity of water goes in at the upper end?

30 A.—I might express it this way: using the figure of, say, 3,680 second feet, which is 92 per cent of the whole, I figure there is about 80 per cent of half of that in the Higginson and Gatineau properties—and I gave one-half to each.

Q.—One-half of the water to each?

A.—One-half of the water to each.

Q.—And your reason for finding a difference in power was because of the length of the Higginson property?

40 A.—There is no difference in power on that stretch between that of the Gatineau and that of Higginson. Where I get the difference is the Gatineau Company also transferred an additional piece of land below what was owned by the Higginson property, in which there is a certain amount of power.

Q.—If the bed of the river had been apportioned to those lots according to the method you have used on Exhibit D-69, the lines would have an entirely different appearance?

A.—The Company would have had control of more power.

Q.—And it would have been contrary to the assumption made by the parties in their sales?

A.—Yes, because the lot lines are defined as the boundary.

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Q.—You are not, of course, suggesting that they could, in fact, change what was the boundary, but they took that to be what was the boundary?

Witness: You mean the parties to that Deed?

Counsel: Yes.

10 A.—I presume they did.

Q.—You are not presuming that because they did, that would change it if it was otherwise in law?

A.—No.

Q.—Will you, after comparing it, certify this description of Group A which we marked yesterday as Plaintiff's Exhibit P-54?

A.—Yes, I will.

Re-re-
examination

BY MR. KER:

20 Q.—Plaintiff's counsel suggested to you that, in fact, Mr. MacRostie's estimate of 30 feet between the upper red line and the railway was correct, inasmuch as to raise the water at that point you would have to impinge upon the property above it?

A.—Yes.

Q.—That property is, in fact, owned by the Maclaren Company?

A.—Yes.

Q.—Who were the purchasers?

A.—Yes.

30 Q.—Will you tell me whether you were correct, or whether you have any change to make, in your statement that the Maclaren Company, being the purchasers of that piece—say, from the railway up—were purchasing in that potential horsepower of 10,000 horsepower value?

A.—Yes.

Q.—That was what they were actually purchasing?

A.—Yes.

40 Q.—A question was raised with respect to the possible distortion in those aerial plans. Will you tell his Lordship the circumstances in which these photographs are taken?

A.—It is a vertical photograph, taken at a considerable height. It is the most accurate way of doing photography, and the chances of distortion are almost infinitesimal.

Q.—In other words, when you get to a height of, say, 5,000 feet over an object the lines of distortion become almost negligible?

A.—Practically.

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Q.—When you are taking such a photograph of an object vertically below you?

A.—Yes.

Q.—And that is what those photographs are?

A.—Yes.

Q.—As a matter of fact, I think you said you found them, if not in absolute agreement, at least in practical agreement with your own survey made on the ground?

A.—With the detail survey made.

10 Q.—In re-examination yesterday afternoon you stated that by the Deed of the Canadian Pacific Railway from Mrs. Byrnes, Mr. Cross' auteur (Dame Bridget Smith at that time), or even from Mr. Moore, her father—the same parties in any event—that the C.P.R. right-of-way was stated to enter the property at the southern boundary of lot 21-C?

A.—Yes.

20 Q.—Have you had occasion to examine the Deeds or the Records of the C.P.R., as to from whom they purchased their right-of-way through lot 21-D?

Mr. St. Laurent: I object to any evidence of purchase by the C.P.R. otherwise than through the production of the documents. 21-D does not appear at all in their Book of Reference, and, as a matter of fact, 21-D did not exist as a cadastral number at that time; it was added in 1891.

30 Mr. Ker: The Deed to the C.P.R. refers completely and distinctly to lot 21-D, and they purchased it from Mr. Maxwell Reid. The Deed to the C.P.R. distinctly refers to 21-D, to 20-C and to 20-D.

Mr. St. Laurent: I must insist upon my objection to verbal evidence of the contents of Deeds.

BY MR. KER (continuing):

40 Q.—Have you a copy of the Deed by which the C.P.R. purchased this right-of-way over to 21-C, the Moore property, and describing that property?

A.—They purchased it from Reid.

Mr. St. Laurent: I must object to verbal evidence of the contents of Deeds. Our information is that they did it anterior to the mentioning of 21-D in the cadastre.

Mr. Ker: The piece of property we are now discussing is shown

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on Plaintiff's own plan as having been purchased from Reid by the C.P.R.; at least, the name of Reid is on 21-D. The right-of-way which the C.P.R. purchased from Mrs. Byrnes is shown as beginning at 21-C. I think there is a commencement of proof which would certainly open the door to this evidence. All I am asking the witness is whether he has seen the Deeds, and whether they coincide with what I have said.

10 Mr. St. Laurent: Surely my learned friend will not insist that he can base himself upon a commencement of proof in writing to prove the contents of a Deed.

Mr. Ker: Then may I reserve my right to examine the witness further when the Deeds arrive?

His Lordship: I think it would be better to do so, Mr. Ker.

BY MR. KER (continuing):

Q.—Have you a memorandum of the Book of Reference description of this lot 21-D?

20 A.—Yes. It is not certified, but it is a memorandum from the Registry Office. It is not a certified copy from the Registrar, but it is a description from the Book of Reference, as contained in the Book of Reference. It is really an extract from the Book of Reference.

Q.—Will you take communication of the extract from the Book of Reference of the Township of Hull, and indicate where it discloses the Book of Reference description of lot 21-D?

30 A.—It does. Lot 21-D is owned by Francis Learmont, and is described as: "Of irregular figure, forming part of lot No. 21 in the 15th Range of the primitive subdivision of the Township of Hull: bounded towards the north by the Gatineau River, towards the east by No. 20-C, towards the southwest by a public road and No. 20-C, and towards the northwest by No. 21-C; containing one acre, one rood and twenty-eight perches in superficies".

Q.—Am I right in saying that would leave 21-D lying immediately south, or perhaps slightly southeast, of 21-C, and between the river and the highway?

A.—Yes, with the exception that there is a small portion of lot 21-D which extends beyond the highway.

40 Q.—In other words, does that Book of Reference description correspond with your plan Exhibit D-69-

A.—It corresponds with where I locate 21-D, both as to position and area.

Q.—On Exhibit D-69?

A.—Yes.

Q.—Will you file this extract as Defendant's Exhibit D-74?

A.—Yes.

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BY MR. ST. LAURENT:

Q.—You note this extract mentions that lot 21-D of the 15th Range is corrected in conformity with Article 2174 of the Civil Code, Department of Crown Lands, Quebec, June 10th, 1891?

A.—Yes, I see that.

10 Q.—Looking at the cadastral plan Exhibit P-14, you see, do you not, that the correction made on June 10th, 1891, consisted in the addition of Nos. 20-A, 20-B, 21-A, 21-B, 21-C, 22-C, 22-C-1, 22-C-2, 22-A, 22-B, 23-A, 23-B are corrected, and Nos. 21-D, 20-C and 20-D in the 15th Range are added in conformity with Article 2174?

A.—Yes.

Q.—So, from the plan, the correction that was made at that time appears to have been the addition to the plan of the No. 21-D?

A.—Yes.

(And further deponent saith not.)

20

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Walter Blue,
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DEPOSITION OF WALTER BLUE, A WITNESS EXAMINED
ON BEHALF OF THE DEFENDANT

30 On this fifth day of November, in the year of Our Lord one thousand nine hundred and thirty-one, personally came and appeared

WALTER BLUE,

of the City of Ottawa, in the Province of Ontario, Civil Engineer, aged 42 years, a witness produced and examined on behalf of the Defendant who, being duly sworn, deposes as follows:

EXAMINED BY MR. KER, K.C.,
OF COUNSEL FOR DEFENDANT:

40 Q.—What is your occupation?

A.—Civil Engineer, employed by the Gatineau Power Company as Manager of the Development Department.

Q.—Development Manager of the Company Defendant?

A.—Yes.

Q.—How long have you been with the Company Defendant?

A.—Since the Company was formed.

Q.—You are a professional engineer?

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A.—Of the Province of Quebec, yes.

Q.—How long have you been engaged in the engineering profession?

A.—I graduated in 1910, and have practised ever since.

Q.—I understand you are a graduate of McGill University?

A.—I am a graduate of Royal Military College.

Q.—You are a member of the Engineering Institute of Canada?

A.—Yes.

10 Q.—You have a personal knowledge of the developments of the Company defendant on the Gatineau River?

A.—Yes, I have.

Q.—Referring particularly to that portion of the Gatineau which is known as the Cascades, have you had occasion to have water levels taken at or opposite the property which is in question here and stated to be owned by Mr. Cross?

A.—Yes, I have had water levels taken at the points A, B and C shown on the plan Exhibit D-69.

20 Q.—You caused those water levels to be taken at the points A, B and C on this plan?

A.—Yes.

Q.—Were those levels taken over a considerable period of time?

A.—They were taken for about a year, from April, 1926, until November, 1926.

Q.—From April, 1926, to November, 1926?

A.—Yes.

Q.—At what intervals?

A.—Weekly intervals.

Q.—The same day at all three points?

30 A.—Yes.

Q.—How did you go about fixing those points, and what instructions were carried out?

A.—I went out with the engineer, and located those points on the ground. We planted a stake on the ground opposite those points, and I instructed him to take the water levels weekly at those points. The levels were taken by actual level set up and a rod put on the water.

40 Q.—Would you be good enough to file a tabulation of the results of those elevations over that period, taken from your Company's books?

A.—Yes; I file such a tabulation as Defendant's Exhibit D-75.

Q.—Did you also take levels at Wakefield?

A.—I established a gauge, and took gauge readings there in 1926.

Q.—Have you the result of those gauge readings at Wakefield?

A.—Yes, I have a copy of the records in our office. These cover from the first of April, 1926, to the 30th of November, 1926.

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Q.—Will you produce this record as Defendant's Exhibit D-76?

A.—Yes.

Q.—It is quite evident those readings were taken before the water was raised in the river?

A.—Yes.

CROSS-EXAMINED BY MR. ST. LAURENT, K.C.,
OF COUNSEL FOR PLAINTIFF:

Cross-examination

10 Q.—Referring, first, to Exhibit D-76, which I understand is a tabulation of gauge readings at Wakefield, will you tell me just exactly where those gauge readings were taken?

A.—If a plan of Wakefield has been filed I could show you exactly. It was on a small crib that was on the Gatineau River slightly below the junction of the Pêche Creek and the Gatineau River, in Wakefield Village.

Q.—Practically below the level of the pool in the Pêche Rapids?

A.—Yes.

20 Q.—The readings mentioned on Exhibit D-76 are daily readings?

A.—Daily readings, yes.

Q.—While those on Exhibit D-75 are weekly readings?

A.—Approximately weekly readings.

Q.—On the dates indicated opposite each reading?

A.—Yes.

Q.—Of course, the part you had in this consisted in issuing the instructions as to how the work was to be done?

A.—Yes.

30 Q.—And these tabulations are made up from reports which were turned in to you by those to whom your instructions had been issued?

A.—Yes.

(And further deponent saith not.)

DEPOSITION OF STUART S. SCOVIL, A WITNESS
EXAMINED ON BEHALF OF THE DEFENDANT.

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On this fifth day of November, in the year of our Lord one thousand nine hundred and thirty-one, personally came and appeared

STUART S. SCOVIL,

10

of the City of Ottawa, in the Province of Ontario, Consulting Engineer, aged 45 years, a witness produced and examined on behalf of the defendant, who, being duly sworn, deposes as follows:

EXAMINED BY MR. KER, K.C.,
OF COUNSEL FOR DEFENDANT:

Q.—I understand you are a Consulting Hydraulic Engineer by
20 profession?

A.—I am.

Q.—You are engaged in private practice?

A.—Yes.

Q.—You are not a member of the staff of the Gatineau Power
Company?

A.—No. I am retained by the Gatineau Power Company.

Q.—How long have you been practicing your profession?

A.—I graduated in 1912.

Q.—From where?

30 A.—Queen's University.

Q.—And thereafter, how long have you been occupied in a professional way?

A.—Continuously on hydraulic work.

Q.—With whom, first?

A.—With the Department of the Interior, in the Water Power
Branch.

Q.—At Ottawa?

A.—At Ottawa.

Q.—How long were you in that work?

40 A.—Until the year 1925, at which time I was in charge of all hydraulic investigations.

Q.—All hydraulic investigations for the Dominion Water Powers Branch?

A.—Yes.

Q.—What consulting experience have you had since then? Upon what works have you been engaged, in a general way?

A.—In a general way, in so far as the International Paper Com-

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pany is concerned, on practically all reporting upon power available, on any power project in which they might be interested either in Canada or Newfoundland.

Q.—On all the power projects in which they might be interested?

A.—Yes, power and storage.

Q.—And they are numerous?

A.—Yes.

Q.—What other work have you done, in a general way?

10 A.—I am Canadian Consulting Engineer to the International Joint Commission on References having to do with storage and power in the boundary waters Rainy Lake and above. I am engineer to the Lake of the Woods Control Board. I appear before the International Joint Commission on several matters having to do with hydraulics. I am retained by two of the larger Power Companies on hydraulic studies—that is, retained on an annual basis.

Q.—On hydraulic studies?

A.—Yes.

20 Q.—Are you retained by the Light, Heat & Power Company?

A.—Yes; I have been for several years.

Q.—I think you investigated some of the Beauharnois Water conditions, did you not?

A.—I have been engaged for the last two years as a member of a Board of three reporting upon the remedial works necessary between Lake St. Francis and Lake St. Louis as a result of the Beauharnois diversion.

Q.—The actual nature of your work in the Water Power Branch had to do with the stream flows, the measurements, and so on?

30 A.—My work in the Water Power Branch had essentially to do with the gauging and the measurement and flow of rivers throughout Canada, and, in addition, studies as to storage and regulation of river flow, channel improvement, back water studies—in fact, everything relating to power development or storage.

Q.—I take it, with a general idea of power development and determining the possibilities of power development?

A.—Yes. In that connection I may state I was the Assistant Director, and it was my duty to carry on such work.

40 Q.—Have you made extensive hydraulic investigations on the Gatineau River, between Cascades, and, say, the lower part of Pagan?

A.—Yes, very extensive investigations.

Q.—Have you studied the records, and investigated stream flow conditions generally in the Gatineau River?

A.—In the year 1925 I first reported to the International Paper Company on the unregulated flow and the possibility of regulated

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flow with given storage capacities—what they might secure in the way of regulated flow.

Q.—On the Gatineau.

A.—Yes.

Q.—As a result of your investigations, what did you determine, or consider to be, the ordinary minimum flow of the Gatineau? And perhaps in this connection you may say what the ordinary minimum flow is?

10 A.—Ordinary minimum flow on the Gatineau—any site that might be developed must take into consideration such competition as might be encountered in the sale of power. That is, on the basis that firm power is already available for sale in that district, and the ordinary minimum must be taken on some comparable basis that firm power could be assured.

20 The Gatineau might be taken at 3,000 second feet, which is possibly high as an ordinary minimum. The flow drops to an absolute minimum—it has in the past—of 1,900 second feet. It frequently has been below 3,000, and in some years it has fallen below 3,000 for two months. So in reality 3,000 second feet would not assure firm power.

Q.—In any event, it may be taken to signify the average ordinary minimum flow of that river?

A.—Yes.

In the last Annual Report—the Nineteenth Report—of the Quebec Streams Commission, a statement is made in connection with concentrations on the Gatineau—the concentrations at Farmers' Rapids, at Chelsea, and at Paugan, are first cited (page 99):

30 “ Such large concentrations would not be economically possible without the construction of storage reservoirs to make it possible to increase the low water flow of the Gatineau River considerably above the natural minimum. For example, under natural conditions the average minimum flow at Chelsea is about 2,800 second feet ”.

Q.—That is the Report?

A.—Yes. The minimum prevailing at the reservoir is 10,000 feet.

40 Q.—You say you are giving it a little better than that—3,000 feet?

A.—Yes.

Q.—What is the present regulated flow of the river?

A.—10,000 second feet.

Q.—Will you please take communication of Defendant's Exhibits D-75 and D-76, which are records of water elevations at Cascades on given dates (produced by Major Blue), and records of the

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same kind taken under different dates at Wakefield: and will you tell me, basing yourself upon those records, and referring to the plan Exhibit D-69, what would you consider the available head upon the Cross property composed in the large block in red on the plan Exhibit D-69?

Witness: With the elevations as shown?

10 Counsel: With the elevations as shown—309.9.

A.—309.9 to 306.7—3.2 feet.

Q.—That is on the west side?

A.—On the west bank.

Q.—Would you look at the elevations on the east side, and indicate what average of head would be represented by the two together on Mr. Cross' property?

A.—On the east bank, from 309.8 to 309.

Q.—About 11 inches?

20 A.—Eight-tenths of a foot. The average drop, as embracing the total flow of the river, would be 2 feet.

Q.—Provided we do not eliminate the Canadian Pacific Railway right-of-way, but give credit for the entire stretch between the point "A" and the point "C", the point "A" being, I think, Major Blue's levels—would you give the same information?

A.—That would add 2.6 feet.

Q.—Is that on the average?

A.—No: that relates only to the west bank. As embracing the total flow of the river, and averaging it between both shores, the amount of additional head would be 1.3 feet.

30 Q.—I would like you to take from the point "A" to the point "C", averaged in with the part on the east bank—over all. What head would you get?

A.—You might give it in another way, possibly. Taking it on the lower reach, from the wooden post on the east bank between lot 21-B and 20-B, to the crest of the lower fall opposite the lower boundary of Mr. Cross' property, there is a drop of 2.6 feet. So, if the full flow of the river is considered, and the head available on this property on the east shore not belonging to Mr. Cross' averaging that would be the full flow of the river at 1.3 feet head. Deduction
40 might then be made to give the average head available on Mr. Cross' property at any time.

Similarly, on this reach above we have 2.6 feet, which might be averaged as embracing the whole flow of the river and be the equivalent of 1.3 feet embracing the whole flow of the river.

Q.—On that calculation what would be your average of head available, from the point "A" to the point "C"?

A.—Might I facilitate matters, possibly, by referring to certain

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diagrams which I have prepared to relate the flow of the river to the stage at flow and elevation at various discharges. I used the Dominion Water Power Branch rating table or rating curve for the Gatineau River at Alcove, the gauging station at which records have been secured up to the time the Chelsea plant was brought into operation.

In addition to the gauge readings filed by Major Blue I have certified copies of the gauge readings at Alcove for the period from October, 1925, to January 31st, 1927.

10 I have related those gauge records at Alcove with the gauge at Wakefield, so that a discharge curve is available for the gauge at Wakefield. Similarly a relationship has been carried from Wakefield to the gauging point at "A" as shown on Exhibit D-69, and to the point "C". From these curves I immediately have the relationship between stage and discharge, and also the relation between the drop between "A" and "C" for any given discharge in the river under natural conditions.

Q.—In a general way, does that relation vary much under different flows?

20 A.—It does not.

Q.—It is practically almost constant, is it not?

A.—At a flow of 3,000 second feet the difference in elevation between point "A" and point "C" is 6.4 feet, and at 40,000 second feet the difference in elevation between point "A" and point "C" would be 5.9 feet—a variation of half a foot, with a variation in discharge of from 3,000 up to 40,000 feet.

Q.—37,000 cubic feet?

A.—Yes.

30 Q.—Would only vary the relationship between the two elevations by half a foot?

A.—Yes.

Q.—Can you tell me what head would be available, presuming this was all coloured red: basing yourself on point "A" and point "C", and taking only the east side of the river into consideration? On the average what head would be available on Mr. Cross' property alone?

Witness: With that discharge?

40 Counsel: Say, 3,000 feet.

A.—The total drop from point "A" to point "C" would be 6.4 feet. Deducting, first 1.3 feet as the average would bring that to 5.1 feet.

From "A" to "C" is 6.4 feet. Then, deducting the average for the lower portion of the property, 1.3 feet, would leave a head of 5.1 feet.

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Q.—Averaging that against the east side of the river, what would your average of head on all that property be? About 3½ feet, would it not?

A.—I have already deducted for the lower portion.

If then this portion belongs to the C.P.R., a further deduction of 2.6 feet is necessary: leaving the head on the property 2.5 feet.

Q.—And, if the deduction is not made for the C.P.R.?

A.—5.1 feet.

10 Q.—A complete head of 5.1 feet, taking the points "A" to "C"?

A.—Yes.

Q.—Am I right in saying that would include the use of this rapid which is not opposite Mr. Cross' property?

A.—That would include the whole rapid.

If it were divided, and Mr. Cross given the benefit of the ownership of the C.P.R., 5.1 feet would be reduced to 3.8 feet.

Q.—Which, as the red shows, with the inclusion of the C.P.R. would be the only head available to him on his own property, even utilizing the C.P.R.?

20 A.—That is all.

Q.—Have you any objection to producing the tables to which you have been referring?

A.—No, none.

Q.—To what elevation could you go, presuming a flow of 3,000 feet per second, by doing as much damage as you liked to the Pêche but not in any way affecting the tailwater at Paugan?

A.—Point "A" could be held to elevation 314.40 without affecting the tailrace at Paugan.

30 Q.—From which you would have to deduct how much in order to arrive at the total head available to Mr. Cross even by moving the water up to the Pêche? In other words, what would be the available head upon Mr. Cross' property if he was entitled to utilize the water above him without affecting Paugan?

A.—At point "A" the difference between point "A" and point "C" would be 12.23 feet. Then, deducting 1.3 feet would leave a head of 10.9 feet.

Q.—That is the utmost he could possibly make use of without impinging on the rights or tailwaters at Paugan Falls, to make any development whatsoever upon this property?

40 A.—Yes.

Q.—10.9 feet?

A.—Yes.

Q.—What reduction would take place in that head, the regulated flow, 10,000 cubic feet, being considered?

A.—At a flow of 10,000 cubic feet, the limiting elevation at point "A" without affecting Paugan would be 316.2, and the elevation at point "C", with a flow of 10,000 feet, would be 305.03—

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showing a gross head of 11.17. Deducting 1.3 feet, the remaining head would be 9.9 feet.

Q.—It is absolutely accurate to say that the head available for 10,000 cubic feet per second flow (which is the present flow of the river) on that property, by moving the water up as high as you could, would be 9.9 feet?

A.—Yes.

Q.—At higher flows it would be similarly reduced?

A.—Yes.

10 At flood stage, of 70,000 second feet, natural conditions would prevail, and the elevation at point "A" would be 317.9, and at point "C", 312.2—5.7 feet.

Q.—Which would be reduced to

A. (interrupting)—5.7.

Q.—Is that the net?

A.—That is gross. Deducting 1.3 feet would leave a net head of 4.4 feet.

20 In referring to the difference in elevation between point "A" and point "C" as "Head", I am not quite correct. When flood discharge is reached, at a discharge of, say, 40,000 second feet, there will be a drop between point "A" and point "C" of practically three-quarters of a foot; further diminishing the head in flood flow.

Q.—In making investigations in connection with the possibilities of power development, what do you require to study in a general way and to study with the most perfect accuracy possible? Would you say the elevations, the stream flow measurements, and so on?

30 A.—In this particular instance, a series of gauge readings covering a range in river discharge from low to high discharge, and preferably up and back again.

Q.—Over a long period of time?

A.—Over a considerable period of time. Individual readings, while of value, cannot always be relied upon.

Q.—Would you say you could make any scientific, or nearly scientific, estimate without studying the river over a long period, and checking those readings?

40 A.—Both a record of river discharge and water levels is essential; and, in addition, to derive any elevations, or the resulting elevations, from any structure that might be placed in this section of the river it is necessary to cross-section the river from the Cross property up to Paugan to secure a profile of water surface at known discharge so that the hydraulic characteristics of the channel might be determined. Otherwise it is impossible to do it.

Q.—Have you cross-sectioned the river up there?

A.—It has been done.

Q.—Certain witnesses for the Plaintiff have stated that although they have made no such investigations they have computed the pos-

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sibilities of this property. Do you think it is possible to do it scientifically in that way?

A.—I do not.

Q.—How would the head between the points "A" and "C" be reduced by increased flows?

A.—I am referring to practically the natural condition of flow. Such—you might call them—experiments as we have made in lowering Chelsea Pond during high discharge show that there is a loss between point "A" and point "C" of practically three-quarters of a foot with a discharge of 38,000 second feet. That cannot be overcome other than by excavating the whole channel, which would be such an absurdity that it would not be undertaken.

Q.—In other words, if you put a dam at the point "C" you could not get all the head you have estimated at those flows?

A.—No, not at all. I am merely giving the difference in elevation between "A" and "C", without consideration to the loss in that channel.

I have a certified copy of the Dominion Water Power Branch Rating Table for the gauging station at Alcove.

Q.—Will you produce it as Exhibit D-77?

A.—Yes.

I have also a diagram showing the relationship between gauge readings at Alcove and Wakefield Village.

Q.—Will you file it as Exhibit D-78?

A.—Yes.

The next diagram I have is the relationship between Wakefield Village and point "A" at the head of Cascades.

Q.—Will you file it as Exhibit D-79?

A.—Yes.

On all of which diagrams are plotted the actual gauge readings taken simultaneously at both points.

I have also a diagram showing the relationship between point "A" and point "C" at Cascades.

Q.—Will you file it as Exhibit D-80?

A.—Yes.

From the gauge relationship and the discharge curve at Alcove, a curve has been prepared showing the Gatineau River at Wakefield Village, which is referred to the Wakefield gauge.

Q.—Will you file it as Exhibit D-81?

A.—Yes.

The next is a discharge curve of point "A", head of Cascades.

Q.—Will you file it as Exhibit D-82?

A.—Yes.

The next is a discharge curve of point "C", at the foot of Mr. Cross' property.

Q.—Will you file it as Exhibit D-83?

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A.—Yes.

I have a table showing the limiting elevations for various discharges Wakefield Village and Cascades.

Q.—Will you file it as Exhibit D-84?

A.—Yes.

Q.—The citation you made from the Quebec Streams Commission Report is made from the 19th Report, 1930, page 99?

A.—Yes, the fifth paragraph.

10 Q.—To summarize your testimony with respect to those elevations, will you please tell me what head is available, with a deduction of the average downstream level, of the Cross property—the head available at a stream flow of 3,000 feet, and the head available at a stream flow of 10,000 feet?

A.—Deducting 1.3 feet for the lower portion of the property, the head available at 3,000 second feet would be 5.1 feet, inclusive of the C.P.R.

Q.—That is, going up to the foot of the Pêche, but not affecting the Pêche?

20 A.—Going up to point "A", and including the C.P.R.

Q.—That is equivalent to the foot of the Pêche, is it not?

A.—Yes.

At 10,000 feet, the total head between point "A" and point "C" is 6.2 feet. Deducting 1.3 feet would leave 4.9 feet. That also would be inclusive of the head in the intermediate reach. Deducting 2.6 feet as the drop opposite the C.P.R. property, with 3,000 second feet the net head on the Cross property would be 2.5 feet. At 10,000 second feet the net head would be 2.3 feet.

30 Q.—Leaving in the C.P.R., and going up to the foot of the Pêche, what would it be with a flow of 60,000 feet?

A.—The elevation at point "A" would be 317.24, and at point "C" it would be 311.46; resulting in a difference in elevation of 5.78—say 5.8 feet—between the two points. Deducting 1.3, would leave 4.5; and deducting 2.6 feet for the C.P.R. property, would leave a resultant difference in elevation of 1.9 feet.

Q.—That is at a flow of 60,000 feet?

A.—At a flow of 60,000 feet.

40 Q.—Have you had occasion to make any investigations with respect to Meach Creek? Have you any record of meterings, for instance?

A.—I have records of meterings. I also had occasion, a few years ago, to investigate such records as might be available in the Department of Public Works at Ottawa. I have a certified copy of discharge measurements made by the Department of Public Works on Meach Creek in the year 1920.

Mr. St. Laurent: I object to the use of this document, as it

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10 can have no value as evidence. The Department of Public Works has nothing whatever to do with non-navigable streams. If they choose to send men out to look at them, or to investigate them, or to get statistics about them, it may be very interesting, but it does not in any way constitute an official record, copies of which can be put in evidence. If the gentleman who made the measurements were here, and if his evidence was pertinent, it might be allowed, but I submit that it is not because certain statistics were gathered in 1920, with respect to a matter which is in no way within Federal jurisdiction, that certified copies of what may have been so gathered can be put in evidence. I do not see how they can be made relevant to the Pleadings in this contestation.

20 Mr. Ker: I do not follow my learned friend in his statement that it is not within the jurisdiction of the Federal Water Powers Branch. They have investigated every tributary of the Gatineau, in connection with the Georgian Bay. Mr. Scovil was an official of the Department; the records were kept, and they are still available. I submit they are perfectly legal documents to be offered in evidence.

Mr. St. Laurent: But there may be a lot of material on file in Ottawa, copies of which would not be evidence in Court. There are records of everything that has been said in the House of Commons, but a certified copy of such a record would not prove that what was said is so in fact. In addition to that, I submit it is not relevant under the Pleadings.

30 Mr. Ker: It is relevant because we say your Meach Creek plant is not any-good.

Mr. St. Laurent: But you have not said that.

Mr. Ker: We have said it is less than 200 horsepower.

Mr. Scott: It is not pleaded.

40 Mr. Ker: In paragraph 48 of our Plea we say:

“ That if the Plaintiff owns a developed water power on the so-called Farm Point properties, which is not admitted, the same is a small development, producing less than 200 horsepower of electrical energy, and being irregular and unreliable in its operations by lack of water, especially in the dry seasons of the year, and the Defendant has not interfered with or prevented the operation of the said water power nor with the oper-

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ation of the other alleged industries of the Plaintiff.”

I submit the evidence would be covered by this paragraph.

How the witness may arrive at his conclusions is a matter of very little consequence. If he can depose to having found the stream measurement of Meach Creek as being so and so, I think it is proper evidence.

10 Mr. St. Laurent: We simply allege there was more than 200 horsepower at Cascades. We have not alleged anything with respect to the Meach Creek property.

Mr. Ker: But we have pleaded in regard to it, and it has not been inscribed against, so it stands to be proven. You have accused us of having damaged your Meach Creek property by interfering with it in some way.

20 Mr. St. Laurent: We say you have destroyed our Cascades property.

Mr. Ker: The evidence of your client is full of recriminations against us on the Meach Creek property.

Mr. St. Laurent: It is something which necessarily goes with the use of the Cascades, whether you use it or whether we use it.

Mr. Ker: Are you making any claim for Meach Creek?

30 Mr. St. Laurent: We are making claim for this other property, the use of which involves the abandonment of Meach Creek.

Mr. Ker: We can prove your revenues from Meach Creek have never amounted to anything, and that it is not a developable or continuous water power.

40 My submission is we should be entitled to establish by this witness that there is not, and has not been this summer, any flow in Meach Creek, and if it has been brought to a halt it is not through the fault of anyone, but is the result of the act of Providence.

His Lordship: If the witness knows anything personally about Meach Creek, he may tell us. For the moment he should leave out the reference he makes to the document, and state what he knows personally.

Witness: My personal knowledge has been an investigation of

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records held within the Department. I have not measured the flow of Meach Creek personally.

BY THE COURT:

Q.—Have you examined it?

A.—I have seen it.

Q.—You have been on the spot?

A.—Yes.

10 From my personal knowledge of run off in the Gatineau watershed, and of conditions on Meach Creek, there was no water flowing this present year. Less than one second foot was flowing in Meach Creek—which means that there is no such a thing as continuous or permanent power on Meach Creek. Certainly there is not 200 horsepower.

BY MR. KER (continuing):

20 Q.—As a matter of fact, does the Department keep official records regarding Meach Lake?

A.—The Department of Public Works has in the past ruled for the regulation of Meach Lake. A certain limit is given within which Meach Lake may be regulated, and the Department of Public Works is the Department which has ruled in the matter.

Q.—And Meach Creek discharges from Meach Lake?

A.—Meach Lake is the main source of Meach Creek. There is a small tributary which enters the creek below the lake.

Q.—So the readings of Meach Creek would be relevant?

30 A.—To the regulation of Meach Lake, yes, they would.

Q.—And from your experience would they be considered as such in the Department?

Mr. St. Laurent: I do not think that would have any effect. If it is not a matter within Federal jurisdiction, whatever may be considered in the Department would not make the entries kept there official records.

Unless I am mistaken, Meach Lake is not a navigable lake.

40 Mr. Montgomery: It is a navigable lake, and the discharge streams from Meach Creek are relevant to Meach Lake.

His Lordship: Meach Lake appears to be a fairly large lake?

Mr. St. Laurent: Less than a mile long, and about a quarter of a mile across, I am told. It is one of those ponds of which there are several thousand in the Province of Quebec.

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Mr. Montgomery: It is treated as a navigable lake, and they are interested in its discharges.

10 Mr. St. Laurent: The Department has control over only navigable waters, and it may be my friends can prove that such and such figures represent the record with respect to navigable waters. I do not think it would prove the fact, but it would prove the figures are of record. When, however, it comes to a matter of dealing with private property, over which the Department of Public Works has no control, and with which it has no concern whatever, if the Department chooses to get up a lot of figures concerning such property, those figures cannot make any evidence against the owner.

Mr. Montgomery: But if your creek runs from a navigable lake over which the Department has jurisdiction, obviously they have jurisdiction over the creek.

20 Mr. Ker: It would, for instance, be impossible for you to put a dam on Meach Creek without having the sanction of the Department.

BY MR. KER:

Q.—In any event, your personal investigations on Meach Creek have convinced you that, this summer at least, there has been absolutely no water running in it?

30 A.—At different periods this summer there was no water flowing in the creek. In the month of September, for instance.

40 Mr. Ker: Basing himself upon information which is of record in the Department of the Interior, the witness has prepared a table showing various discharges through Meach Creek from 1926, at varying dates, up to and including 1931. I believe this evidence is pertinent, and I ask the right to have this witness produce a statement which will indicate exactly the nature of the flow in that creek during those times. Whether the document be official as coming within the jurisdiction, scope and ambit of the work of the Department is, I think, a matter of no particular consequence. The statement is one prepared by the witness, who is an expert engineer, and it shows the stream measurements of Meach Creek, and I would ask to be allowed to produce it as a tabulation of the facts.

His Lordship: Do you not think that would be producing evidence on hearsay? Would it not be simply producing in statement form information collected by somebody else?

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Mr. Ker: It is not hearsay, your Lordship, because it is taken from official records maintained by the Department. I do not know what would be the object of maintaining such records if they were not held to be official for any purpose whatever. In any event, the witness has compiled them officially.

Witness: I did not compile them. They are copies of official records in the Department of the Interior and in the Department of Public Works.

10 BY MR. KER:

Q.—But they were taken from those records by you?

A.—I did not check them.

Q.—They were taken by you?

A.—No. The Department turned those certified copies out to me.

20 His Lordship: Certified by the proper official of the Government?

Mr. Ker: It is a compilation certified by the Assistant Deputy Minister of the Department of the Interior to be a true and correct copy of the original record in the Department of the Interior, pursuant to Section 6, subsection E, and Section 19, of the Public Works Act; certified by Mr. Somerville, Secretary of the Department of Public Works.

30 Mr. St. Laurent: It is quite true it is certified as a copy of something they have in the Department, but I do not think what they may have in the Department, even if the originals were produced, would be evidence in Court.

Mr. Montgomery: Mr. Lefebvre informs us that since 1922, by an arrangement between the Quebec Streams Commission and the Water Power Branch of the Dominion, certain records are kept by the Dominion Water Powers Branch, and certain others by the Quebec Streams Commission, in the official course of their duties.

40 These are official records, and certified copies of them make proof by themselves.

The Department of the Interior clearly has jurisdiction over all waters of the interior, and the Department of Public Works would have jurisdiction over Meach Creek because it is the outlet of a navigable stream.

Mr. St. Laurent: There may be an arrangement under which

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the work is done by officials of one of the Federal Departments, but that would not make it evidence of the facts in Courts of Justice.

Mr. Montgomery: I submit any record of that kind, which is regularly kept by the officials of the Department, can be proved by the certificate of the Deputy Minister.

His Lordship: Have you the text of the Statute to that effect?

10 Mr. Montgomery: The text is referred to in one of the documents.

His Lordship: That those documents are to be accepted as being authentic or true?

Mr. Ker: "Certified true copy pursuant to the Act."

His Lordship: I will allow the document to be filed, under
20 reserve of the objection.

Mr. Ker: Then, I will file, as Defendant's Exhibit D-85, statement of discharge measurements of Meach Creek; and, as Exhibit D-86, discharge measurements Meach Creek at Brown's Farm.

BY MR. KER (continuing):

Q.—Is it your opinion, based on your knowledge and investigations of those discharges at Meach Creek, that anybody could
30 operate continuously as a power development at that point

A.—No: it is impossible.

BY THE COURT:

Q.—Qualifying your statement by the word "continuously"?

A.—Continuously, yes.

BY MR. KER (continuing):

Q.—For how long do you think it could be operated?

40 A.—During this present year, with the low precipitation, it would have been impossible to operate for a month, to my knowledge, and I do not know how much longer.

Q.—For a month during the whole year?

A.—Yes. And in previous years, from the records that I have investigated, similar conditions have held.

Q.—Is there a permanent natural force of 200 horsepower in that Creek?

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A.—No, there is not. A permanent horsepower amounting to 200, with a 74-foot head, would require 30 second feet. The drainage area of Meach Creek is 45 square miles, and 30 second feet would be equivalent to .67 second feet per square mile. Applying that to the Gatineau, which has a watershed of 9,600 square miles, would give an ordinary low flow on the Gatineau of 6,500 second feet, which at once shows the absurdity of the figure—a small drainage of 45 square miles without any diversion, as compared to a large drainage of 9,600 square miles, and giving practically double the
10 ordinary minimum of the Gatineau.

Q.—In other words, in order to have a flow which would produce approximately 200 horsepower continuously in Meach Creek what minimum flow would be required in the Gatineau River?

A.—It would be increasing the ordinary minimum of the Gatineau from 3,000 to 6,500.

Q.—More than doubling it?

A.—Yes.

Q.—Taking into consideration the figures you have given with respect to head on the Cross' property alone, what is your opinion
20 as an expert as to the possibility of any profitable development of power thereon?

A.—A head of 2 feet could not be considered.

Q.—Taking the stretch up to the point "A"—the 3.6 foot head: is it possible at all to do anything with that property within itself?

A.—It would not be.

Q.—In your opinion, has it any commercial value whatsoever in itself as a water power?

A.—It could not be developed in itself.

Cross-examination 30 CROSS-EXAMINED BY MR. ST. LAURENT, K.C.,
OF COUNSEL FOR PLAINTIFF:

Q.—Is it to your knowledge that since the development at Chelsea the water has been held normally at an elevation of 318?

A.—At or about there, yes.

Q.—At or about 318?

A.—Yes.

Q.—That is 14 or 15 feet above the low water elevation at point "C"?

40 A.—The water elevation at point "C", 3,000 second feet, is 302.

Q.—And, at 10,000 second feet?

A.—305.

Q.—And, 10,000 second feet is the regulated flow, and the normal flow at which Chelsea is operated?

A.—It is the regulated flow at the present time.

Q.—And, I suppose the remainder of my question is also true:

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it is the normal flow at which Chelsea is operated by means of the regulation?

A.—It is the regulated flow on the river.

Q.—Perhaps I am not using the correct technical language to put to an engineer. What I mean is it is the flow which prevails for most of the year?

A.—Yes, quite true.

Q.—And, at that flow the elevation is 303.5?

A.—At 10,000 second feet the elevation at point "C" is 305.03.

10 Q.—And, the elevation at which the water is held for this regulated flow of 10,000 feet over that point would be practically 318?

A.—318.

Q.—So the water is raised about 13 feet over that point, "C"?

A.—About that, yes.

Q.—That is the head which is actually included in the Chelsea development over point "C"?

A.—Yes.

20 Q.—So, for the purpose of inclusion in the Chelsea development there is approximately 13 feet that is used?

A.—Yes.

Q.—I understood you to say that between the point "C" and the point "A" the relation in head varied, to a certain extent, with the flow?

Witness: The difference in elevation?

Counsel: Yes.

30 A.—Very slightly. At 3,000 second feet the difference in elevation between "A" and "C" is 6.4 feet; and at 50,000 feet, it is 5.8 feet.

Q.—But, there is a variation?

A.—A slight variation, yes.

Q.—If there is a variation between "A" and "C", there presumably is a variation between the top end and the bottom end of the stretch of river opposite the C.P.R. right-of-way?

A.—Quite so: to a small amount.

40 Q.—But, nevertheless, in giving those figures, and in making the deductions, the 2.6 was used by taking that variation into account?

A.—I did not take that into account when I was citing 3,000 and 10,000 second feet, and the head at 3,000 feet, 2.5 feet, and the head at 10,000 feet, 2.3 feet.

Q.—You also gave us the deduction on the enormous flow of 70,000 cubic feet?

A.—Yes.

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Q.—And there again you deducted the 2.6?

A.—Quite so. I did. It might vary a few tenths.

Q.—Whereas, with respect to the total, I think you said it was 5.7, instead of 6.4?

A.—5.7.

Q.—A difference of approximately three-quarters of a foot?

A.—Yes.

Q.—Would the variation in the elevations in any way affect the 1.3 which you mentioned as being proper to deduct?

10 A.—To the same extent as the slight diminishment in each individual section.

Q.—So, those variations would probably be proportionate to the length of river?

A.—Possibly, yes.

Q.—I understand you got this three-quarters of a foot, which you say would be the slope between "A" and "C" at a discharge of 38,000 feet, by experiment?

A.—Yes.

20 Q.—Opening up Chelsea sufficiently wide?

A.—Lowering Chelsea Pond.

Q.—To draw down 38,000 cubic feet?

A.—Yes, and then computing it through.

BY MR. ST. LAURENT:

Q.—We were discussing the elevations at point "C" as compared with 318 at a flow of 10,000 cubic feet second. Have you the elevation at point "A" when the flow was at 10,000 cubic feet second?

30 A.—At point "A" 10,000 cubic feet second, the elevation would be 311.2.

Q.—That would be six and a fraction over the elevation at point "A" ?

A.—The difference between point "A" and point "C" in elevation would be 6.2 feet.

Q.—A little less than half of the 13th?

A.—Yes.

Q.—Have you considered the pondage that holding the water at 318 makes available above point "C" ?

40 A.—I have assisted in some studies that have been made of that nature, but I have not the data with me. One of the other witnesses is going to produce that.

Q.—You have not the data with you?

A.—No.

Q.—It does make available considerable pondage above point "C" ?

A.—There is considerable more area available. To point "C"

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alone there is an area of two square miles, and holding the water to 318, the pondage area is 3.5 square miles.

Q.—Let me see if I understand this: It is a little bit difficult for a layman. By holding the water to the natural elevation of point " C " to 305 the pondage area would be 2 miles?

A.—Yes.

Q.—While if you held the water to elevation 318 and drowned out what others are flowing above it you get a pondage area of three and a half miles?

10 A.—Correct.

Q.— $3\frac{1}{2}$ miles altogether or $3\frac{1}{2}$ miles extra?

A.— $3\frac{1}{2}$ miles altogether.

Q.—So, one and a half miles additional?

A.—Yes.

Q.—When you said, first of all, a development that would take in at this point only a two-foot head or one that would take in at this point only a 3.6 head I think was used in the other question, it could not be done—I assume you are not saying it was not physically possible?

20 A.—Oh, it is physically possible.

Q.—But as a hydro-electric development you would not look upon it as a profitable development?

A.—No.

Q.—That is what you had in mind?

A.—Yes.

Q.—With respect to Meach Creek, did I understand you to say from your knowledge and information the drainage basin of Meach Creek was about 45 miles?

30 A.—Yes.

Q.—And that of the Gatineau about 9,600 miles?

A.—About 9,600 miles.

Q.—The Gatineau basin has been provided with artificial storage?

A.—It has.

Q.—Am I correctly informed that the area of the artificial storage is about 250 square miles?

40 A.—You can put it another way. The area of Bitobi storage when it is full, the surface area is about 100 square miles, and as Bitobi is drawing down, it is somewhat cone shaped, so that you may give it another way and say that the storage capacity is one hundred and forty-five billion cubic feet between the two reservoirs.

Q.—I am afraid that gets us into figures which it does not mean very much to the ordinary layman, unless he does a lot of figuring. Bitobi is one of the two storage reservoirs on the Gatineau head waters?

A.—That is the main storage.

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- Q.—And that has a surface area when full of about 100 square miles.
- A.—Yes.
- Q.—Then there is another one, the Cabonga; the Cabonga when full has an area of about how much?
- A.—I could not give you the surface area, not any other than we worked it down to a basis of capacity.
- Q.—Is it larger or smaller?
- A.—It is smaller and a secondary storage.
- 10 Q.—I assume that there is also in that basin of 9,600 square miles some natural lakes?
- A.—There are.
- Q.—There are quite a number, are there not, of small lakes and ponds in addition to Meach Lake in that basin at Meach Creek?
- A.—Quite so.
- Q.—Meach Lake is about how large, do you remember? Is it about three miles long?
- A.—I think it is somewhere in the neighborhood of two to three square miles.
- 20 Q.—Two to three square miles surface?
- A.—Yes.
- Q.—How much is that?
- A.—Meach Lake area—I am entirely wrong. I have a note here 1.15 square miles.
- Q.—My information was that it was perhaps something under three miles in length by about three-quarters of a mile in width?
- A.—That was the nearest determined. I think that area was taken at the time from the aerial photograph.
- 30 Q.—Are there not in addition to Meach Lake quite a number of small lakes and ponds in that 45 miles of drainage basin?
- A.—The drainage to the outlet to Meach Lake is thirty square miles, and Harrington Lake, Phillip Lake and Musk Lake are above Meach Lake.
- Q.—Flowing into Meach Lake?
- A.—I believe so.
- Q.—In any event, the 9,600 square miles of the drainage area of the Gatineau with regulation produces a little better than one second foot per square mile?
- 40 A.—Yes.
- Q.—And the number of second feet required for 200 horsepower for 74 feet head would be 30, I understood you to say this morning.
- A.—Yes.
- Q.—The 45 miles, if they were comparable to the 9,600 miles, might be expected by regulation to produce something a little better than 45 cubic feet second?

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A.—No.

Q.—Why not?

A.—I will tell you why.

Q.—Just remark this, I qualified my question, if comparable to the Gatineau?

A.—Well, I would rather not care to have my answer go down on that basis. The lake area on a relatively small drainage is a high-percentage on Meach Creek.

10 Now, in a year such as this past year, Meach Lake in my opinion could have been dammed and all outflow cut off entirely, and yet the lake level would have fallen.

Now, I can give you my reason for so saying—evaporation. I could cite actual instances of what evaporation may do. The Lake of the Woods has a surface area of 1,485 square miles. The tributary drainage is roughly 26,500 square miles—not this past year, but the previous year, it was not so severe in the matter of drought as this year; the outlet from Lake of the Woods could have been completely shut off, and yet the lake would have fallen.

20 Now, our records absolutely show that Lake Superior, taking the change in stage, the equivalent of change in stage into account, shows a negative supply, in other words the evaporation is greater very often than the inflow to Lake Superior.

Q.—But there is, nevertheless, an outflow from Lake Superior?

A.—All right, there may be an outflow, but that brings about very rapid drop in lake level.

30 Q.—I am afraid that perhaps this is a little bit complicated, and we will get back to something more on my level. Is it to your knowledge that, in fact, the power plant at Meach Creek was operated from 1912 to 1930 for the purposes of supplying lake for domestic purposes in that region?

A.—So far as I have been able to ascertain, the operation was very intermittent at times.

Q.—Is it to your knowledge that that is the power plant which supplied such electricity as they did have for domestic purposes during that period of time?

A.—Yes.

40 Q.—From your previous answer I gathered that you do not wish us to look upon as comparable the 45 miles of Meach Creek basin with the 9,600 miles of the Gatineau basin?

A.—Absolutely not, and for another reason, a small water shed has no diversity, and a larger water shed has a diversity factor that rains may be encountered on one portion of the shed and not on another, bringing about a more uniform run-off of the larger water shed.

Q.—Uniform?

A.—Yes. Whereas the smaller water shed can go completely dry.

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Q.—Not necessarily a greater total?

A.—A greater average rate, not at all.

Q.—But a more regular run-off?

A.—A more uniform run-off.

Q.—At the 10,000 cubic feet second, the elevation you have told us at point " C " is 305?

A.—305.

Q.—And at point " A " ?

A.—311.2.

10 Q.—And at the top of the Pêche does it not appear from the Government records that it is 320 and a fraction. Have you got that figure?

A.—At 10,000 second feet the elevation at the head of the Pêche would be 319.8.

Q.—The actual difference in elevation then between point " C " and that point would be 14.8?

A.—319.8, and 311.2 it would be 8.6 feet.

Q.—I am asking about point " C " ?

20 A.—Point " C ", oh—14.8 feet.

Q.—That would be the actual difference in level between point " C " and

A.—And the head of the Pêche.

Q.—At 10,000 cubic second feet flow?

Q.—In these photostats filed as Exhibits D-81, D-82 and D-83, the curve is, I understand, the graphic illustration of combining the flow in second feet with the elevation it produces?

A.—The relation between river stage and discharge—river elevation and discharge.

30 Q.—When you get to such a river elevation, the water is flowing by at such a rate?

A.—Yes, quite so.

Q.—That is what the two tables combine?

A.—The vertical ordinate gives the elevation, and the horizontal the discharge in thousands of second feet.

Q.—And the line which runs up is the one that connects the two tables?

A.—Yes.

40 Q.—I have not been able to realize what was shown by Exhibits D-78, D-79 and D-80?

A.—May I explain that the first table which I filed was the rating, the relation between the stage and discharge at Alcove as adopted by the Federal Government in securing the daily discharge of the Gatineau under natural conditions.

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Q.—That is D-77?

A.—At elevation 316 at Alcove the equivalent discharge of the river at that elevation is 2,350 second feet, or higher than elevation 320 is equivalent to a discharge of 8,520 second feet.

BY MR. ST. LAURENT:

10 Q.—Am I to understand that a certain number of experiments have been made, and from those experiments it has been determined that that is apparently what happens, so that therefore they get the elevation and they deduce from the elevation what the flow is at that stage without weiring it?

A.—Actually, this is based upon a series of discharge measurements taken with a current meter at a section at Alcove; each time a discharge measurement is taken the elevation of the river is raised, and then by securing measurements at various river stages the definite relation is established between stage and discharge.

20 Now, then, to carry that discharge curve, or to get the relationship between stage and discharge at Cascades, Wakefield, and below gauge readings, simultaneous gauge reading. Take the one up at Alcove, which is plotted, reading the elevation of water surface at Wakefield village, the same day, you see the same amount of water is flowing, so that then any given elevation at Alcove has a corresponding elevation at Wakefield; the same thing from Wakefield to point "A", so that in carrying this relationship down, knowing that from this the actual readings over a period of time, 320 at Alcove is equivalent to 312.3 at Wakefield. When the water is at elevation 320 at Alcove, it would be 312.3 at Wakefield, so that 320, we know from
30 the table the discharge corresponding with 320 at Alcove; then that same discharge corresponds to the elevation of 312.3 at Wakefield.

Q.—So the vertical table here shows actual elevations at Alcove, and the horizontal table shows corresponding elevation at Wakefield?

A.—Yes.

Q.—And a line has been drawn to pass through the intersection of those two elevations?

A.—Quite right.

Q.—That is the explanation of D-78?

40 A.—Yes. Similarly that has been carried from Wakefield

Q.—D-79 shows in the vertical the elevation at Cascades and at point "A"?

A.—Yes.

Q.—And on the horizontal the elevation at Wakefield?

A.—Yes.

Q.—And the line drawn is through the intersection of the two elevations?

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A.—Yes.

Q.—D-80 shows in the vertical the elevation at point "A" at Cascades and in the horizontal the elevation at point "C" at Cascades?

A.—Yes.

Q.—And it appears to be a perfectly straight line that connects the intersecting of those two elevations?

10 A.—Yes. The line diagram is merely showing in diagrammatical form the records of measured flow filed this morning, of elevations, water elevations taken at point "A" and point "C".

Q.—That straight line would indicate there was a constant relation between these elevations starting from 305 up to

A.—No, not necessarily. It is not a constant relation. With this carried through at 45 degrees, it would be a constant relation, but as shown in the table it is taken directly from this at 3,000 second feet; the difference in elevation between point "A" and point "C" is 6.4, and at 60,000 it is 5.8.

20 Q.—What discharge does the line that has been put on D-80 correspond with? It seems to run from elevation 304?

A.—If you would let me have the discharge table for point "A". The diagonal line on D-80 covers a range in discharge from about 2,000 second feet to 70,000 second feet. In other words, these elevations have been taken throughout the open water season of one year where the river was rising and then falling, the only basis by which a relationship can be established.

Q.—But there is no deviation from the straight line?

A.—No, there is no curve there.

30 Q.—So this slight difference you did mention is insufficient to show that line?

A.—Oh, that does not necessarily bring curvature in it. Where it is on a 45-degree angle, then there would be no difference between the elevations at point "A" and point "C", but that is not 45 degrees. That is the reason.

Q.—So the constance of the angle does not mean the relation is the same?

A.—No, only on one condition.

Q.—Only on the 45-degree angle?

A.—Yes.

40 Q.—Have you any recollection of what the records of the Department of Public Works show as being the unregulated normal minimum flow of the Gatineau?

A.—I do not believe the Department of Public Works in any way has made any specific statement. They have published records of the Gatineau up to the year 1920. Subsequently, the Dominion Water Power Branch took over the work of stream gauging, and they have made no specific statements other than giving the daily

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records of flow. They have made no specific statement as to ordinary low water, but the records will show an absolute minimum of 1900 and frequent periods when the flow has been two and three thousand second feet.

Q.—And it was from those records that you made your estimate of the approximate 3,000 feet?

A.—Yes.

Re-examination

10

RE-EXAMINED BY MR. KER, K.C.,
OF COUNSEL FOR DEFENDANT:

Q.—In reply to a question by my learned friend for the Plaintiff, you stated that the flow of 10,000 cubic feet second, there was a head of 14.8 between the point "C" and the top of the Pêche?

A.—Yes.

Q.—Just how much of that 14 feet would be represented by head on the property of Mr. Cross himself, not taking into consideration the property of others?

20

Mr. St. Laurent: I must object to the generality of that question, I submit it is a matter of law to determine whether or not the portion which the C.P.R. right-of-way runs along the river is Mr. Cross' property. I submit my learned friend's question has not for its purpose the interpretation of the legal situation. He should state explicitly whether he excludes that or not.

Mr. Ker: There cannot be any possibility of not taking it in, if you go from the point "C" to the Pêche.

30

Mr. St. Laurent: If you go from the point "C" to the Pêche. You ask the witness how much of the 14.8 is opposite the Cross' property. I think you should state whether or not you are asking him to leave in or to exclude the C.P.R.

BY MR. KER:

Q.—How much between the point "A" and "C" which includes the C.P.R.—we will take that first. What was the head represented out of that 14 feet by the portion between the points "A" and "C" on the plan D-69?

A.—10,000 second feet. Everything would be 6.2 feet between points "A" and "C".

Q.—That is, including the portion which is opposite the Canadian Pacific Railway property?

A.—Yes.

Q.—And opposite Caves' property?

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A.—Yes.

Q.—Can you tell me what the same head would be leaving out the C.P.R. property and only going to the points “C” to “X”, that is on the large block below?

Witness: Eliminating the C.P.R.?

Counsel: Yes.

10 Witness: And the property on the east bank of the river?

Counsel: What would be the head applicable to the block below?

A.—Eliminating the C.P.R. would leave 3.64.

Q.—You say then, taking in from the point “A” to “C”, the amount of head applicable between those points would be, in the one case, 6.2 feet, is that the necessary deduction in respect of the half of the lower reach?

20 A.—3.6 feet is the drop from the upper limit of the Cross' property on the west bank to the point “C”.

BY MR. ST. LAURENT:

Q.—The upper limit of the large block?

A.—Of the large block.

Q.—From the point “X” to the point “C”?

A.—Yes.

30 BY MR. KER:

Q.—And the other is 6.2?

A.—6.2.

Q.—The 6.2 that you spoke of is the same thing on the west side of the river from point “A” to “C”?

A.—Quite so.

Q.—If 1.3 is deducted for the non ownership of the other side of the river in the lower stretch what would the result represent?

40 A.—The head would be then 2.3 feet, but the average head on the Cross' property as embracing the total flow of the river.

Q.—That would be the average head to which he would be entitled on a 14-foot head?

Mr. St. Laurent: I object to this question. The witness can give us the facts, and the Court will say what the head is to which we are entitled in view of our titles. The witness gives us from point to point, but the court will say what the legal fact is.

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Mr. Ker: I do not insist on the question.

BY MR. KER:

Q.—Coming again to the top of Paugan where you state it was 14.8, could the water be raised on this property of Mr. Cross by 14.8 and still not impinge on the property?

A.—No, not at all.

10 Q.—To what extent would it be impinging on the property if you gave credit to Mr. Cross for 14.8?

A.—The water level at point "A" for a flow of 10,000 second feet could not be raised above 316.2 feet without affecting Paugan.

Q.—How then, would that reduce the 14.8? I think you gave us that figure this morning?

A.—That is the 318, I think.

Q.—In other words, could the possibility of the development at Cascades be affected without affecting Paugan?

10 A.—Without affecting Paugan the elevation at point "A" would be 316.2, and with 10,000 second feet flowing and the elevation at point "C" would be 305 or 11.2 feet between "A" and "C".

Q.—So that is, one could develop this property without interfering with Paugan at a flow of 10,000 cubic feet second?

A.—Yes. From that would necessarily be deducted 1.3 feet as allowance for the lower half which is not owned by Mr. Cross.

Q.—What then would that leave developable at Cascades?

Mr. St. Laurent: The witness gave all these calculations in examination-in-chief.

30 Mr. Ker: The question is only asked to make clear the fact, which I think is not quite clear from the evidence, given in answer to Mr. St. Laurent's question, namely, there were 14.8 feet of head available at the Cascades. I am endeavouring to show in explanation that that 14-foot of head was not available at all without affecting the large development at Paugan Falls.

BY MR. KER:

40 Q.—What was the power that was available?

A.—9.9 feet.

Q.—Without affecting Paugan?

A.—Without affecting Paugan.

Q.—Giving full effect to everything?

A.—Giving full effect to Cascades without affecting Paugan tailrace.

Mr. Ker: With the permission of the Court and my learned

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friend I would like to put one question I overlooked.

Q.—Did you hear the evidence of Mr. Farley to the effect that he had estimated the ordinary high water mark of the river at the lower stretch of this red portion 307?

A.—Yes, I did.

Q.—Have you any data which would avail to check on that statement?

10 A.—I have arrived at ordinary high water in the Gatineau River under natural conditions on an entirely different basis. If the mean June elevation be taken over a period of years, it is an elevation to which water may ordinarily stand on the land, and after the month of June the land cannot be used for agricultural purposes, so that deriving a mean elevation for the month of June at Cascades, I have taken the mean flow of the Gatineau under natural conditions for the period from 1912 to 1926, 15 years, and the mean June flow is 19,050 second feet, which corresponds to the elevation at point "C" of 307, which is borne out by Mr. Farley's statement that vegetation ceases at or about elevation 307.

20 Q.—Would you correlate that to the point "A" ?

A.—In like manner the discharge of 19,050 second feet corresponds to the river elevation, a water surface elevation at point "A" of 313.3. In other words, ordinary high water at point "A" may be taken as 313.3.

Q.—In other words, after the water was raised above that point you would be impinging on the land which was above high water?

A.—Flowage easements would have to be necessarily above that elevation.

30 Q.—You have stated that the head could not be taken up to 14.8 without affecting Paugan. As a matter of fact, the Company Defendant is utilizing the water up to a higher elevation than that, and affecting Paugan?

A.—That is quite true there, but on account of the back water head tapering out from Chelsea to Paugan, they can gain a greater amount at Chelsea by holding the water than they can by losing tail water at Paugan.

Q.—That is a condition, which I take it, could only exist where there were identical proprietors?

40 A.—The only manner in which it could be carried out.

Q.—You were asked in your cross-examination as to what difference there might be, variation in that deduction, of 2½ feet of differing flows, for instance, taking it at 3,000 and then as the flow got greater, there would be a difference in that deduction of 2½, is that not so?

A.—Yes.

Q.—Have you any further remarks to make on that point?

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10 A.—Yes. In the heads as given, from 3,000 to 10,000, there is practically no variation, but for flood discharge I have not taken into consideration, nor have I deducted the loss—the hydraulic loss—on the property itself in flood stage which, as I stated this morning, amounts to some three-quarters of a foot, so that when the discharge is 40,000, there is a loss, a slope on the water surface, there must necessarily be, to get the water by the obstruction—these obstructions to channel flow of three-quarters of a foot, could not be held level; if a dam were to be placed at the lower end of this property, and in flood stage, there must necessarily be a drop of three-quarters of a foot, and I have not deducted that in deriving the heads at flood stage, so that that in itself again affects any difference that might come from taking the difference in elevation between “A” and “C”.

Re-cross-
examination

RE-CROSS-EXAMINED BY MR. ST. LAURENT, K.C.,
OF COUNSEL FOR PLAINTIFF:

20 Q.—To sum this up, if I understand you correctly, it means that those figures you have given do involve an inaccuracy, and they involve a second inaccuracy besides the first one?

A.—I am allowing to you a greater loss that should be deducted than the slight inaccuracy that comes in deducting the other.

Q.—Not only is there one error, but there are two, and the net result is?

A.—The net result is that the whole thing is within a matter of a few tenths of a foot.

30 Q.—But we were whittling it down to very few feet by taking off the 2.6?

A.—All right, quite so, if you like. Then I shall take the other three-quarters of a foot.

Q.—I am not liking anything. I am just taking the evidence as it is submitted, and pointing out that when one inaccuracy is pointed out you bring out another.

A.—All right, but I rather object to the statement of inaccuracies as if they were of appreciable amount.

40 Q.—But in mathematics, as in technical engineering, I suppose it is true that absolute accuracy is usually what the engineer aims at?

A.—We are down to within a matter of a few tenths.

BY MR. KER:

Q.—And any advantage has been given to the Plaintiff?

A.—Absolutely.

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BY THE COURT:

Q.—To what extent has the new condition of things created by the dam changed conditions that existed before on Mr. Cross' property?

A.—To this extent, sir, that with the water level held at Chelsea 318, and the flow of 10,000 second feet, the elevation at the foot of the property previously was 305 and it now is 318, and at point "A", the elevation under natural conditions with 10,000 second feet
10 flowing, would have been 311, and it is now 318—311.2, it is now 318.

BY THE COURT:

Q.—What effect had that on Cross' property as to inundation?

A.—Well, at that stage the inundation at the upper small portion of property is 6.8 feet.

BY THE COURT:

20 Q.—That means 6 feet and eight-tenths, is that it?
A.—Yes.

BY THE COURT:

Q.—Of inundation?

A.—Yes, but that also embraces drowning out the Pêche Rapids.

BY THE COURT:

30 Q.—What does that mean, as far as Mr. Cross is concerned?
A.—I suppose that does not mean anything particularly to him. It means that the Gatineau power not only utilize the Rapids below, but the Pêche Rapids also, and part of Paugan.

BY THE COURT:

40 Q.—Would those eight feet—you stated, I think, it was eight feet?
A.—6.8 feet.

BY THE COURT:

Q.—Would those 6.8 feet affect the working of his mill?

A.—Yes, at his power house. It has reduced the head about 6 feet—6.8 feet.

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BY THE COURT:

Q.—And that would considerably affect his operating the mill?

A.—That reduces his power by about 10 per cent, but it does not close the plant down.

BY MR. KER:

10 Q.—In other words, do I understand you correctly to say that the result of holding this water at 318 was to carry, as it were, the excess quantity of water that was already in the river in front of Mr. Cross' property?

A.—Yes.

20 Q.—Thereby inundating, or wiping out the small roads which existed there, and spilling over onto the land to a certain extent an area, which one witness said was 5.8 acres altogether. I think Mr. Farley deposed to the fact that there were about five acres involved on the west, and about five-tenths of an acre on the east—I am speaking now of Cascades?

A.—I cannot state as to the flow.

Q.—As to the additional rise in the water, as you stated, by holding it at 318 at so many feet on Mr. Cross' property, do I understand you to mean that that is as against the levels shown on this plan or against the levels of the ordinary high water mark of the river?

A.—The ordinary high water mark. I was dealing with a flow of 10,000 second feet, that was the question at the time. Ordinary high water mark at point "A" is for a flow of 19,050 second feet.

30 Q.—Could you state what additional elevation results from this flooding over and above ordinary high water mark?

A.—From 313.3 to 318 it is 4.7 feet.

Q.—4.7 above high water mark?

A.—Above ordinary high water mark.

Q.—That is something more than ordinary high water mark as taken from this?

A.—Yes.

BY MR. ST. LAURENT:

40

Q.—And if it is 6.2 feet over the level that it would be at 10,000 cubic feet at point "A", it is 13 feet over the level at which it would be under normal conditions at 10,000 cubic feet flow at point "C"?

A.—Quite right.

Q.—So that the shed of water placed over the property there gives 13 feet to 6.2 feet?

A.—For a flow of 10,000.

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Q.—For a flow of 10,000, which is the flow that is maintained for the major portion of the year by means of the regulation?

A.—Yes.

BY MR. KER:

Q.—And that is, of course, subject to the same deduction as between high water and the elevation given on this plan?

10 A.—Yes.

BY MR. ST. LAURENT:

Q.—Then, I say, that is the flow which is maintained for the major portion of the year. That flow is maintained for the major portion of the year, and then it is not that flow, it is something above it?

A.—Yes.

20 (And further deponent saith not.)

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DEPOSITION OF SIDNEY E. FARLEY, A WITNESS
RECALLED ON BEHALF OF THE DEFENDANT.

30 On this fifth day of November, in the year of our Lord one thousand nine hundred and thirty-one, personally came and appeared

SIDNEY E. FARLEY,

a witness already examined, now recalled on behalf of defendant, who, being duly sworn, doth depose and say as follows:

EXAMINED BY MR. KER, K.C.,
OF COUNSEL FOR DEFENDANT:

40 Q.—Mr. Farley, under the same oath, you spoke this morning of having examined the title or the deed of acquisition of the Canadian Pacific Railway to the property immediately south of Mr. Cross' property and now composed of lot No. 21-D?

A.—Yes.

Q.—Have you secured a copy, and will you produce it, of the Canadian Pacific Railway's deed of the property which is now known as lot 21-D?

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A.—Yes.

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Mr. St. Laurent: I object to the form of the question. I do not think it should be qualified in that way. The deed will speak for itself. The deed does not speak of it as 21-D, but as being part of 20-C and 20-D—forming parts of lots 20-C and 20-D in the 15th range of the said township.

10 Mr. Ker: I was coming to the question which I think will clear that up, inasmuch as I think I can show by this witness, who is a land surveyor, that the description of this property entirely corresponds with his own certificate, description of lot 21, in spite of what the numbers may be, and in fact 21-D is mentioned in that deed if I am correctly advised.

20 Mr. St. Laurent: If the witness does say that, we will have to have the privilege of cross-examining him, but I do not want my learned friend to have the witness say as an assurance of fact that this deed is the deed for 21-D.

Mr. Ker: I admit that is perhaps going a little far.

BY MR. KER:

Q.—Would you say, after having examined that deed, to what, in your opinion, that particular property refers on the cadastral plan.

30 Mr. St. Laurent: I object to this as not being legal evidence. It is not for the witness to say to what property, in his opinion, it refers. The description of the property is mentioned in the deed.

Mr. Ker: Perhaps if the witness reads the description of the property.

Witness (reading):

40 “ Deed of Sale from Thomas M. Reid to the Ottawa and Gatineau Valley Railway Company—Registered on the 10th day of August, 1891, liber B., Vol. 37, page number 750, L. Duhamel, Registrar.

“ In consideration of forty dollars paid me by the Ottawa and Gatineau Valley Railway Company hereby acting by and through their Attorney, John P. Mullarkey, of the City of Montreal, Land Surveyor, thereunto duly and expressly authorized by and in virtue of a resolution to that effect made and passed

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by the said Company on the twenty-seventh day of August, 1888”

Q.—Come to the description?

A.—(Reading):

10 “All the tract or parcel of land situate, lying and being in the township of Hull, in the County and District of Ottawa, containing by admeasurement, three-quarters of an acre, more or less, and forming parts of lots No. 20-C (twenty-C) and 20-D (twenty-D) in the fifteenth range of the said township, and bounded as follows, commencing at the intersection of the centre line of the Ottawa and Gatineau Valley Railway, with the division line between said lot 20-C (twenty-C) and twenty-D (20-D) in said fifteenth range, thence northwesterly along said centre line, a distance of four hundred and three feet, more or less, to its intersection with the division line between said lot number 21-D (twenty-one-D) and lot No. 21-C (twenty-one-C) with a continuous width of eighty feet, forty feet on each side of said centre line and measured off square thereto, together with such portions of said lot No. 20-C (twenty-C) East of lot No. 20-D (twenty-D) as shall make up a uniform width of forty feet to the east, of said centre line.

20
30 “And further bounded as follows: Southeasterly by lot No. 20-D (twenty-D) the property of said company, northwesterly by lot No. 21-C (twenty-one-C) the property of Thomas Moore, southwesterly by the remaining westerly portions of said lot 21-D (twenty-one-D) and twenty-C (20-C) and lot No. 20-D (twenty-D)—northeasterly by the remainder of said lots No. 20-C (twenty-C) and 21-D (twenty-one-D) in said fifteenth range of the township of Hull.”

I do not think I need carry on with the rest. There is no other description.

Q.—That deed is from one Reid?

A.—I mentioned that it was from Thomas M. Reid to the Ottawa and Gatineau Valley Railway Company.

Q.—And it is for property south of the south line of lot 21-C?

40 A.—The northerly boundary of the property described in this deed is the southerly boundary of lot 21-C.

Q.—Will you file this photographic copy of the deed as Exhibit D-87?

A.—Yes.

Q.—The length of this centre line was given as 403 feet?

A.—In the description, the length described was 403 feet, more or less.

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Q.—Looking at Exhibit D-69, can you correlate the property on lot 21-D with that deed, insofar as the measurement of the centre line of the C.P.R. is concerned?

A.—The distance I have shown on plan D-69 from the division line between lots 20-D and 20-C, which is the starting, mentioned in this description to the southerly boundary of 21-C, is approximately 410 feet.

10 Q.—Would you mark those points on this plan D-69, the distances which you find as corresponding or nearly so to them?

A.—Yes.

Q.—To get that 410 feet you go through lot 21-D?

A.—Yes, we go through lot 21-D.

Q.—Could you indicate the block described in this deed by metes and bounds on this plan D-69?

A.—It is the right-of-way itself.

Q.—It is the right-of-way?

A.—It is the right-of-way that is described by metes and bounds.

20 Q.—Could you put with a coloured pencil what the metes and bounds correspond to on that plan?

A.—I have no coloured pencil.

Q.—Put it in black pencil?

A.—I will shade it.

Q.—Hatch it. Just run lines through it. The vertical pencil lines indicate the lots described in this deed, in your opinion?

A.—Yes.

Cross-examination

CROSS-EXAMINED BY MR. ST. LAURENT, K.C.,
OF COUNSEL FOR PLAINTIFF:

30 Q.—Mr. Farley, the deed you read describes the property acquired as being a parcel of land situate, lying and being in the township of Hull and County and district of Ottawa, containing by admeasurement three-quarters of an acre, more or less, and forming parts of lots 20-C and 20-D in the 15th range of the said township?

A.—Yes.

Q.—And the lots to which you apply that would not form parts of 20-C and 20-D, but would form part of 21-D?

40 A.—In order to apply that piece of land on the ground and fit the description—if we continue on the body of the description we find it extends to the southerly limit of lot 21-C.

Q.—Will you just answer my question. You were applying a description which says parts of 20-C and 20-D to something which is part of 21-D, that is so in fact.

A.—Correct.

Q.—You say you have reasons for doing so?

A.—Yes.

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Q.—I am not asking you what those reasons are, but I am asking you about the fact. Now, we will take the description: the description of the centre line proceeds from a starting point in a north westerly direction?

A.—Yes.

Q.—That would be from the right towards the left?

A.—Yes.

Q.—Looking at the plan?

A.—Yes.

10 Q.—Looking at this plan D-69, will you tell me if this line, which is just over letter " P " in C.P. Railway, does not appear to be a divisional line between 20-C and 20-D?

A.—That is correct.

Q.—If your 410 feet started from the projection of that line, and went north westerly, they would stop opposite the Wilson property, you would reach 410 feet opposite the Wilson property?

20 A.—Pardon me, the deed describes this property as starting at an intersection of the division line between lot 20-C and 20-D, the only possible intersection of the division line between lots 20-C and 20-D is where I have marked an arrow.

Q.—That is the only possible intersection between the lines as you have put them on this plan? Are you saying that those lines as put on this plan are lines which conform with the possession of the parties, or lines which conform with the cadastral plan?

30 A.—Well, actually the possession of the parties—there is no line on the ground which indicated the division between the parties. This was put on from the cadastral plan and the description given of the property of the Canada Cement Company as bounded by that lot 20-D and as followed in the description of the property of the Canada Cement Company.

Q.—Were those lines put on to fit with your construction of the deed we have been talking about as Exhibit D-87?

A.—I never saw that deed before.

Q.—Then, this deed that you have been talking about for a couple of days as having induced you to recite what you have shown on the expropriation plan, and in the description accompanying the expropriation plan. . . .

40 A.—I did not say anything about a deed. I said that the description given in the Book of Reference of the situation, the area of lot 21-D corresponded with the plan and the property acquired by the railway company.

Q.—But you said something about having now before you some information that you did not have when the expropriation plan was made?

A.—Yes.

Q.—What is it? I understood it was some C.P.R. deed?

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A.—After the first expropriation plans were prepared, I secured access to the deeds and the plans of the property acquired by the C.P.R. across this lot, and I found that they agreed with the location of the lot 21-D as described in the Book of Reference, both as to its description and area, which helped me to fix the northerly boundary of lot 21-D.

Q.—Is Exhibit D-87 one of those deeds you had access to, and which revealed this new situation to you?

A.—I believe so.

10 Q.—Well then, you must have examined it at the time, or it would not have affected your opinion?

A.—I don't know whether it was that particular deed or not, but I am convinced that it was that deed together with the plan.

Q.—Any plan we have got here?

A.—No, it was one of your plans showing the C.P.R. right-of-way across this lot.

Q.—One of my plans? When did you first see that plan here? Did you see it the day it was put into evidence at the trial?

20 A.—No I do not think it was. I have seen it before. I have seen the plan of the property of the railway company previous to this.

Q.—Is it a plan similar to the one we put in as an Exhibit that we are talking about, or some other plan?

A.—Well, it is. It is a copy of that plan.

Q.—A copy of this plan?

A.—Yes.

Q.—That you saw?

A.—Yes.

30 Q.—Where?

A.—In the office. I believe we had it in Ottawa. We secured it from the officers of the company.

Q.—When?

A.—Some time after the expropriation proceedings took place. I cannot say just when.

40 Q.—If I am not mistaken and if my memory is at all faithful, my recollection seems to be that His Lordship asked you about that, and that you gave some explanation of its being the result of information and data, or documents, that you did not have when you made the expropriation plan and description?

A.—No, I did not have that data when we made the expropriation plan originally, but I had them later. I secured them later when we went into the question again.

Q.—Well, then it was not a deed, it was a plan?

A.—No. As I said the reason why I was hesitating, is because I believe I had both a plan and a deed, but I am not quite clear whether it was that particular deed or not.

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Q.—But you do remember that it was this plan of which our exhibit is a blue print?

A.—Yes.

Q.—Cannot you go back in your memory and see if you can tell us what deed it was?

A.—I will say this definitely now, that it was this deed.

Q.—Well, I am asking you to say it?

A.—I will say it now.

Q.—I am just trying to get at the facts?

10 A.—Now it is coming back to me, it was this deed.

Q.—When you told me a few minutes ago that this was the first time you had seen this deed, you were mistaken?

A.—I am mistaken. It has just come back to me, and I know now it is this one.

BY MR. KER:

Q.—D-87?

A.—D-87.

20

BY MR. ST. LAURENT:

Q.—You had D-87 and the plan when you made up D-69?

A.—Yes.

Q.—Did I understand you to say you made the lines under your consideration of Exhibit D-87?

30 A.—In the first place I plotted the lot 21-D from the official description given in the Book of Reference according, not only to its position, but its area, and when I consulted these plans I found they agreed.

Q.—Since we have got that far, just tell me how much of the area of 21-D you put beyond the highway and I will preface that question by asking you to agree with me that the cadastral plan does put a certain portion of 21-D beyond the highway?

A.—That is right.

Q.—Since you plotted it in accordance with this area, how much of that area did you allow for the portion beyond the highway?

A.—A little bit less than a quarter of an acre.

Q.—Did you show it on D-69?

40

A.—No.

Q.—What did you go by to make the distribution of the area less than a quarter of an acre to one side of the highway and a little bit more than three-quarters of an acre to the other side of the highway?

A.—Well, in studying these lot lines there is more than one thing to consider. One has to consider deeds very often, and transfers of property, and in this particular case the transfers of those prop-

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erties indicated if placed at a certain point would coincide with the boundaries of properties so transferred and fit very closely with the position of where that line should be.

Q.—Since that comes in, and as it involves calling this property by a different number from that by which it was called by the parties when they signed the deed, I will have to ask you to check up on another C.P.R. deed that we have here. This plan D-69 runs up to the division line between lots 21-C and 22-C-1?

A.—Yes.

10 Q.—Between original lots 21 and 22?

A.—Yes.

Q.—And it is a plan that is made to scale?

A.—Yes.

Q.—Will you kindly scale on this plan back for us from that intersection point 3,564 feet? I find I have to change my question and ask you to start between the division line between lots 21-C-1 and 22-C-2 instead of from the division line between 21-C and 22-C-1, and that you have scaled that, and that according to your scale the 3,564 feet would come down to the point where you have

20 marked 3,560?

A.—Yes.

Q.—That is so?

A.—Yes.

Q.—That would be more than 100 feet away from the other property?

A.—Yes.

Q.—So that does not tie up either?

30 A.—Yes, but we must not forget that one line comes down on a bias, whereas one of those side lines hits the railway line or right-of-way on a considerable bias; a very small difference in its direction would affect the distance along the right-of-way very considerably.

Q.—You noted that, as a matter of fact, 21-D had been a lot added to the cadastre by correction of the 10th June, 1891?

A.—Yes.

Q.—And that the deed you are referring to is, I think, dated August 3rd of the same year?

A.—Yes.

40 Q.—And there has never been any deed of correction to these numbers to your knowledge, in the cadastral numbers, the deeds stating that the parties who had called a lot 21-C, had been mistaken, and that it should be called 21-D, or anything of that kind?

A.—No.

Q.—The only correction you do know is the one of the Flynn property where that was corrected to 21-C instead of 20-C?

A.—Yes.

(And further deponent saith not.)

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DEPOSITION OF CARROL N. SIMPSON, A WITNESS
PRODUCED ON BEHALF OF DEFENDANT

On this fifth day of November, in the year of Our Lord one thousand nine hundred and thirty-one, personally came and appeared

10 CARROL N. SIMPSON,
of the City of Ottawa, Hydraulic Electrical Engineer, aged thirty-eight years, a witness produced on behalf of the Defendant, who being duly sworn doth depose and say as follows:

EXAMINED BY MR. KER, K.C.,
OF COUNSEL FOR DEFENDANT:

20 Q.—You are a civil engineer?
A.—I am an electrical engineer.
Q.—You are the chief engineer of the Gatineau Power Company?
A.—Yes.
Q.—And a member of the professional engineers of the Province of Quebec?
A.—Yes.
Q.—Where did you graduate from?
A.—From the University of Toronto.
30 Q.—When?
A.—In 1915.
Q.—When did you join the forces of the Gatineau Power Company?
A.—In 1927.
Q.—And what were you doing between 1915 and 1927?
A.—In 1916 and the early part of 1917 I was with the Northern Canada Power Company on the construction of Sandy Falls and Wawatin Falls, and during the latter part of 1917 I was employed by the same company on the investigation of power supply to the Flin-Flon Mine in northern Manitoba and Saskatchewan, and located the present development at Island Falls.
40

BY THE COURT:

Q.—For the defendant?
A.—No, for the Northern Canada Power Company.

BY MR. KER:

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Q.—You were not with the defendant then?

A.—I was not then with the defendant. In 1920 and 1921 I was with the Abitibi Power and Paper Company on the construction of their Twin Falls development. In 1922 and 1923 I was with the Northern Canada Power Company on the construction of their Sturgeon Falls development. In 1925 I was with the Abitibi Electric Development Company on their Island Falls development. In 1926 I was with the Fraser-Brace Company on the construction of Chelsea and Farmers development on the Gatineau.

10 Q.—And you were taken from the Fraser-Brace Company to the engineering staff of the Gatineau Power Company in 1927, and you are now chief engineer of that company?

A.—Yes.

Q.—You have consequently, I take it, had very considerable experience in the matter of power developments and their construction?

A.—I have done every kind of work involved in hydro-electric construction work.

20 Q.—The theory has been put forward by the plaintiff in this case to the effect that there is a general market price for undeveloped water power. Would you give us your opinion as to that particular statement or assumption that has been made?

A.—There is absolutely no general market value for undeveloped water power. There are a large number of water powers in an undeveloped stage which are worth absolutely nothing, in my opinion never will be worth anything to be turned into any kind of commercial development, making that type of property worthless, and other properties in their undeveloped state range up to very
30 considerable prices per horse power, I might say, depending on the amount of profit that you can make out of developing that site, assuming that you can get a fixed price per horse power after you have the development completed.

The two factors have to go together, the price at which you can sell the power and the price at which you can develop the power, and the difference is the intrinsic value of the raw power.

Q.—In other words, I take it you mean that each power site, undeveloped power site, must stand on its own feet insofar as its potentialities are concerned?

40 A.—That is right.

Q.—And consequently so far as its value in the raw may be concerned?

A.—That is right.

Q.—The considerations which one would have to deal with in considering the value of that would depend on innumerable elements?

A.—For instance, on this Churchill power, I traversed sections,

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possibly 150 miles on the Churchill River in this locality of the Island Falls development, in Northern Manitoba and Saskatchewan, and in that whole 150 miles this Island Falls development was the most economical. There were other sites in the stretch which were less economical and there were parts of the stretch which were worthless. Some sites were worthless for one reason, and another site was worthless for another reason. There is no general statement that any person can make regarding water power sites in general that will state why one site is more valuable, or another site is less valuable.

10 Q.—You are familiar, of course, with the Masson power, the power on the Lièvre River which has been in question here. You have heard some testimony given in respect to it?

A.—Yes.

Q.—In your opinion, would it be possible to compute at the same price raw power at the property of Mr. Cross, as one would compute it on the property of Masson on the Lièvre?

20 A.—The two properties have no relationship in any way whatever. The Masson property has to be considered of and by itself, and the property of Mr. Cross at Cascades has to be considered of and by itself.

Q.—And I take it, the same remarks would apply to the various other powers that have been mentioned here, all of which in some phenomenal way work out to \$40 a horsepower?

A.—That is right.

Q.—You have heard evidence given by Mr. Scovil with respect to the head at various flows between various points mentioned on the plan D-69. Did you hear Mr. Scovil's evidence on those points?

30 A.—Yes.

Q.—Have you had occasion to examine the charts and data which he furnished as exhibits here?

A.—I have examined all of it.

Q.—You are familiar with the various heads that he gave from the points on Mr. Cross' property alone, without including the C.P.R. and also including the C.P.R., and going outside of the entire property of Mr. Cross up to and including the Pêche Rapids?

A.—I have examined all those heads.

40 Q.—The various working heads under various stream conditions?

A.—Yes.

Q.—Have you made calculations and investigations to indicate the possibilities or otherwise of development of the site under conditions of head given by Mr. Scovil in respect of the Cross property itself between the points "A" and "C"?

A.—Yes.

Q.—Would you be good enough to indicate just what the results

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of your investigations have been in that respect as to the possibility of scientific and economic development of his own property?

A.—On Mr. Cross' own property, that is what was shown below the C.P.R. property.

Q.—Let us say without taking in the C.P.R. property?

A.—I have not made any detailed estimates on the cost of developing Mr. Cross' property below the C.P.R. as the head and general configuration of the property is such that I do not think it is possible to build any kind of hydro-electrical development within any reasonable cost whatever. The thing is so remote as to the possibility of development, I have not made any costs.

Q.—I think in that you fairly well agree with Mr. MacRostie who gave evidence for the plaintiff?

A.—Yes.

Q.—Giving Mr. Cross the advantage, or, for the sake of argument, assuming he has a right to utilize all the head between points "A" and "C" shown on that plan D-69, have you investigated carefully and precisely the possibilities of development between those points?

A.—I have prepared a lay-out and estimates based on the average water elevation between "C" and the lower extremity of Mr. Cross' property on the east side of the river, which average, as Mr. Scovil said, is 1.3 feet higher than point "C", and taking in the power between that and point "A", and I have prepared a general design and detailed estimates of the cost of developing that power.

Q.—Would you outline briefly and as clearly as possible just what the result of that investigation and the computations and estimates you have made is, going to show the result of your findings in respect of the possible development between points "A" and "C" on the property of Mr. Cross, utilizing the whole distance between "A" and "C"?

A.—Well, utilizing the whole distance between "A" and "C" with a flow of 3,000 second feet I have an estimated development of 1,280 horsepower.

Q.—1,280 horsepower?

A.—Costing \$696,550, or a capital cost per horsepower of \$545.

Q.—\$545 per horsepower?

A.—Per horsepower.

Q.—For a flow of 10,000 second feet?

A.—For a flow of 10,000 second feet. I have an estimated development of 4,080 horsepower costing \$1,702,900, or a capital cost per horsepower of \$420.

Q.—Would you state whether that capital cost per horsepower is at all possible or economic or within reasonable cost per horsepower for development?

A.—It is altogether out of reason for a development in this sec-

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tion of the country, compared with the prices that power is being sold for.

Q.—Would you be good enough to compare the cost per horsepower which you find would arrive from these estimates with what would be possible in the way of cost per horsepower for an economic development? In other words, what would the cost which you have here of \$545 and \$420 require Mr. Cross to sell his horsepower for?

10 A.—That cost of \$545 per horsepower is the cost at low tension on the plant, and to deliver that in Ottawa would require a total annual charge of \$81,840. The losses between the low tension of the plant and Ottawa would reduce the 1,280 horsepower to 1,200 horsepower, which makes the cost per horsepower a year \$68.20 at Ottawa.

Q.—That is, under the 3,000?

A.—That is under the 3,000; under the 10,000 second feet flow the annual charges are \$179,303 for 3,820 horsepower delivered, or an annual cost of \$46.90 per horsepower.

Q.—Delivered at Ottawa?

A.—Delivered at Ottawa.

20 Q.—Could these prices compete in any way at all even with steam?

A.—No, not even with steam.

I have prepared an estimate of the cost of generating power by steam at Ottawa, which I estimate that under present prices of boiler equipment and steam turbo generators, and present prices of coal, would be \$29.00 per horsepower a year.

Q.—In Ottawa?

30 A.—In Ottawa, and that the probable future costs of steam power in Ottawa would be approximately \$26.00. That lower cost for steam is due to the fact that the efficiencies are higher, increasing as time goes on.

Q.—That is, contrasting the costs of these developments on the basis you have given with steam development?

A.—Yes.

Q.—What was the general rental price of power in Ottawa in 1925 and 1926?

A.—The class of power that we have estimated Mr. Cross would supply through this development would be worth about \$17.75, which is about the maximum we get in and around Ottawa.

40 Q.—Between \$17 and \$18?

A.—Yes.

Q.—That is hydraulic power?

A.—Hydro-electric power.

Q.—Hydro-electric power, not steam?

A.—Yes.

Q.—That price is prevailing approximately

A.—At the present time.

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Q.—It would be prevailing in 1925 and 1926?

A.—Yes.

Q.—Do circumstances indicate that there should be any immediate rise in that price?

A.—I would say not.

Q.—What actuates you in saying that?

A.—I have come in contact with a number of the people in and around Ottawa who buy power, and there does not seem to be any deficiency of power. There is ample power in a number of different
10 localities in and around Ottawa. As a matter of fact, there is really more power than the power company knows what to do with at the present time, and they are all trying to sell their power, and consequently the price is likely to go down, although I cannot say definitely until a new contract is signed whether the price will go down. We are satisfied to sell power at about that price.

Q.—And you have abundant power for sale at that price?

A.—Yes.

Q.—That is, on contracts which warrant the price of that kind,
20 long term contracts?

A.—The type of power that Mr. Cross would generate.

Q.—As a matter of fact, are you selling power now for the purposes of manufacturing steam?

A.—Yes.

Q.—At what price?

A.—We get three-quarters of a mill per kilowatt hour, that is, .00075 dollars per kilowatt hour. That is the equivalent of \$3.40 per horsepower per year, 70 per cent load factor.

Q.—That is equivalent to \$3.40 per horsepower?

A.—\$3.40 per horsepower year, at 70 per cent load factor.
30

Q.—I suppose if you had the opportunity of selling that power at \$17 you would not make it available for steam?

A.—No.

Q.—In order that we may have a clear idea of the possibilities or otherwise of this property, would you state whether you have made any estimate for a possible development of the property up to and including the Pêche Rapids?

A.—Yes, I have made a number of different estimates. I have an estimate here based on raising the water at Cascades to the point
40 where it will not affect Paugan.

At 3,000 second feet flow, 2,860 horsepower could be developed at a cost of \$1,300,555, or a capital cost of \$493 per horsepower.

Q.—And at 10,000?

A.—At 10,000 second feet I have estimated that there are 8,750 horsepower available at a cost of \$2,174,360, or a capital cost of \$271 per horsepower.

Q.—And an annual cost per horsepower in each case under 3,000

and 10,000 second feet, how much delivered at Ottawa?

A.—Under 3,000 second feet delivered at Ottawa, \$54.30 per horsepower, for 2,500 horsepower delivered. At 10,000 second feet flow, an annual cost per horsepower of \$31.75 per horsepower for 7,500 horsepower delivered.

Q.—When you refer to the capacity of 2,860 at 3,000 second feet, why do you merely convert it into 2,500; is that due to the line losses?

10 A.—That is due to the line and transformer losses between the low tension plant and low tension at Ottawa.

Q.—In other words, when you generate that 2,860 horsepower you are speaking now of electrical horsepower?

A.—Yes.

Q.—By the time you get that to Hull it is only 2,700?

A.—Yes.

Q.—And similarly the other one, this 8,750, when it arrives in Hull it is only. . . .

A.—7,500 horsepower.

20 Q.—The annual cost in Ottawa being \$31.75?

A.—Delivered at low tension, Ottawa.

Q.—Delivered at low tension, Ottawa, in competition again with the possibility of steam development?

A.—At \$29.00, or for hydro-electric development at the present time at \$17.75.

Q.—For hydro-electric development at the present time at between \$17 and \$18?

Q.—Would you produce some figures which would make clearly available to us how you worked out these costs?

30 A.—Scheme 1-A is the detailed estimate cost for developing Cascades property from the average elevation of the downstream of Mr. Cross' property to point "A".

Q.—Will you file that Scheme 1-A as Exhibit D-88?

A.—Yes.

Q.—In making these computations, have you taken into consideration just the ordinary development or have you gone into any extravagances which might have been avoided?

40 A.—I have approached this proposition in exactly the same way that I would any other hydro-electric development,—that a company was interested in and might consider developing. I have looked at the site. I have looked at all the plans, and the water levels, I have considered the whole thing as a theoretical matter before considering a development at all, and I considered that the development was a very costly proposition. In any proposed development which I consider is very costly in making up a preliminary estimate, I make a design which contains the smallest quantities possible and unit costs that are the lowest that I can possibly justify

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for any of that class of work, so after having made a design which I know is the lightest possible, and used unit costs for quantities which I know are the lowest possible, if that is not an economic proposition there is no further use doing anything more with it, so I started off on that basis with these quantities and designs.

These are lighter and the prices are lower than I would estimate if the company were going to do this themselves.

I have taken the prices as nearly as possible comparable with the costs of the Chelsea and Farmers' developments which were of
10 such an extensive nature; quantities were so large that the unit costs of concrete and steel and brick, and such like are lower than I can justify for the small quantities for this development.

Q.—In other words, of its nature, a smaller development you would not be able to use the same unit prices for excavation, material, and that sort of thing, they would be larger in proportion, compared to the unit prices?

A.—Yes.

Q.—As to your statement of low tension at the power house and line losses between that and Ottawa, how does that come about?
20 Is that actual loss of electricity, or does that take into consideration the cost of transmission?

A.—The cost of transmission is a separate item.

Q.—The costs of transmission are taken into your estimate, are they?

A.—Yes. I have the capital cost of transmission, and the estimated annual cost of transmission and the losses. The losses only reduce the amount of horsepower, and the capital cost of transmission are added into the annual cost, and that is the way that
30 the annual cost per horsepower is arrived at at low tension at Ottawa.

For instance, I have estimated the transformer losses as being $1\frac{1}{2}$ per cent at the power house, and $1\frac{1}{2}$ per cent at Ottawa, making three per cent losses in the transformer. The transmission line losses vary from two and a half per cent to four and a half per cent, depending on the amount of power and the voltage going over the line.

BY MR. KER:

Q.—At the adjournment yesterday you were discussing the
40 cost of possible developments of the Cross site, both from the point of view of its development as it were within itself, and by taking in the head up to and including such portion of the Pêche Rapids as might be available without affecting the tail water at Pagan, and you produced as Exhibit D-88, an estimate of the cost, under what we may refer to as scheme 1-A, am I correct?

A.—Scheme 1-A.

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Q.—Will you just state again what that estimate covers, that is what cost is that?

A.—This estimate covers the cost of developing the power between the average of the lower limits of Mr. Cross' property at point "C", and on the east bank, and the point "A" at a flow of 3,000 second feet, we obtain 1,280 horsepower low tension at the plant at a capital cost of \$545 per horsepower.

Q.—That is, taking in the head in front of the C.P.R. property?

A.—Yes.

10 Q.—From the point "A" to "C" on the plan D-69?

A.—That is including the property of the C.P. Railway.

Q.—That was at a flow of 3,000 cubic feet second?

A.—Yes.

Q.—That is Scheme 1-A?

A.—Yes.

Q.—I take it that Scheme 1-B would be at 10,000 feet, am I right?

A.—10,000 feet.

20 Q.—Have you an estimate of that, the 10,000 being the controlled flow of the river?

A.—Yes. This is my estimate of the cost of the development of the power using the same head as could be obtained in Scheme 1-A under the condition of 10,000 second flow in the river.

Q.—And what horsepower is arrived at?

A.—The horsepower available, low tension at the plant is 4,080 horsepower, and the capital cost of development is \$420 per horsepower.

Q.—And the annual cost per horsepower delivered at Hull?

30 A.—The annual cost per horsepower delivered at Ottawa I estimate is \$46.90 per horsepower year.

Q.—These statements that you have given respecting the annual cost of delivery of that power at Ottawa, let us say, what quantity of power do they presuppose selling?

A.—They presuppose selling the total output of the plant as soon as the plant is completed.

Q.—That is to say as soon as the plant is completed, those figures are based on selling the complete output at once at Ottawa?

A.—Yes, that is right.

40 Q.—If you were unable to sell the complete output at once, and were obliged to sell it piece-meal over a period of time, what would the effect be upon that annual cost per horsepower?

A.—It would increase the annual cost per horsepower.

Q.—Why?

A.—If we only sell a proportion of the power, we have exactly the same annual cost, which makes the annual cost per horsepower

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greater than as with the fixed annual cost, the smaller amount of power gives a higher annual cost per horsepower.

Q.—In other words, your fixed charges are running along and have been applied over a small amount of output?

A.—That is right.

Q.—Consequently the price must go up if it is going to take care of the whole fixed charge?

A.—That is right.

10 Q.—Would you produce this scheme 1-B as Exhibit D-89?

A.—Yes.

Q.—Those were the figures which you gave devoting development to the parts between points "A" and "C", I think you said, and it was agreed that below points "A" and "C" there was not any possibility of the development of an economic nature, that is, in the lower part blotched red on the plan?

A.—Yes.

20 Q.—In order to get a clear idea of the possibilities, even if Mr. Cross were entitled to go up the river and submerge, or take advantage of the head, between the point "A" and the upper part of the Pêche, have you prepared estimates as to the cost of power which could thereby be generated?

A.—I have. My estimate No. 2-A covers the detailed cost of estimates for developing power above Mr. Cross' property, with a flow of 3,000 cubic feet a second in the river, to the maximum elevation without affecting the Pagan power plant.

I find 2,640 horsepower available at a capital cost of \$1,300,555, or a capital cost per horsepower of \$493. That corrects the statement I made yesterday afternoon.

30 Q.—You gave him credit for 2,860?

A.—2,860, which was a stenographical error in that one particular item. It does not affect any of the other items.

Q.—In other words, you gave him credit for something more than really was the case. What should it be?

A.—2,640.

Q.—And does that make any difference in the net power delivered at Hull with line losses?

A.—No. My estimate here was correct. I suppose this was a stenographic error on that particular item.

40 Q.—At what do you figure the annual cost, therefore, of that power delivered at Hull?

A.—\$54.30 per horsepower year.

Q.—And the same would be applicable to that, that is, on the basis of selling the whole output at once?

A.—Selling the whole output at once.

Q.—Am I right that that was scheme 2-A?

A.—Yes.

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Q.—Will you file scheme 2-A as Exhibit D-90?

A.—Yes.

I prepared another estimate on the same basis as the scheme 2-A, but estimating that a flow of 10,000 second feet is available, and I find there are 8,020 horsepower available, low tension at the plant, at a capital cost of \$2,174,360, or a capital cost per horsepower of \$271. That corrects the figure I included yesterday for the power available, low tension of the plant, where I stated yesterday it was 8,750. That was a stenographic error. It should have been 8,020.

10 Q.—In other words, you gave him credit for 750 horsepower more yesterday than really was the case?

A.—Yes.

Q.—Through a stenographic error?

A.—Through a stenographic error.

Q.—None of the other items were affected?

A.—No.

20 Q.—That, I understand you to say, is, taking advantage of all the head above Mr. Cross' property, right straight up, and including Pêche Rapids, or such portion of the Pêche Rapids as could be submerged, without affecting the tail water of Paugan?

A.—Yes.

Q.—And on a flow of 10,000 cubic feet?

A.—Yes.

Q.—Will you file this scheme 2-B as D-91?

A.—Yes.

Q.—I don't know that I got your statement correctly as to the cost of that power under scheme 2-B delivered in Hull. I think you just referred to it?

30 A.—The annual cost per horsepower for power delivered under scheme 2-B at Hull I estimate as \$31.75 per horsepower year.

Q.—Provided he sells the whole 8,000 in one block?

A.—Yes.

Q.—Is that the net power delivered at Hull?

A.—The net power is 7,500 horsepower after deducting line and transformer losses.

Q.—Are these amounts the annual cost?

A.—The annual cost.

40 Q.—In no case has the cost been added on any of these statements of the yearly cost delivered at Hull?

A.—Not on any of those statements has there been any indication of the cost per year.

I have made some further estimates of development. Scheme 3-B assumes the flow at 3,800 second feet in the river, which is estimated to obtain for 90 per cent of the time, and in this scheme the head is raised to the maximum at the Pêche Rapids without affecting the Paugan power plant.

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Q.—You have not taken that at the lower reach?

A.—Yes, I have, scheme 3-A. It is not of very much importance but I will put it in; 3,800 second feet without affecting the Pêche Rapids, that is from the average of Cross' tailwater to the point "A" at 3,800 second feet I find 1,480 horsepower available at a capital cost of \$780,130, or a capital cost of \$527 per horsepower.

Q.—What is the annual cost of that power delivered at Hull?

A.—The annual cost delivered in Hull, I estimate to be \$64.50 per horsepower per year.

10 Q.—Based on selling the whole load?

A.—Yes.

Q.—Have you made a calculation as to the figure of 3,800 feet flow taking in the higher head?

A.—Yes; 3,800 second feet flow raising the water to the Pêche Rapids without affecting Paugan power plant, I have 3,370 horsepower available at a capital cost of \$1,522,390, or a capital cost per horsepower of \$453.

Q.—Will you file Scheme 3-A as Exhibit D-92?

20 A.—Yes.

Q.—Will you also file scheme 3-B as Exhibit D-93?

A.—Yes.

Q.—I understood you to say that 3,800 was approximate 90 per cent of the time. What do you mean by 90 per cent of the time? Over what period?

A.—Mr. Scovil gave me this figure of 3,800 second feet, which he estimated as being 90 per cent of the time.

Q.—You do not know whether that would exist in low years or not, such as this year, for instance?

30 A.—Mr. Scovil will give you that information.

Q.—You are basing yourself on his stream flow statements?

A.—Yes.

I have an estimate prepared, using 3,800 second feet, and holding the water at the Pêche Rapids at elevation 318. I find 4,370 horsepower available at a capital cost of \$1,924,630, or a capital cost per horsepower of \$440.

Q.—You say, holding the water at 318. Would you say what effect, if any, that would have on the Paugan?

40 A.—I have not made any estimates of how that would affect Paugan.

Q.—Would there be an effect on the Paugan holding water at 318?

A.—I have not calculated that. Mr. Scovil has.

Q.—At any rate, on the development at Cascades, holding the water to 318, you arrive at a horsepower conclusion of how much?

A.—4,370 horsepower.

Q.—4,370 horsepower at a cost of \$440 per horsepower?

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A.—Yes.

Q.—What was the flow there?

A.—3,800 second feet.

Q.—Will you produce this statement of this fact as Exhibit D-94?

A.—Yes.

Under that scheme I estimate that the annual cost per horsepower of this power delivered in Hull is \$47.20.

Q.—Under the Scheme you have just mentioned?

10 A.—Under Scheme 3-C.

I prepared a further estimate, Scheme 3-D, using 10,000 second feet flow, and holding the water level at the Pêche Rapids at elevation 318, and find 9,210 horsepower available at a capital cost of \$2,476,100, or a capital cost per horsepower of \$268.

Q.—Which converted into delivery at Hull for the whole 9,210 horsepower would be how much per annum?

A.—I estimate that there are 8,520 horsepower available for delivery in Hull at an annual cost per horsepower of \$30.40.

20 Q.—Provided it is all sold?

A.—Provided it is all sold immediately.

Q.—Will you file this Scheme 3-D as Exhibit D-95?

A.—Yes.

Q.—As to these estimates that you have prepared, have you applied to them the same absolutely scientific working out that you would apply were you retained for your company, or some other company, to plan a development on certain assumptions given to you with respect to head and flow?

30 A.—I stated yesterday that if I were retained by the Gatineau Power Company, or any independent company, to make an estimate of the economics of developing this power, I would take all the possible features of the development into consideration to start with, and from my general knowledge of hydro-electric development I would estimate in a reasonable way, without making any detailed figures, whether the development was economical or uneconomical, and when I consider that a development is uneconomical, I start in making designs with the simplest and smallest quantities which I could possibly justify, or which could possibly be justified under the circumstances, and in the same way a unit cost for material, and
40 having worked that out for the lowest unit prices, or with the smallest quantities that could be justified, if I find then the development is uneconomical I do not do anything further.

Having worked the thing out on that basis, when I find that that works out as being an economical development, I work the thing through again, using a different set of figures, until I am satisfied either one way or another that the development is economical or not.

In this case, having worked out a preliminary estimate such as

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I have done, and finding that the development is uneconomical, I have not proceeded any further, in the same way, that I would if there was any possibility of this development going ahead by the Gatineau Power Company or any other independent company.

Q.—You have discussed this matter from numerous angles?

A.—Yes.

Q.—You have estimated the possibility of horsepower develop-
able within the property of Mr. Cross himself, that is, even giving
him credit for the Canadian Pacific under 3,000 feet per second, and
10 under 10,000 feet per second?

A.—Yes.

Q.—And you have gone from there giving him credit for all
the intervening lands, including the head of the Pêche, both at 3,000
and 10,000 cubic feet per second, and you have made several meas-
urements of other flows, and have produced these statements. Will
you state whether, in your opinion, having made a very particular
survey of this whole situation, you are prepared to express a definite
opinion as to whether there is any possible economic development
under any circumstances at that site?

20 A.—I am fully satisfied that there is absolutely no possibility
of any kind of an economic development on Mr. Cross' property, and
I am also satisfied that it would not have been possible to have made
an economical development at any time in the future.

BY THE COURT:

Q.—If I understand you correctly, you mean that one could not
make this proposition pay?

30 A.—Yes, that is right, that is what I mean—an uneconomical
development on account of the cost of producing the power being
higher than the revenue the party would get after the power is avail-
able. To put it roughly, the cost of development in the most econo-
mical scheme that I have found is in the neighborhood of \$30 a
horsepower, and the power cannot be sold for more than \$17 or \$18,
meaning that there is a loss of between \$12.00 and \$13.00 per horse-
power, that is, the cost of development is practically double the rev-
enue that could be got out of it.

40 BY MR. KER:

Q.—And, as a matter of fact, I think I understood you to say
that in no case could that development compete even with steam?

A.—Even with steam.

Q.—I am instructed that you have plans showing what is a
power house construction?

A.—I have prepared plans to estimate my unit costs, quantities

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and unit costs of the different schemes of development, and plate No. 7 shows the general layout for proposed Schemes 1-A and 3-A.

Q.—Will you produce plate 7 which refers to Schemes 1-A and 3-A as Exhibit D-96?

A.—Yes.

I have prepared plate 8 which shows the general features of construction required under proposed Scheme 1-B.

Q.—That is 3,000 feet at the higher level?

A.—Scheme 1-B is 10,000 feet at the low level.

10 Q.—Will you produce plate 8 as Exhibit P-97?

A.—Yes.

I prepared plate 9 which shows the general arrangement of the construction required under Schemes 2-A, 3-B and 3-C.

Q.—Will you produce that plate 9 as Exhibit D-98?

A.—Yes.

I prepared plate 10 which shows the general details of construction required under Schemes 2-B and 3-D.

Q.—Will you produce plate 10 as Exhibit D-99?

20 A.—Yes.

Q.—Now the Plaintiff has alleged, and has attempted to make certain evidence with respect to the value of this site of Mr. Cross when included with the Chelsea power development of the Gatineau Power Company, the Defendant. To that evidence, and to evidence of any value to the taker, the Defendant has made objection. Under reserve of the objection which has already been made to evidence of value to the taker, would you please state whether you have made any investigation to determine what the advantage or profit has accrued, if any, to the Gatineau Power Company by the inclusion of
30 this higher stretch of the river?

Mr. St. Laurent: I object to the form of the question, if the word "taker" therein used is to be accepted in its technical sense as meaning a person or party authorized by law to exercise expropriation rights.

Mr. Ker: Of course, we are authorized by law, and expropriations proceedings have been issued. Notices to treat have been made and offered. I think perhaps it is a play on words. However,
40 Your Lordship has heard the objection.

His Lordship: Yes, and I will reserve the objection. Of course you are dealing with a petitory action. If the Defendant really requires these lots, and you are depriving the Plaintiff of the full enjoyment of his property, then the Court will have to decide that first. That is the first thing I think that is asked in the conclusions of the Action. The rest is only an option the Plaintiff is giving.

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What the Plaintiff says is, if you do not wish to put the property back in its original position and situation, pay me so much.

10 Mr. Ker: That is exactly the statement in his conclusions, he states that we should pay him the value of his property based on a certain method of calculation. In other words he alleges that that property has had a certain value to us by including it in our estimate, he bases his amount of \$600,000 for the use upon certain definite and stated facts, namely, there was horsepower there of the value of \$40 which worked out at \$600,000, further, that the same thing took place, if we include that property and make it part of our own development that it also shows a very large profit and advantage to us, and that we are making use of it, and that we should pay him the profits that we are making. That is what he states to be the value of his property.

He has attempted to prove by means of analogous statements as to what raw horse power has been sold for in the other parts of the Province.

20 His Lordship: Supposing he had not included it that way and said to you put things as they were.

Mr. Ker: In that case then, he confronts us with a petitory action that we are occupying his property.

Mr. Dessaulles: There is always the question of damage to his property.

30 The Court: Then you could expropriate?

Mr. Dessaulles: There is another recourse. There is the recourse under section 2 of the Water Courses Act to establish the damages. There are two alternate recourses. If we increase the level of the water on his property, then we have the right to do that under the Water Courses Act independently of powers of expropriation, and then, the question of damages intervenes.

40 His Lordship: In what way should that present itself in the present case? The Court has first to decide if he has a right to this petitory action.

Mr. Dessaulles: If we have the right to do what we are doing, his only recourse is an action for damages. He is exercising that in his own way. Whether or not his conclusions are right, we will discuss that later.

His Lordship: Then, you deny his right to a petitory action.

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Mr. Dessaulles: We deny that independently of any expropriation proceeding.

His Lordship: What about article 407 of the Civil Code?

10 Mr. Ker: We rely on article 503 of the Civil Code. The whole gist of our case is that of legal servitude and was so declared by the Court of Appeals. We do not take the new property. The rubic ownership in that case does not apply. We are relying on article 503. It is in the public interest and that is why I submit to Your Lordship that it has been declared to be so under article 503, but that is in part of the argument with which my counsel will deal later.

His Lordship: I just wanted to draw your attention to what struck me, and I think that all companies should commence by paying before they take possession and using another party's land. That was the principle that seemed to strike me just now.

20 Mr. Ker: I think we have done that in every case except that of Mr. Cross, and we have always been ready to pay him. We cannot see our way clear to pay him what he asks.

Mr. St. Laurent: I do not intend to argue the point at the present time. If we are wrong in having taken a petitory action we will fail, but we submit we are right in our conclusions.

His Lordship: If I make a remark, that does not mean that I favor one side or the other.

30 Mr. St. Laurent: I quite appreciate that. I do not want to tender an argument at this time. We will argue it, I am quite sure, when the evidence has been completed.

His Lordship: I do not want any one to think I am deciding the case now.

Mr. Ker: I do not take your Lordship's remarks to mean that you do not want us to proceed with the proof.

40 His Lordship: No, not at all.

BY MR. KER (continuing examination):

Q.—And in this connection I would refer you to the evidence of Mr. Robertson, a witness of the Plaintiff, which is reported at page 272 of his deposition, in which he states:

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10 “ The Defendant Company obtained an advantage of something like 15,000 additional electrical horsepower due to the 14 feet in head, and the cost of obtaining that 15,000 horsepower from the construction standpoint would be very much less than the average cost of the plant because the increased head would reduce the unit cost of the machinery required, the result being that they would make economies in cost of construction, so that to all intents and purposes they would pretty well get the 15,000 horsepower for nothing, perhaps not exactly, but for some figure approaching that.”

Would you be good enough from such investigations as you have made to give us your opinion as to the accuracy of such a statement as that?

20 A.—I have made an estimate of the cost of including Mr. Cross' property in the Chelsea development, and that is from elevation 306 to elevation 316, that is the last ten feet—the extra power made available at a flow of 10,000 second feet is, due to the 10 feet rise in water level, 13,800 horsepower at 70 per cent load factor, and due to the increase in head of 0.6, or 6/10ths of a foot head, due to the larger pond area, 800 horsepower at 70 per cent load factor, making a total extra power of 14,600 horsepower at 70 per cent load factor.

Q.—So that we may understand this quite clearly, am I right in stating that you say that the addition of this extra head in horsepower meant an advantage?

A.—Of 14,600 horsepower.

Q.—At 70 per cent load factor?

A.—Yes.

30 Q.—And that it meant an advantage in pondage by reason of the larger area of pond which might be drawn down upon.

A.—That includes the larger area of the pond.

Q.—It meant how many horsepower in pondage?

A.—800 horsepower in pondage, and 13,800 horsepower in everything except the pondage, making a total of 14,600.

The capital cost of including that extra head I have estimated as follows: The increase in the height of the dam at Chelsea, \$171,100—the increase in the height of the power house at Chelsea, \$131,400.

40 The increased cost of equipment, \$196,200.

To flood lands required between the two elevations, \$293,655.

Railway diversion required between the two elevations, \$608,510.

The highway diversion required between these two elevations, \$103,560, and including the flooded land, \$13,070, making a total of \$1,517,495, to which I have added 5 per cent interest during construction and 5 per cent general administrative overhead costs, a

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total of 10 per cent, making a total extra cost, \$1,669,245.

Q.—In order that there may be no ambiguity about it, I notice that you have flooded land. I understand you to say that that means flooded lands immediately between Cascades and above?

A.—No. That is all the way from Chelsea to the Pêche Rapids.

Q.—Will you just explain, so that it may be clear, that the raising of the water to the point which would take in that head would mean additional flooding of the lower reach below Cascades?

10 A.—Yes. When we raise the water from elevation 306 to elevation 316, it has to be raised all the way from the Chelsea plant to the Pêche Rapids, and we flood, not only the property above Mr. Cross' land at Cascades, but also the property between Mr. Cross and the Chelsea plant.

Q.—For the additional head required above?

20 A.—For the last ten feet, and during that last ten feet there is a considerable quantity of railway re-location along the shore and the river, and as we have to raise the water, we have to raise the railway and the roadway to keep them out of the water. There was not very much railway or roadway diversion required above Mr. Cross' property. A large part of the railway and roadway diversions were below Mr. Cross' property.

Q.—But that \$608,000 for railway diversion is what was added to the cost, or what had to be added to the cost for railway diversion right from Chelsea up, due to the fact that you went to that additional height?

A.—Yes.

Q.—It does not necessarily mean it is just above the Cascades, and I want to make that clear, because the item is very considerable?

30 A.—That is the capital cost of including that amount of head at the time the plant is completed. At that time we were getting a revenue of \$3.40 per horsepower principally for the additional power which we developed.

I estimate that we were getting \$49,700 per year from the net power at \$3.40 per horsepower year.

The initial charges I have estimated as being \$125,100 a year, making an annual loss during such period as that is power sold at a low figure, of \$75,400 a year.

40 We estimate that that power will have to be sold at that low rate until at least the year 1941. There is a surplus of power in the district which can only be sold as steam; between the time when the plant was complete and 1941 that annual deficit has to be added to the capital, so that by the year 1941 that deficit itself has amounted to a capital cost of \$1,805,000, which added to the initial cost of construction of \$1,669,245 gives us a capital investment by the time that power is ready to be sold at a price of some fourteen odd dollars a horsepower, \$3,474,245.

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I have estimated that the annual charges on the deficit, and on the capital cost at that time, will be \$255,900, with the annual revenue of \$204,500 leaves us a deficit in that particular stretch of \$51,400 a year.

10 Now, after raising the water from 316 to 320, our costs of development, including that part, are somewhat less, and that shows a profit. On each individual stretch of the river as we raise it, the costs are different amounts. In some stretches of the river the costs are low, and as we go up we have to pay more damages, and the costs are high, and as we go up a little bit more the damages may not be very much in that stretch, and the costs are low, in this next stretch of the river from 316 to 320.

From 316 to 320 we find that we can make a profit in that stretch of river.

20 I have here an estimate for raising that extra 4 feet of head. We get 5,500 horsepower available at 70 per cent load factor. There is a slight increase in the area in the pond which gives us 15/100ths of a foot extra due to the larger pond, or 200 horsepower at 70 per cent load factor, making a total extra power available of 5,700 horsepower.

Q.—This is between 316 and 320?

A.—Between 316 and 320.

In the same way I estimate the details of costs between 316 to 320. I estimate the cost of including this section as \$340,160.

In that last stretch of river we estimate the power would be worth \$3.40 a horsepower year until 1944, which is quite a long time away.

30 Our revenue we estimate at \$19,400, our costs at \$25,600, making a loss until 1944 of \$6,200 a year, which, at the end of 17 years amounts to \$195,000, being the accumulated deficit during that period.

Added to the capital cost to start with, gives us the investment in 1944 of \$535,160.

Our annual charges on the deficit, and on the initial capital cost, we estimate at \$39,700. The revenue at that time we figure will be about \$14 a horsepower year at 70 per cent load factor, as we estimate the power we have, we are making a profit in that stretch of the river \$40,300 per year.

40 Now, then, combining the head from 306 to 320, we have a deficit of \$50,000 odd in the first ten feet, and a profit of \$40,000 odd in the last four feet, the two of them together making a loss of about \$11,100, or just practically breaking even. We figure that in that last stretch of the river from 306 to 320 we are making no money whatever. That estimate I have made includes all the value that we get. I am including in that head the extra power available in the pondage and all other considerations.

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Q.—And that is worked out scientifically on the basis of hydraulic estimating of profit and loss in development of water powers?

A.—Yes. I have made a further estimate of the cost of including the Canada Cement Company's property. This will show how it is we can afford to pay the Canada Cement Company a definite figure, and we can afford to settle with the Canada Cement Company, you might say, in the open market, and in a free sale, because we are making a definite and substantial profit by including the Canada Cement Company's property in Chelsea.

10 Q.—The Canada Cement Company is immediately below Mr. Cross' property?

A.—The Canada Cement Company is immediately below Mr. Cross' property, and includes the head from elevation 295 to 306.

Q.—Which is 11 feet of head concentrated?

A.—11 feet of head.

I have estimated that the additional power made available at 10,000 second feet is 15,200 horsepower at a capital cost of \$1,340,900, and in the same way I figure that that power will be sold partly as steam, partly at \$10 a horsepower year to the Canada Cement
20 Company; we sold 3,000 horsepower at \$10 a horsepower year, and the remainder, 12,200 horsepower, will have to be sold at \$3.40 a horsepower year until 1937.

The average revenue from that power until 1937 we estimate at \$65,500 a year.

The initial costs are estimated at \$101,000 a year, and the initial loss at \$35,500. That accumulated loss until 1937 means \$497,000 capital cost, so that our total capital investment, including the initial deficit compounded until 1937, and our initial capital cost, amounts
30 to \$1,837,900, and our annual charges on that amount will be \$137,100 in 1937.

Our annual revenue, 3,000 horsepower at \$10.00, and 12,200 horsepower at \$14.00, we estimate at \$201,000, making us a profit of \$63,900 a year present value to us, of including the Canada Cement Company property in Chelsea.

Q.—Present value?

A.—Present value.

Q.—Will you file your statement as Exhibit D-100?

A.—Yes.

40 Schedule No. 2 includes the cost of development, and shows the annual preliminary loss and ultimate loss of including the head between elevation 306 and 316.

Q.—That is the point at which it would not affect Paugan practically?

A.—Yes.

Schedule 3 covers the costs of development and shows the annual

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preliminary loss, and ultimate profit, including the head between elevation 316 and elevation 320.

Q.—Which latter elevation seriously affects the Pagan?

A.—Affects the Pagan tail water, and then also shows the average of the annual profits and losses incurred in raising the water from 306 to 320.

Q.—Will you file this schedule as D-101?

A.—Yes.

10 Schedule No. 1 shows the capital cost and the initial loss and ultimate profit of including the head between elevation 295 and elevation 306, which was the Canada Cement Company's property below Mr. Cross.

Q.—Will you file this schedule as D-102?

A.—Yes.

I have prepared a general plan of the Chelsea development showing the dam and power house as it would have been laid out for the water level of elevation 306.

Q.—That is not affecting Cross.

20 A.—That is not affecting Cross. That is a plan of which my estimates for the construction costs of the Chelsea would have been for that elevation.

Q.—Will you file this general plan as Exhibit D-103?

A.—Yes.

I have also prepared a plan and elevation showing the Chelsea development for a water level elevation 316.

Q.—That is a result to which you can go without affecting the Pêche?

A.—Yes.

30 Q.—Will you file that plan as Exhibit D-104?

A.—Yes.

In estimating the quantities in the Chelsea power house at the lower elevations I have taken as one extreme the layout of the Farmers' power house, which I have shown here on this drawing in the lower right-hand corner, and on the other extreme the layout of the Chelsea power house in the lower left-hand corner. Both of these power house designs were prepared by the same engineers, and are strictly and thoroughly comparable in all details, that is, this is strictly comparable for the low head as against the high head for
40 this one—the one on the right is strictly comparable with the one on the left.

Q.—Will you produce this drawing as Exhibit D-105?

A.—Yes.

I have also prepared a general plan and elevation of the Chelsea dam which was prepared for the water elevation 295, that is, without affecting the Canada Cement Company's property.

Q.—Will you file this general plan as Exhibit D-106?

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A.—Yes.

10 In estimating the value of the pondage, the extra area of the pond between Chelsea and the Pêche Rapids, which is obtained by including the property from 306 to 320, I have taken the actual records from the Chelsea power house of the fluctuations in pond level, during September, October and November, 1930, and I find that the maximum of fluctuation is approximately from 318 to approximately elevation 320, that is, from the lowest point to the highest point, a difference of about two feet, and averaging that through the whole three months' consecutive period, I find that the average amount below 320 to which the pond has been drawn is one foot.

20 I have taken each hour all the way through for three months, and the average by which that falls below elevation 320 is one foot. Sometimes it was above that, and sometimes below that, that is, elevation 319 sometimes goes above 319, and sometimes below 319, so that the average draw down of holding the pond at elevation 320 is one foot, and with a smaller pond at elevation 306, the pond would be required to be drawn down in inverse proportion to the area of the pond. If the area of the pond is smaller for drawing a certain amount of water out of the pond, we draw down in proportion as the pond is small. If our pond is only half the area drawing out the same amount of water, we have to draw down twice as much.

Q.—Would you be good enough to explain what the theory of this pondage is as applied to the operation? Will you explain just as clearly and as simply as you can what is the value of pondage?

30 A.—The value of pondage cannot be stated to be the same for all water power developmets. I would say in a general way that pondage is more valuable to a low head development than it is to a high head development.

If we draw down our pond we affect the operation of the machinery, and we also have less power available.

On a high head development the effect on the operation of the power house machinery is very, very slight, practically negligible. In this case here I consider that the effect on the operation of the power house machinery due to the small pond would have been negligible.

40 Q.—I was more anxious to know just what you mean by drawing down. Granted that you have a dam at Chelsea and a pond, as it were, a bed of water exending behind that, what do you mean by gaining an advantage by drawing that water down? In respect to peak?

A.—During the peak hours of the day we draw our water down, and during the off peak hours of the day we keep our water back again, as explained here on one of these charts.

Assuming that our average power is at elevation 319, when we

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go below that, that is, when we are drawing more water out of our pond than is going in.

Q.—In other words, you are generating more electricity to take care of the peak load, and consequently pulling your water down?

A.—Pulling our water down faster than it is going in, that is during our peak hour.

Q.—That is really the value of pondage, to be able to pull down faster than it goes in?

10 A.—That is right.

BY THE COURT:

Q.—It is a supplement?

A.—Well, that is true to some degree. If we had absolutely no pondage there we could not pull the water down, and the larger the area, depending on the head over which the power is used, will be the factor on the amount by which we can draw the water down.

20 In this case at Chelsea where we have between 95 and 100 feet head, I do not consider that this extra one foot of head affected the operation of the power house machinery to any extent, but in the low head development, say of ten feet, the pondage would be of considerable value.

BY MR. KER:

30 Q.—From the layman's point of view the value of pondage for certain hours is when you require to generate more electricity you can draw down water, and then save it up again when you do not have to generate so much electricity?

A.—Well, I have qualified that. It depends on the head for which it is used, and on a high head development the pondage is not much of a factor, because we draw the pond down such a little bit. On a high head development that is not a factor. On a low head development the amount by which we draw the pond down is a factor.

Q.—I want to get at what pondage really is, what it is useful for?

40 A.—I am saying that under a low head development it is useful in two ways, it assists in both the peak and in the average power, and on a high head development such as we have at Chelsea it has no value I figure as extra peak capacity, but only as increasing the average amount of power available.

Q.—Because the head is so high that it makes very little difference on the operation of your machinery by drawing down?

A.—Yes.

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Q.—I understand the water in the pond is a reserve which you may use if you require, is that it?

A.—Yes, and for a high head you do not require any reserve to speak of. On a low head we do.

BY MR. KER:

Q.—Is this site of Mr. Cross' a low head or is it a high head?

A.—Mr. Cross' I estimate is a low head development.

10 Q.—What is your opinion as to the use which Mr. Cross might be able to make at all of any pondage behind his property, in case we took him right up to the Pêche?

A.—I have estimated the amount of the pondage above Mr. Cross' property with the water level at elevation 318 as being 470 acres. With that head available holding the water at elevation 318, Mr. Cross would draw his pond down five feet, if he drew out of the pond 200 cubic feet a second more than came into the pond per week. That would practically make his power worth nothing, therefore his pondage is worth nothing, so that I estimate that those 470 acres
20 above Mr. Cross' property is worth nothing as pondage to Mr. Cross.

Q.—In other words he can produce more power by using the continuous flow of the river than he can by utilizing pondage?

A.—Yes.

Q.—I think perhaps I interrupted you in your consideration of Exhibit D-107, which was a graf. Will you describe what that is?

A.—Yes. I have estimated that the area of the pond above the Chelsea development at elevation 306 is two square miles, at elevation 316 it is 3.2 square miles, and at elevation 320 it is 3.5 square
30 miles.

At elevation 320 the approximate maximum elevation to which we are holding the Chelsea pond, taken from this chart, and the fluctuation in pond level I estimate that we are drawing our pond down an average of one foot.

At elevation 306 I estimate that we would have drawn our pond down an average of $1\frac{3}{4}$ feet.

Q.—That is if you had not had the additional 14 feet?

A.—That is if we had not had the additional 14 feet, we would have to draw our pond down $1\frac{3}{4}$ feet. Into a one-foot small pond
40 we draw down more in proportion to the area of the pond inversely as in proportion to the pond. That $1\frac{3}{4}$ of a foot being an average head for a large pond I estimated at 1,035 horsepower at 70 per cent load factor.

Q.—You have given credit for that advantage in your estimate of profit and loss of taking in this whole increased head in your statements that have already been filed?

A.—Yes, that is already included.

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Q.—Every advantage to that pondage has been given so far as its value to you is concerned, and still it leaves you with a loss in taking in that extra head?

A.—Yes.

Q.—Again I quote from the evidence of Mr. Robertson, one of the witnesses examined at page 271, in which he states:

10 “The total value to the Gatineau Company of the water which would be stored in their particular pond, the additional water which would be stored in the upper pond due to the rise in level of 14 feet, would be something like sixty or seventy thousand horsepower per 10 hours every day. That would mean that the company could store water at night which would make available to them something like sixty or seventy thousand horsepower the next day, and the first value of that would be problematical. It would mean the item is \$700,000 a year, which is a very large figure.”

20 Would you give me what opinion you may have with respect to that statement?

A.—My opinion of that statement is that it is absolutely absurd and ridiculous.

Q.—\$700,000 a year is an absurd statement?

A.—Yes, in view of the calculations I have made.

Q.—Based on actual facts?

A.—Based on actual facts.

Q.—Would you amplify just a little more what you mean by actual facts? Based on operating records?

30 A.—Based on the operating records as to the amount of the pond drawing down, the value of that drawdown to the Chelsea development, and the cost of getting that.

Q.—I am referring to this \$700,000 a year. Can you give me any idea what such a figure as that should be based on or what calculation of any kind could have been made to arrive at any such figure as that?

40 A.—I heard Mr. Robertson estimate on that, and he estimates it as being worth \$10 a horsepower year, and assuming a definite amount of power he estimates it in that way, and he arrived at \$700,000, which I do not consider is a proper basis for arriving at any such value of the pondage, nor do I consider that that power is worth that much.

Q.—Taking his statement, “the total value to the Gatineau Company of the water which would be stored in the upper pond, the additional water which would be stored in the upper pond due to the raise of level in 14 feet would be something like sixty or seventy thousand horsepower for ten hours per day”.

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A.—We do not figure on drawing down that water to the last fourteen feet by any amount more than just what is shown in that chart. We do not figure on drawing that water down fourteen feet at all.

Q.—Do you actually make any drawing down?

A.—The chart speaks for itself, showing what the actual amount of drawdown is.

10 Q.—What do you concede could be meant by sixty or seventy thousand horsepower per ten hours a day by reason of this pondage in this particular reach?

A.—I assume Mr. Robertson means during the peak hours of the day we can draw more water out of the pond than is going into the pond, and that will give, on the basis of his estimate, some 70,000 horsepower more than could be obtained if there was absolutely no pondage whatever at Chelsea.

Q.—Is that the case?

A.—No.

20 Q.—This chart, does it show what actually is the situation with respect to the condition of the power?

A.—My chart shows the draw down which is taking place on the Chelsea plant, and which has taken place over a consecutive period of three months, which I consider is normal operating conditions for the Chelsea plant.

Q.—How much does that represent in horsepower? Have you figured that out?

A.—I gave an estimate of 1,035 horsepower at 70 per cent load factor.

30 Q.—That is the amount of increase in advantage which you get by that draw down as against 60,000 or 70,000 horsepower for a ten-hour day?

A.—I estimate that, instead of that 70,000 horsepower, the only value to us of the larger pond is 1,035 horsepower at 70 per cent load factor.

Q.—Of course, the \$700,000 a year has no relation to the amount of 1,035 horsepower that you speak of?

A.—No.

40 Q.—Mr. MacRostie, a witness of the Plaintiff, at page 142 of his evidence refers to dependable power under his estimates at Mr. Cross' property. He was asked several questions, and I will read one or two of them to you. He is asked:

“ You do not think you would be entitled to rely on the flow of 5,000 feet for 300 days.”

and his answer is

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“ With the limited regulation that was on it at the time. That is borne out by Mr. Francis' report, and it is stated on your own report here.

“ Q.—May I ask you what happens for the remainder of those 365 days?

Witness: You mean for the 365 days?

10 Counsel: Yes. I suppose street cars have to run, etc.?

A.—I know they do.

Q.—What do you propose to do about that?

A.—You can take care of it through your local storage.

Q.—What do you mean by that? As applied to Mr. Cross?

A.—He has about five miles about there, that he could use.

Q.—So it is your pretension that although he develops to a head of 14 feet he may still make use of that water pondage?

A.—Yes, he can use it to a certain extent.

20 Q.—What is the area involved?

A.—I have not figured it out. I cannot tell you the area.”

Would you let me have your observations as a professional engineer as to this statement of Mr. MacRostie?

A.—From my investigation of Mr. Cross' site, I am satisfied that as the flow drops below any such figure as 5,000 second feet, that he would be money ahead by reducing the power output of his plant rather than by drawing on such a small amount of local pondage as he has.

30 As I stated before, if Mr. Cross had a development holding the water at elevation 318, I have estimated he would have 470 acres of pond area, and that by drawing out 200 second feet more than was coming in, he would pull his pond down five feet in a week which would reduce the output of his plant to such an extent that I do not believe that it would pay Mr. Cross to reduce his power output.

Q.—Mr. MacRostie estimates five miles about there could be used?

A.—I assume he means the lineal dimension of five miles.

Q.—You assume he means the lineal distance?

40 A.—Not superficial but lineal.

Q.—But in any event, you have actually worked it out to the acre?

A.—Yes, 470 acres, I estimated.

Q.—And, in your opinion, no advantage could be gained by the use of that storage?

A.—None whatever.

Q.—So then what happens to the proposition, a dependable

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power for 300 days in the year, if he cannot rely on storage at intervals between?

A.—The power has to be reduced as the flow would be reduced.

Q.—In a general way, to summarize your statements, am I right in stating that it is your opinion that Mr. Cross' property is impossible of commercially and economical development by itself?

A.—Yes.

Q.—Even though he takes the heads above him?

A.—Yes.

10 Q.—And includes the Pêche Rapids?

A.—Yes.

Q.—And it is also your opinion based upon investigations you have made, that at the present, and it will not in the future be of any value whatever to the Defendant Company, that is to say, the Defendant Company will not make profit on that portion of the river concerned either now or ultimately?

A.—Not after deducting the costs of acquiring the property necessary to include this in Chelsea.

20 Q.—You are familiar with the property sold by the Gatineau Company on the Lièvre River, the Masson site which has been referred to, of which the large aerial photograph is here?

A.—Yes.

Q.—Have you given any study to that property from the point of view of its possibility in itself of development above the Bridge?

A.—Yes, I have prepared an estimate of the costs of developing the property which belonged to the Gatineau Company, and the average head water elevation I have assumed as 207.4, the average tail water elevation 171.0, giving the gross head of 36.4 feet. I have assumed penstock losses of 3 feet, giving a net head of 33.4 feet.

30 I estimated the cost of developing 5,000 horsepower at 100 per cent load factor at this site as \$450,000, which is a capital cost of \$90 per horsepower.

I have estimated the annual cost of developing this power at \$53,300 or \$10.66 per horsepower year.

If this power is worth \$15.00 per horsepower per year, the annual profit is \$4.32 per horsepower year or \$21,600 annual profit which could be made, by an addition at that time upon what was the Gatineau Company's property, on the Lièvre property, the property above the bridge.

40 Q.—You find it to be an investment which would have been a profitable, scientific and hydraulic possibility to develop that property profitably above the bridge in itself?

A.—In and of itself.

Q.—It is a concentration?

A.—It is a concentration which has sufficient head and sufficient flow to make it a thoroughly economical development.

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Q.—I may have asked you this question in a different form, but will you say whether, in your opinion, there is any method of comparing horsepower in the raw at this Masson site with horsepower in the raw at the Cross site, for value?

A.—None whatever.

Q.—Why?

10 A.—I estimate that the property on the Lièvre River, of which I have spoken, is an economical development, and that the property on the Gatineau River belonging to Mr. Cross is not economical, and there is no comparison between something that is worth nothing and something that is worth something.

Q.—Under the same reserve respecting value to the taker, which perhaps Mr. St. Laurent may object to, would you give us an estimate of what the McLaren Company, the purchaser, could do in the way of utilizing the power which they purchased from the Gatineau Company, and how they did utilize it, and if included, what they were able to do with it?

20 A.—The McLaren Company, as I understand it, own a stretch of the river from above the Gatineau Company's property down to the Gatineau Company's property, to the west of the Gatineau Company's property and to the Ottawa River. They did own a stretch of the river to the exclusion of every one else, but the Gatineau Company and Higginson. They could have made a development on their property above the Gatineau Company's without having to buy the Gatineau Company's property. At present their dam is some considerable stretch above what was the Gatineau Company's property, and they are constructing a tunnel directly underneath the Gatineau Company's property.

30 I have estimated they could build their dam about at the point " E " in the Lièvre River. The McLaren Company are constructing a dam and they are building a tunnel underground, which is almost directly underneath the easterly limits of what was the Gatineau Company property, and they are building a power house at the mouth of the Lièvre River on the Ottawa River.

BY THE COURT:

Q.—In the same direction as that white line?

40 A.—Approximately in that same direction.

BY THE COURT:

Q.—The white line?

A.—The white line. They are diverting the total normal regulated rate of the river down through that tunnel and using all the water through the power house which they are locating at the mouth

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of the Lièvre River. They could, instead of going down to the mouth of the Lièvre River, have brought their tunnel to the power house located directly to the north of what was the Gatineau Company's property, and they could have developed a smaller quantity of power at that point.

I have made an estimate of the cost of including the power in the stretch of the river from the northerly part of what was the Gatineau Company's property, down to the mouth of the Lièvre River, to show the value to the McLarens of including the raw power in this stretch of the river.

BY MR. KER:

Q.—Under their particular scheme of arrangement?

A.—Under their particular scheme of arrangement.

Q.—What head do they get through the tunnel altogether from their dam to the power house?

A.—The water elevation at the head of the dam which the McLaren Company propose to hold is elevation 330, and the elevation which they propose as their tail water is 142, making a total head of 188 feet.

The head available from the north end of what was the Gatineau Company's property to the Ottawa River, I have estimated at 66 feet.

The total installation which the McLaren Company proposes to make in their power house as at present located is 130,000 horsepower, and if they had located their power house at the north end of the Gatineau Company's property, I have estimated that they would require 45,000 horsepower less installation.

That additional 45,000 horsepower which it has cost them to install by going to the foot of the river, I have estimated as costing \$675,000. The extra 1,800 feet of tunnel I have estimated the cost at \$400,000; the extra size of the surge tank required at \$50,000 odd, interest, engineering and contingencies at 20 per cent, making a total extra cost of including that last 66 feet of head at \$1,350,000.

I have estimated that in that whole stretch of river practically 30,500 horsepower available at 70 per cent load factor, which is produced at an annual cost of \$125,000 per year.

The revenue from 30,500 horsepower at \$14 per horsepower year is \$440,000, which makes a net annual profit of \$315,000 a year to the McLaren Company, after deducting the costs of generating that power accruing to them from generating the last 66 feet of head on the Lièvre River.

I have estimated that the Gatineau Company's proportion of that power is 46 per cent, multiplied by 14,500, divided by 26,000, or their share of that value of \$315,000 a year is \$85,000 a year,

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which is the value to the McLarens of including the proportionate part of the Gatineau Company's property in their development.

Q.—Can you state from those figures within a reasonable range what the horsepower is which they themselves can make use of by acquiring that Gatineau Company's property? In other words, what horsepower did they get out of that?

Witness: Out of the Gatineau Company's property only?

10 Counsel: Yes.

A.—46 per cent of 14,500 divided by 26,000.

Q.—What is it in horsepower?

A.—Approximately 7,850 horsepower at 70 per cent load factor.

Q.—And very cheaply developed?

A.—Yes. That is, the increased cost of development is lower than the initial cost of development.

20 Q.—I merely asked you that because I think one of the witnesses for the Plaintiff, Mr. MacRostie, stated it was about 4,000 that was represented in that sale. For the 200,000 they got potentialities

A.—But Mr. MacRostie's estimate was power at 100 per cent load factor, and this power I have estimated on is at 70 per cent load factor.

Q.—Just what do you mean by difference in load factor? Would you explain to the Court what you mean by load factor?

30 A.—Load factor is the ratio between the average power which is developed and the peak power which is developed, that is, if the average amount of power over a week which is generated is 70 horsepower, and the maximum amount of power which is generated during that week is 100 horsepower, the weekly load factor is 70 per cent, that is, the average power is 70 per cent of the peak power and the load factor is 70 per cent.

Q.—You do not develop power for your full 100 per cent ordinarily just on the load factor basis?

40 A.—Ordinarily not, under some conditions it is more profitable to develop power at 100 per cent than it is on load factor. There are a number of different considerations that have to be taken into account in determining what load factor in development would be most satisfactory.

Q.—You would consider 70 per cent as being a proper estimate of the load factor at which the McLarens would work?

A.—Well, that is in general the most economical load factor for supplying of power which has to be transmitted a long distance.

Q.—And working under that load factor there would be about 7,800 horsepower developed from that property that was sold?

A.—Yes.

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CROSS-EXAMINED BY MR. ST. LAURENT, K.C.,
OF COUNSEL FOR PLAINTIFF:

Q.—Have you made any other estimates that you would like to file for the purposes of this trial, or have we got all of them?

A.—I do not think of anything at this time. If I do in the meantime I will tell you so, and if you wish to have them, I will file them.

Q.—If we may leave the estimates for the moment, and get back to facts. Were you the chief engineer of the Gatineau Company when they made this sale of the Masson property to the McLarens?

A.—I cannot give you the date of that, although I believe I was.

BY MR. KER:

Q.—You were never chief engineer of the Gatineau Company Limited?

A.—No, I have had no connection with the Gatineau Company Limited.

20 BY MR. ST. LAURENT:

Q.—But did you have anything to do with the negotiation of this sale?

A.—I made an estimate of the cost of developing that power before the sale was made.

Q.—Is that the estimate which we have here now as an exhibit?

A.—\$450,000.

30 Q.—And in respect of that estimate the sale was made? You know that it was made?

A.—Yes.

Q.—And the \$85,000 profit is going to be made by the McLaren Company, the purchaser, instead of the original owner of the property?

A.—I did not state that we could make that \$85,000 profit. I said I estimated that the \$85,000 was the profit, value to the McLaren Company. I estimated that the profit we could have made out of that development of and by itself as a separate unit was \$21,600

40 a year.

Q.—Even \$21,600 a year would be quite a handsome profit in years like 1931?

A.—In proportion to the other considerations.

Q.—Were you the chief engineer of the Gatineau Power Company when the scheme to include all this head from 295 up to 320 was worked out and decided upon.

A.—No.

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Q.—At the commencement of your evidence you stated that it was not to your knowledge that there was any recognized market value for raw power?

A.—Yes.

Q.—Have you yourself negotiated any purchases or sales of power in the undeveloped state?

A.—I do not recall any.

10 Q.—You have been concerned more with the estimating of various projects according to which powers might be developed or might not be developed?

A.—I estimate the value of the raw water power sites. I have not been concerned to my recollection in any negotiations.

Q.—Of course, power sites are not a commodity that everybody requires. There are not a large number of those who are in the business of developing hydro-electric power in the Province of Quebec, is that not so?

A.—There are not as large a number of companies as there are people.

20 Q.—You might perhaps get a little bit closer to the actual relation than that, could you not? If we took the population as about three millions, what, according to your estimate, would be the number of companies developing power?

A.—I have not made any estimate.

Q.—Will you please during the lunch hour make an estimate of that so we can compare it with the three millions and see if there is any difference that is worthy of notice?

A.—Yes.

30 BY MR. ST. LAURENT, K.C.:

Q.—Have you considered about how many companies were operating hydro-electric plants in a substantial way in the Province of Quebec?

A.—I made a list of twenty-five operating companies, but I am satisfied there are more than that.

Q.—Are those the companies operating hydro-electric plants of some magnitude?

A.—Yes.

40 Q.—And, you are satisfied there are a few others besides the twenty-five?

A.—Oh, yes.

Q.—Is it to your knowledge that quite a large number of undeveloped water powers changed hands in the last decade?

A.—Yes.

Q.—When you stated there was no general market price for undeveloped power, did you intend to convey any contradiction or

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criticism of the statements made by Mr. Robertson with respect to the transactions he cited?

A.—I have not examined all the power sites that Mr. Robertson enumerated in his testimony.

Q.—You told me this morning, I think, that you did not recollect having yourself had to do with the negotiating of any sale or purchase of undeveloped water power in that period?

A.—No, not directly.

10 Q.—Do you know personally of any other sales of undeveloped water powers in that period, apart from those instanced by Mr. Robertson?

A.—Personally I did not negotiate them, so personally I do not know them any more than any I may have seen or heard of. I do not know them, not having done them personally.

Q.—There are none of which you have any information that you could vouch for?

A.—No, not personally.

20 Q.—I suppose there are a number of water powers in this country which may have very great capabilities, but which could not be practically developed at the present time?

A.—Oh, yes.

Q.—Situated in places where there would be no market for developed power?

A.—Either that or of such a magnitude that the power could not be sold within such a time that the loss would more than outbalance the initial gain.

Q.—In fact, the water power of the Canada Cement Company, and that of Mr. Cross (whatever it may have been in quantity) have been included and concentrated in the Chelsea development?

30 A.—Yes.

Q.—And, in fact, the Masson power disposed of by the Gati-neau Company, Limited, to the Maclaren interests is being included in a larger development?

A.—It looks as if it would be.

Q.—There are things going on looking towards its inclusion in a larger development?

A.—Yes, that is right.

40 Q.—Did I understand you to say that had the Canada Cement power not been included in the Cascades development, the high water elevation would have been 295?

A.—Approximately.

Q.—And that would be at 10,000 cubic feet flow?

A.—About that. I have not checked that absolutely.

Q.—For the purpose of your evidence were you using the elevations and flows given by Mr. Scovil?

A.—Yes. For the purpose of my calculations I used an elevation of 295, at 10,000 second feet.

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Q.—And, that was not determined by yourself, it was taken from information?

A.—I did not determine it. I have not determined any of these levels or elevations.

Q.—Was it to your knowledge that the elevation at point " C " on the plan Exhibit D-69, at 10,000 cubic feet flow, was 305?

A.—I have not the record of that before me.

Q.—Do you not remember that was what Mr. Scovil said yesterday?

10 A.—I do not recall that.

Q.—Do you remember where you got the 306?

A.—Yes. I used an average between the point " C " and the lower part of Mr. Cross' property on the east side of the river—1.3 feet.

Q.—And whatever the elevation was at 1.3?

A.—Whatever the elevation was, add 1.3, which gives me that elevation.

20 Q.—In fact, no higher level than 305 could be attained without impinging on some of the Cross' property? When you go to 306 you go up over the level?

A.—Yes.

Q.—But, at 1.3 below that you commence to impinge upon the lower extremity of the property?

A.—That is right.

Q.—I believe you mentioned 316 as the top level attainable without impinging on the tailwaters of the Paugan?

A.—Approximately 316.

30 Q.—Do you agree with what I believe we have had in evidence already, that the water has been held around 318?

A.—Yes. I showed that in the pondage chart.

Q.—And, your calculation is based for a maximum elevation of 320?

A.—A maximum of 320, yes.

Q.—With the 318, or, if you choose, the 320 (and you know better than I do) as the elevation of the head waters, what head is obtained at Chelsea?

A.—With 320: the head water at Chelsea is 320, and the tail-water is 222—making a gross flow of head of 98 feet.

40 Q.—And, what we have been told was the average elevation at which the head waters have been kept, 318. . . .

A.—(Interrupting): 319 is the average. I pointed out this morning that the maximum is approximately 320, and the lowest is approximately 318: making the average about 319.

Q.—I understood that was for the period of the three months for which you made the chart?

A.—That is the representative period. I could take a longer

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period than that, but I thought a three months period was sufficiently long to be conclusive.

Q.—Am I to take it that the correct elevation at which the waters have been held since March, 1927, is 319?

A.—I would not say over that extended length of time.

Q.—I quite understand it sometimes goes down, but is that the elevation to which the waters have been held over the greater portion of the time.

A.—For those three months in particular, and for longer than
10 that. I would not want to say, unless I had the records before me, just how much longer. I am satisfied, however, it would be for a greater length of time than shown by that chart. I cannot say how much greater unless I have the records before me.

Q.—Has the situation this year been comparable to that shown by the chart?

A.—I would not want to say that from memory. That chart shows 10,000 second feet flowing in the river for those three months. I believe a chart of this year would show there has been considerably less than 10,000 second feet flowing in the river. Which alters
20 the conditions.

Q.—So, the operation may have been different from that which appears by the graph for the first three months of 1930?

A.—Yes. I took it as nearly a representative period as I could possibly get to show the conditions under which the plant would operate under a normal and permanent condition.

Q.—So, you cannot tell us if for the years 1927-1928, and 1929 the elevation to which the waters have usually been held is above 318?

A.—As just an approximate guess I would say that in 1927
30 the water level did not go anything to speak of above 318; and for 1928, 1929 and 1930, it ranged from 315 to 320.

Q.—315 would be the extreme low—if your graph is at all typical?

A.—I would not want to say that. Sometimes they would have to pull the pond down in cases of flood, in order to prevent damage upstream.

Q.—Pull the pond down for the purpose of having place to store the water that would come down at a greater rate than 10,000 cubic
40 feet per second?

A.—No. If we hold the pond up at Chelsea during a flow of 60,000 feet, the back water effect will drown out the country up above, which otherwise would not happen.

Q.—Then the normal working head at Chelsea would be between 319 and 222?

A.—Yes, that is the approximate average working head at Chelsea.

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Q.—97 feet?

A.—Yes.

Q.—So that we may have it on the record, how much would that be in horsepower, with a 10,000 cubic feet per second flow?

Witness: In water horsepower?

Counsel: Yes.

A.—97, multiplied by 10,000, divided by 8.8.

Q.—Roughly, 110,000 water horsepower?

A.—Yes.

10 Q.—What is the installed capacity of the machines at Chelsea?

Witness: The waterwheels?

Counsel: Yes.

A.—The waterwheels are four, 34,000 horsepower waterwheels.

Q.—Rated at what?

A.—Rated at 34,000 horsepower. Four, rated at 34,000 horsepower each.

Q.—On some of the exhibits you filed this morning you put in a rated head of a certain figure?

20 A.—I am just recalling that rated head as 92 feet. I have not the record before me, and I am only speaking from my recollection.

Q.—What is the capacity of the electrical generators?

A.—Three generators of 36,000 K.V.A., and one generator of 32,500 K.V.A.

Q.—What would the 36,000 K.V.A. mean, converted into horsepower?

A.—It is almost impossible to convert a K.V.A. electrical generator capacity into horsepower capacity without knowledge of the power factor under which the horsepower has to be taken.

30 Q.—Say at 100 per cent?

A.—Divide the K.V.A. capacity by .746.

Q.—And if it is a 70 per cent load factor, for every 70 you would have 100 horsepower?

A.—Not in K.V.A. capacity. For every 100 horsepower peak capacity installed in the plant we would require 70 per cent of that water horsepower, taking into consideration the efficiency of the plant.

Q.—Those waterwheels have the rating as at 92 feet head. They would develop considerably more, would they not, at 97 feet?

40 A.—They might develop. Whether they would or not is another matter.

Q.—Whether they would or not would depend upon whether you used them or not?

A.—Yes.

That statement of mine is not altogether correct. A wheel that has a rating of 34,000 horsepower, to get, say, 36,000 horsepower out of it would mean that some of the other parts have to be stronger

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than you would need for a 34,000 horsepower wheel. If we got prices from a manufacturer on a 34,000 horsepower wheel at 92 feet head or a 38,000 horsepower wheel at a 97-foot head, even though you might get the same power out of one as the other, the prices would be different, because the parts have to be heavier for a 38,000 horsepower wheel than for 34,000.

Q.—I am speaking of the actual wheels you have in this Chelsea development.

10 A.—I do not know that we would try to get more than 34,000 horsepower, although I do not doubt that by overstressing the material we could do so.

Q.—If the rating is 92, with the 10,000 cubic feet second flow these wheels would give the 34,000 horsepower at the rated head?

A.—That is right.

Q.—Was there space provided for an additional wheel in the erection of the Chelsea development, or has everything been installed that can be installed?

A.—There is space at the present time for one additional wheel.

20 Q.—I think I understood you to say that not all the power the Gatineau Power Company is developing at the present time is being taken as firm power?

A.—Yes.

Q.—You have a surplus of power?

A.—A surplus of power, yes.

Q.—Did I understand you correctly that the inclusion of the head above 306, up to 316, meant an operating loss of \$75,400 per annum?

30 A.—In Schedule 2 I show the inclusion of the head from elevation 306 to elevation 316 meant an ultimate loss to the Company of \$51,400 a year.

Q.—But, up to 1941, a loss of \$75,400 a year?

A.—Yes.

Q.—And that the inclusion of the elevation from 306 even up to 320 means an initial loss of how much per annum?

A.—I have not worked it out on the basis of an initial loss on that whole item. I have just taken the ultimate loss from 306 to 320. I have estimated the initial loss from 306 to 316, and again from 316 to 320, and later combined them.

40 Q.—What is the initial loss from 316 to 320?

A.—\$6,200 a year.

Q.—And for the proper period that would be added to the \$75,400 per annum?

A.—Yes, up to 1941.

Q.—And I believe you said you were estimating that loss on that portion of the river up to 1944?

A.—From 316 to 320, to 1944.

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Q.—Even when you get over the period you have called the initial period, the net result would be an annual loss of \$11,000?

A.—When we are selling all our power at firm power rates, which I have estimated as the figure of \$14.00 per horsepower, 70 per cent load factor, it will bring an ultimate loss of \$11,100 per year over 306 to 320.

Q.—And that is the most favourable situation your estimates show for the inclusion of the head from 306 to 320?

10 A.—That is the only estimate I showed. I have not shown anything else but that.

Q.—May I take it that, in your opinion, is what the result will be?

A.—Yes. I have gone into those figures very, very thoroughly, and I am satisfied they are correct. We have not any figures past 1941, and I had to assume the last stretch—that the last bit of power would be taken up in proportion to the power before that.

20 Q.—Am I to understand, then, that in your opinion as Chief Engineer of this Company it has been an unwise thing to include this head from 306 to 320 in the Chelsea development?

A.—I have not said that; and I do not think so.

Q.—But I am asking you now. We have gone over the figures, and you have told me your best calculations show that even when the whole thing becomes absorbed as firm power you are still going to be losing \$11,000 a year, and you have told me that is the result to be anticipated?

A.—Yes, as nearly as I can tell you that is the anticipated result.

30 Q.—And I therefore ask you, for my own enlightenment as well as for the purpose of checking your statement, if as Chief Engineer of the Company you are telling the Court that you consider it was an unwise thing to include that head from 306 to 320 in the Chelsea development?

A.—No, I do not say I consider it was an unwise thing.

Q.—You have not said so?

A.—You asked me if I was telling the Court I considered it unwise. I have not told the Court that.

40 Q.—But I am asking you now if it is your opinion. In other words, if, in your opinion, it is shown to have been an unwise thing to do to include that elevation from 306 to 320 in the Chelsea development?

A.—I would not say that is a determining factor. I would not say the fact that they would lose \$11,000 a year is a determining factor.

Q.—Are not those investments made, and is not the value of water power ascertained (as you stated in the beginning of your evidence) from the reasonable profits that can be anticipated from the investment?

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A.—That is one measure.

Q.—What are the other measures?

A.—I would think it would be necessary for us to include that stretch of the river in the development at Chelsea if we included the Canada Cement property in Chelsea. Unless we included these in Chelsea that power would otherwise go to waste forever.

I do not think that property above 306 is worth anything as a power development, but from my knowledge of the attitude of the Quebec Government and their officials, I do not believe we would
10 have been given authorization to go to elevation 318 unless we could have shown that that power was very, very unprofitable. So I cannot state it was an unwise move on the part of the Gatineau Power Company to include it in Chelsea.

Q.—Perhaps you do not like the expression “unwise”. May I put it to you in this way: that in your opinion as Chief Engineer of the Company it is going to turn out to have been an unprofitable thing to do?

A.—Yes.

Q.—And although unprofitable you will not say, as Engineer
20 of the Company, whether you consider it an unwise thing?

A.—I will not say that.

Q.—Although you consider that the development of the power in that stretch cost more than it is worth, you will not say it was unwise to develop it?

A.—No, because I do not believe we could have included the Canada Cement property without including the other. You will notice we make a substantial profit by including the Canada Cement Company's property, and I am of the opinion that the Quebec Government would have forced us to include Mr. Cross' property once
30 we included the Canada Cement property.

Q.—If you had been able to show the very interesting estimates you have put before the Court here, do you think they would have forced you to make an unprofitable investment?

A.—I would judge the Quebec Government would have insisted on us taking in Cross' property unless we could show a much more substantial ultimate loss than is shown here.

Q.—Are you trying to convey the idea that the Cross property was included in the development under compulsion?

40 A.—No, not under compulsion. But we know the attitude of the Quebec Government and its officials, under which they are desirous of having any water power developed in the most economical way, including all the power possible in a definite stretch so that no power that has any possibility of future value will go to waste.

Q.—But according to your statement this stretch from 306 to
320 had no possibility of future value?

A.—That is right. I am not speaking, for the moment, so much

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of revenue, but as to its value as power only. That much power might be of use to the community; and while it has only a value of \$14 a year to the Gatineau Company, by the time it is distributed in a retail way the people of the country will make probably three or four times that much out of the power. So unless we are losing money, the country stands to gain.

Q.—But according to these figures you are losing money for a long period, and you are going to continue to lose money indefinitely and permanently?

10 A.—I would state the amount of money we estimate we will lose is not sufficiently substantial to be used as an argument with the Government and its officials.

Q.—Not even in hard times? \$11,000 a year represents quite a substantial capital?

A.—That is right.

In proportion to the whole power development at Chelsea I do not consider the Quebec Government would have allowed us to leave that stretch of the river undeveloped unless the deficit were greater than what we have shown.

20 Q.—What was the initial annual loss on the inclusion of the Canada Cement property? \$35,500, I think you said?

A.—\$35,500 a year.

Q.—Over a period of ten years?

A.—Until 1937. 1927 to 1937.

Q.—The total loss during that period you have calculated to be \$497,000?

A.—That is the cumulated compounded loss.

30 Q.—When you get it to the revenue producing stage, you have to add, according to your figures, \$497,000 to the original cost, to get its capital cost at that time?

A.—Yes.

Q.—And after that you estimate there will be a possible profit of \$63,900 per annum?

A.—That is basing our revenue on \$14 per horsepower year on a capital cost of \$1,837,900.

40 Q.—I am not asking you what you base it upon. I am asking you, as an expert witness before the Court, if that, in your opinion, is the reasonable anticipation you have to make as Chief Engineer of the Gatineau Power Company?

A.—That is what I would estimate the ultimate annual profit due to the inclusion of the Canada Cement Company's property may be anticipated to be.

Q.—That would be something around 3½ per cent on the capital investment—\$1,837,900 capital investment?

A.—The figure of \$63,900 is the net profit, after deducting interest. Take our gross revenue, and deduct interest, and we get a

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net profit of \$63,900. The interest charges on the cumulated capital cost are \$137,100, and the ultimate annual revenue is \$201,000—leaving a net annual profit of \$63,900.

Q.—Would that be the net annual profit, or would there be anything to be deducted for operation and upkeep?

A.—That does not allow anything for operation and upkeep.

Q.—So it is not really net profit? There must be something allowed for operation, upkeep, depreciation, and so on?

10 A.—There is something, yes. Depreciation is covered in it. The 7½ per cent covers an item of one per cent for depreciation. It also covers some extra taxes, insurance, maintenance—one-quarter of one per cent—and I believe there would be some other small additional charges.

Q.—For operation and upkeep?

A.—They would be so small I did not take them into consideration.

20 Q.—From this I take it your considered opinion is that the inclusion of the Canada Cement property is going to prove to be profitable?

A.—Yes.

Q.—The inclusion of the portion above Cross' is going to prove to be profitable?

A.—The inclusion of the portion between elevation 316 and elevation 320 is profitable.

Q.—It just so happens that between 306 and 316 you strike the unprofitable part?

30 A.—For the moment I am not discussing that the Cross property is all the way from 306 to 316; I am just pointing out that the portion from 306 to 316 is not profitable, and that above 316 is profitable. As far as I know no figures have ever been prepared to show the smaller increments of cost above 306, anything more than 306 to 316.

Q.—I will not for the moment discuss with you whether Cross' property goes from 306 to 316, but your statements or estimates show profit until you get to the lower end of Cross' property?

A.—Yes.

40 Q.—And from what Mr. Scovil had given as being the ultimate height to which Cross can go (if his contentions are right) there is further profit?

A.—That is right.

Q.—But everywhere from the lower end of the Cross property, not only to the top of the Cross property but as far as the Cross contentions go anywhere, is loss?

A.—Yes.

Q.—Still it has been included in the development, and you are not prepared to say it was unwise to include it?

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A.—No, I am not.

Q.—I am not an engineer, of course, and I cannot keep down to the accuracy of decimals. In ordinary language what is the horsepower development at Chelsea being called? What has the Company considered as the development?

A.—Four 34,000 horsepower waterwheels.

Q.—What is it spoken of commonly as development? How many thousand horsepower?

A.—136,000 horsepower.

10 Q.—It is commonly referred to as 136,000 horsepower development?

A.—Yes.

Q.—What would it have been to elevation 305?

A.—The figure I gave you of 136,000 includes only the first four units that have been installed. The fifth unit, which will be installed sooner or later, will add 34,000 horsepower to that—making 170,000 horsepower development.

Q.—As the ultimate?

20 A.—Yes.

Q.—That, of course, could not be 100 per cent load factor?

A.—No, there is not sufficient water in the river to do that.

Q.—And even for a 70 per cent load factor use would have to be made of the pondage?

A.—Yes, we would have to make use of the pondage. Part of that capacity would be held as spare capacity.

Q.—A 100 per cent load factor, with the 10,000 cubic feet, would be something around 110,000 horsepower?

30 A.—That is at 100 per cent efficiency. We could not get that much out of the river.

Q.—Are you speaking of 100 per cent efficiency when you speak of 136,000 horsepower?

A.—The 136,000 horsepower is what the waterwheels will deliver to the generator shafts. The 110,000 horsepower, which you calculated in a rough way, is the theoretical water horsepower which might be obtained under absolutely ideal conditions. In a practical way it is never possible to obtain 100 per cent efficiency.

40 Q.—If you raised it to 100 per cent load factor what would be the figure comparable to the 136,000 horsepower?

Witness: Raise what to 100 per cent load factor?

Counsel: You say you have the 136,000 horsepower installation there, but that could not take care of 100 per cent load factor. What would the 10,000 cubic feet per second give you with 100 per cent load factor?

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A.—I am not checking the 110,000 horsepower, or whatever it should be.

10,000 multiplied by the efficiency, which at the Chelsea plant I would estimate at 85 per cent. 85 per cent of 97, multiplied by 10,000, divided by 8.8.

Q.—That would be somewhere between 90,000 and 100,000?

A.—Yes.

Q.—And, that goes up to the 319 or 320 elevation?

A.—Yes.

10 That 110,000 horsepower you speak of would require to take our pond up to elevation 319 or 320 in order to develop that amount of power.

Q.—And it is, I suppose, in direct proportion to the height of the head?

A.—The power varies directly as the head.

Q.—So, if it is given as 97, every foot off would be one ninety-seventh off?

A.—Yes, one ninety-seventh off.

Q.—And, we can use that to whatever elevation we wish?

20 A.—That is correct. Of course, that figure would not be correct if you get down to a very low head. I should say that 85 per cent efficiency would obtain on a high head. If you went down to 295, or some such figure as that, I would think it would be a fair figure.

Q.—It would be a fair figure even if you did not impinge on the Canada Cement property?

A.—Yes.

Q.—So, all we can be concerned with is from the foot of the Canada Cement property up to 320, and it would apply there in direct proportion?

30 A.—Yes.

Q.—What is the elevation of the tailrace at Paugan?

A.—I have not those figures before me. I could not say offhand. I could not tell you unless I looked at the records.

Q.—Have you the records here?

A.—I have not the records here, no.

Q.—Have you anything here that would enable you to answer my question?

A.—No.

40 Q.—I am afraid we will have to be before His Lordship next week. Will you please get the information so that you may be able to give it to me at a later date?

A.—Yes.

The tailwater elevation at Paugan may vary under different conditions. Under what conditions do you want it?

Q.—You will be able to give us detailed information. You will

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be able to give us the elevation of the tailwater at 10,000 second feet, and perhaps at some other stages.

A.—Perhaps you could tell me the stages you want. It may take me some time to work through those figures, and I believe it would save the time of the Court if you would tell me in advance about what stage you want those figures.

Q.—Then, will you look it up for us at 10,000 cubic feet second, 20,000 cubic feet second, and 40,000 cubic feet second?

A.—Yes.

10 Q.—I see you have estimated in Exhibit D-88 on propeller type turbines rated at 8-foot head?

A.—Rated at 4-foot head.

Q.—That is, to produce the power mentioned in the Exhibit they would operate at the 4-foot head?

A.—That 4-foot head is the head under which they would operate in flood conditions.

Q.—That is the head under which they would produce the amount of power you have estimated in the Exhibit?

20 A.—Yes. Those waterwheels will produce the amount of power noted there under 4 feet of head.

Q.—In Exhibit D-89 it is 4.4?

A.—4.1.

Q.—Then you had better correct the Exhibit, because it is marked 4.4?

A.—It is 4.1 on the Exhibit.

Q.—The net head is 4.4?

A.—Yes.

Q.—4.1 is the operating head?

30 A.—It is the operating head under flood conditions.

Q.—In Exhibit D-90 it is 4 feet?

A.—Yes.

Q.—In Exhibit D-91, 5-3?

A.—5.3.

Q.—And in Exhibit D-52, 3-9?

A.—3.9.

Q.—Exhibit D-93 is the same set-up: 3-9?

A.—Yes.

Q.—And Exhibit D-94 as well?

40 A.—3.9, yes.

Q.—Exhibit D-95: 5-3?

A.—5.3.

Q.—Similar to Exhibit D-91?

A.—Yes.

Q.—Were these taken from observations of your own or from Mr. Scovil's figures?

A.—From Mr. Scovil's figures.

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Q.—If the operating head was larger, of course the horsepower would be larger?

A.—To which operating head do you refer: to the operating head under flood conditions, or under normal conditions? If the operating head under flood conditions were higher there would be less power house machinery to be installed to develop the same amount of power. You would have the same amount of power under each condition, but with the higher head the amount of power house machinery and the cost of power house machinery would be smaller.

10 The power would remain fixed.

In all these calculations the amount of power has been taken at the normal flow of the river, and at the head available, and the installation has been based on developing that power under the head available at flood flows.

Q.—Is your calculation of power available the number of feet second indicated, multiplied by the net head? Is that what gives you the power available? I see the first item is flow, the second is net head, and the third is power available?

A.—Yes.

20 Q.—Is the power available deduced from the two previous factors?

A.—Power available is deduced from the previous factors.

Q.—Without regard to installation; and then you put in installation to utilize it?

A.—To develop that power.

Q.—You would not, of course, expect anyone to consider carrying out the schemes outlined in Exhibits D-91 to D-95 inclusively?

30 A.—That does not include all the Exhibits, does it? I would not expect any person to develop them.

Q.—Am I to understand from you that that is the best you could do as an engineer with those natural conditions?

A.—I would not attempt to advise any person to develop that power under those conditions, and I think that is the most economical estimate that can be made of developing that power.

Q.—As an engineer, you could not suggest anything more practical than what you have set out in those documents?

A.—No.

Re-examination

40 RE-EXAMINED BY MR. KER, K.C.,
OF COUNSEL FOR DEFENDANT:

Q.—You referred to the water level of 318 as the general head at Chelsea. As a matter of fact, is it possible to carry the water to even 318 in the upper reach of the river above the Pêche without actually affecting the Paugan?

A.—I have not made the calculation on that. Mr. Scovil has made those calculations.

*In the
Superior Court*

No. 30.
Defendant's
Evidence.
C. N. Simpson,
Re-examination
Nov. 6th, 1931.
(continued)

Q.—I would like to have some further explanation from you with respect to the inclusion of the Cross property and the lack of advantage to you by including it. I understand you to say that you could make a development up to 295 which would not include either the Canada Cement property or the Cross property?

A.—Yes.

Q.—Which would be profitable?

A.—Yes.

10 Q.—You could still go up, and by the concentration on the Canada Cement property, and not including the Cross property, you could still make it economical?

A.—Yes.

Q.—If you did that, and stopped your water at 305 or 306, what would the result be to the public in so far as would concern any potential horsepower that existed between 305 and the foot-water at Paugan?

A.—I think that power would have gone to waste forever.

20 Q.—Is it not a fact that so far as the public would be concerned there would be certain horsepower gone to waste forever?

A.—Forever, yes.

Q.—Did I understand you to say it was the policy of the Quebec Government that such power should not go to waste, quite independently of the cost of developing it, unless the cost or the loss to anybody developing the lower reach would be so exorbitant as to make it beyond reason?

A.—Yes. I am of the opinion that the Quebec Government and its officials would have insisted

30 Mr. St. Laurent (interrupting)—I object to the witness giving his opinion. If he has any facts to put before the Court, he may do so.

Witness: I would insist on the Power Company doing it if I was in charge of that kind of work.

BY MR. KER (continuing):

40 Q.—And in doing so you would consider you were looking after the interest of the public in getting power?

A.—Yes.

Q.—Even if it was going to cost more to include it? Even at the expense of making a reasonably small loss on it, still this power would be available to the public?

A.—Yes.

Q.—Whereas, on the other hand, it would be lost forever?

A.—Yes.

*In the
Superior Court*

No. 30.
Defendant's
Evidence.
C. N. Simpson,
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Nov. 6th, 1931.
(continued)

Q.—My learned friend seems to have found it a little extraordinary that you should be able to develop up to level 306 profitably and not be able to develop from level 306 to level 316 profitably, and pick it up again on the upper reaches, between 316 and 320, at a profit. I think you referred to that this morning, but perhaps you would be good enough to tell us again just why the upper reach is available for profitable development? What are the elements which make it profitable, whereas it cannot be done in the lower reach between 306 and 316? For instance, you impinge on the tailwater at Pagan, do you not?

10 A.—The elements that make one section profitable and another section not profitable are the capital costs of including that portion in the development, and the length of time before which that part that is included can be sold at firm power rates—that is, at \$14.

The large difference between the Canada Cement Company and the Cross property and upwards comes in the extra railway diversion, extra flooded lands, and extra highway that would have to be changed. As I explained this morning, the river runs through a steep and narrow gorge, and there are high rocks on either side. The railway runs along the side of the river, quite close to the river; as also
20 did the highway. As the water was raised, the railway would have to be taken back from the river. The highway also would have to be taken back from the river. The additional cost of the railway and the highway are among the larger items in raising this water level and in including the properties upstream. The minor items are the power house, the dam and the additional machinery.

Q.—In other words, once you have raised the railway and the highway to a point where they would carry the level to 316, you have no more concern with them from that up to 320, from the point
30 of view of expense?

A.—There is some additional expense in connection with the dam, the power house and the machinery—raising that part of it up. As I say, however, the largest part of the cost section is the railway and the highway.

Q.—The largest part is rendered necessary by the section between 306 and 316?

A.—Yes.

Q.—And the largest part of power house change is necessitated by that?

40 A.—The power house is more nearly proportionate to the change in water level, but the cost of the flooded lands, and the railway and the highway is not proportionate.

Q.—When you come to 316 or 318, or along in those stretches, the river is running out naturally to a point where you do not have to pay for much flooding?

A.—Yes.

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(continued)

Q.—And between 306 and 316 you are continually paying for flooding?

A.—Yes.

Q.—And for each foot you raise the water above 306 you have to pay for flooding all the way back to Chelsea to meet the situation?

A.—Yes.

Q.—And once you get to 316 that situation more or less runs out from the flooding point of view—it is not on the same grand scale?

10 Mr. St. Laurent: Our information is when you get beyond 318 you are at Wakefield, and you come into the question of damage to buildings, and it becomes very costly.

Witness: I have the flooding damage here, and it is noted on the exhibit. Between 316 and 320 it is \$95,000.

Q.—What is it between 306 and 316?

A.—\$293,655.00.

Q.—That is reflected back to Chelsea.

A.—Yes.

Q.—Is the \$95,000 also reflected back to Chelsea?

20 A.—Yes.

Q.—In any event, having made this development between 306 and 316, or above, you have actually spent the money on all those flooded lands, powerhouse appliances, additional height of powerhouse, and so on; and the development is now complete?

A.—The actual money has been spent, and the development is now complete.

Q.—Would it be consistent to say that seeing you are not making any profit above that point you should pull your water down and operate at a lower rate?

30 A.—No. We are not making any profit including this amount of head, considering that we have to pay a large annual figure for interest and depreciation and maintenance, such as I have included here in the 7½ per cent. We are making a profit including that, if we do not consider the cost—what we have spent to develop that power. After the power has been developed, if we do not consider what we have spent in developing it, we are making a profit. I say we are making a profit; there is some income before interest, depreciation and maintenance. Deducting interest on the capital expenditure required to include that power, we are losing money.

40 At the present time we are getting some revenue from including that property, but we are paying more money out on the interest involved to include the property.

Q.—Interest on money already expended?

A.—Interest on money already expended.

Q.—And your layout is designed in all respects to operate under that higher elevation?

A.—Yes.

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Superior Court*
No. 30.
Defendant's
Evidence.
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Re-examination
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(continued)

Q.—You spoke of leaving a space for a fifth unit at Chelsea?

A.—Yes.

Q.—Could that unit be operated as a regular power unit with the other four, or would it have to be used as a standby?

A.—It could be operated regularly with the other four, to improve the general efficiency of the plant. The maximum efficiency of the waterwheels is higher than the efficiency at maximum rating, and the efficiency of the plant would be improved by operating four machines at three-quarters load rather than three machines at full load.

10

Q.—Would it substantially increase your ability to sell firm power?

A.—Only to the extent of the increase in efficiency. As far as the extra firm power goes, I do not believe we could do it because we have not the capacity for increasing the floor capacity required for the additional firm capacity that would be available.

(And further deponent saith not.)

20

*In the
Superior Court*
No. 31.
Defendant's
Evidence.
R. H. Reid,
Examination
Nov. 6th, 1931.

DEPOSITION OF RUPERT H. REID, A WITNESS
EXAMINED ON BEHALF OF THE DEFENDANT.

On this sixth day of November, in the year of our Lord one thousand nine hundred and thirty-one, personally came and appeared

RUPERT H. REID,

30 of the Town of Beauharnois, in the Province of Quebec, Civil Engineer, aged 45 years, a witness produced and examined on behalf of the defendant, who, being duly sworn, deposes as follows:

EXAMINED BY MR. KER, K.C.,
OF COUNSEL FOR DEFENDANT:

Q.—You are a professional engineer of the Province of Quebec?

A.—Yes.

Q.—By whom are you employed at present?

A.—The Beauharnois Construction Company.

40 Q.—By whom were you employed before your connection with the Beauharnois Construction Company?

A.—By the Gatineau Power Company.

Q.—When did you leave the Gatineau Power Company?

A.—In October, 1930.

Q.—When did you join the Gatineau Power Company?

A.—It was the Canadian International Paper Company when I joined it.

*In the
Superior Court*

No. 31.
Defendant's
Evidence.
R. H. Reid,
Examination
Nov. 6th, 1931.
(continued)

Q.—When was that?

A.—In August, 1925.

Q.—Under whose direction were you while you were with the Gatineau Power Company or the Canadian International Paper Company which preceded it?

A.—Major Blue.

Q.—He was then, and is now, Manager of Development of the Company?

A.—Yes.

10 Q.—Major Blue has produced in this record, as Exhibit D-75, records of certain water elevations taken at Cascades under his supervision. A number of these were taken over the period from April, 1926, to November, 1926. Will you please state whether you had in hand the actual physical work of taking those levels, and which ones you took?

A.—I took those levels from April 30th to June 14th.

Q.—That is to say, the first seven items on this exhibit were actually taken by you personally?

20 A.—Yes.

Q.—The readings were made by you?

A.—Yes.

Q.—The figures between, and including, those dates represent the elevations taken by you on the gauges at that time?

A.—Those are the elevations.

Q.—Were the gauges put in by you?

A.—It was not done by gauges; it was done by rod and level.

Q.—Are the figures correct and accurate?

A.—Yes, they are.

30 Q.—What was the datum upon which you based yourself in taking the readings?

A.—The Geodetic Survey bench marks.

Cross-examination

CROSS-EXAMINED BY MR. ST. LAURENT, K.C.,
OF COUNSEL FOR PLAINTIFF:

Q.—Are those levels based on the first Geodetic Survey datum, or on the corrected datum?

40 A.—They were based on a Geodetic bench mark located about a quarter of a mile south of the old Cascades Station.

Q.—A bench mark about a quarter of a mile south of the old Cascades Railway Station?

A.—Yes.

Q.—A bench mark along the river?

A.—No; it was along the railroad.

(And further deponent saith not.)

*In the
Superior Court*

No. 32.
Defendant's
Evidence.
C. E. Ralph,
Examination
Nov. 6th, 1931.

DEPOSITION OF CLAUDE E. RALPH, A WITNESS EXAM-
INED ON BEHALF OF THE DEFENDANT

On this sixth day of November, in the year of Our Lord One thousand nine hundred and thirty-one, personally came and appeared

CLAUDE E. RALPH,

10

of the City of Ottawa, in the Province of Ontario, Civil Engineer, aged 47 years, a witness produced and examined on behalf of the Defendant, who, being duly sworn, deposes as follows:—

EXAMINED BY MR. KER, K.C.,
OF COUNSEL FOR DEFENDANT:

Q.—You are a professional engineer of the Province of Quebec?

20

A.—No.

Q.—You are a Civil Engineer by profession?

A.—Yes: McGill University.

Q.—You are at present employed by the Gatineau Power Com-
pany?

A.—Yes.

Q.—Were you so employed in the month of June, 1926?

A.—Yes.

Q.—Under whose direction were you then working?

A.—Major Blue.

30

Q.—The Manager of Development of the Company?

A.—Yes.

Q.—Will you please look at Exhibit D-75, produced by Major Blue, which is a record of the water elevation at Cascades; and will you please state which of those elevations you personally took?

A.—I checked those from our notes after they were made in the office. I checked them for typographical errors.

I took those levels from June 21st on.

Q.—You took every reading mentioned here after those deposed to by Mr. Reid?

40

A.—Yes.

Q.—You began on June 21st, 1926, and carried through to November 12th?

A.—Yes.

Q.—Will you please state as to the accuracy of those readings of the levels taken by you?

A.—They were done as accurately as any engineer could do them with a rod and level. They were not only readings.

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(continued)

Q.—You believe them to be accurate in every respect?

A.—Yes.

Q.—And this Exhibit actually reflects the levels which were shown and taken by you between those dates?

A.—Yes.

Mr. Ker: I have no further questions to put to the witness on this point, but, with Your Lordship's permission I will recall him later on some other matters.

Cross-examination 10

CROSS-EXAMINED BY MR. ST. LAURENT, K.C.,
OF COUNSEL FOR PLAINTIFF:

Q.—Are those levels referable to the same datum Mr. Reid mentioned?

A.—Yes.

Q.—About a quarter of a mile south of the old Cascades Railway Station?

A.—The old C.P.R. Railway Station, on the C.P.R. culvert, yes.
20 (And further deponent saith not.)

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Defendant's
Evidence.
O. Lefebvre,
Examination
Nov. 6th, 1931.

DEPOSITION OF OLIVIER LEFEBVRE, A WITNESS EXAMINED ON BEHALF OF THE DEFENDANT

On this sixth day of November, in the year of Our Lord One thousand nine hundred and thirty-one, personally came and appeared

30

OLIVIER LEFEBVRE,

of the City of Outremont, in the District of Montreal, Civil Engineer, aged 52 years, a witness examined on behalf of the Defendant, who, being duly sworn, deposes as follows:—

EXAMINED BY MR. KER, K.C.,
OF COUNSEL FOR DEFENDANT:

40 Q.—What is your profession?

A.—I am a Civil Engineer.

Q.—You are, I understand, a member of the Engineering Institute of Canada?

A.—I am.

Q.—You are also Chief Engineer of the Quebec Streams Commission?

A.—Yes.

Q.—Which is a Government body having to do with the control

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Defendant's
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Nov. 6th, 1931.
(continued)

of or general information regarding the streams in this Province?

A.—Yes.

Q.—For the Record, will you please state your qualifications?

A.—I am also a member of the Corporation of Professional Engineers of Quebec, with my friend Mr. Robertson; in fact, I am a member of the Council of the Corporation, and a member of the Board of Examiners of the Corporation, with my friend Mr. Robertson. I am also a member of the American Society of Civil Engineers.

Q.—What other Degrees have you?

10 A.—Two years ago I was given the Honorary Degree of Doctor of Applied Science by the University of Montreal. That does not add to my qualifications.

Q.—Were you a member of the Canadian Section of the St. Lawrence Advisory Board?

A.—I was, and I am still.

Q.—You joined in the Report which was made by that Board?

A.—Yes. That Board was appointed in 1924, and reported at the end of 1926, and in 1927; and has been active off and on since then.

20 Q.—Would you please outline in a general way what were the duties of that Commission? What was it designed to investigate?

A.—It was requested to investigate the possibilities of the St. Lawrence River from the head of the Great Lakes to Montreal, in regard to its improvement as a deep waterway, and also its possibilities for the development of power: either the improvement of navigation separately, or the improvement of power separately, or a combination of both.

Q.—How many members were on the Board?

30 A.—Six: three United States engineers, and three Canadian engineers.

Q.—And, you were one of the members?

A.—I was one of the Canadian engineers.

Q.—Would you mind outlining briefly the nature of your duties as Chief Engineer of the Quebec Streams Commission?

A.—As Chief Engineer of the Commission I have full charge of all the work the Commission is called upon to do, and I have had full charge since February, 1913.

40 The Commission is a Provincial Government agency which is entrusted with the investigation of the power possibilities of the streams of the Province, and also is entrusted with the carrying out of works that may be required for the regulation of the flow of certain streams of the Province in order to increase their power possibilities.

Q.—Naturally those duties have caused you to become very familiar with the various streams in the Province and their possibilities and potentialities from a power point of view?

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A.—I feel I am becoming pretty familiar with them.

Q.—You are, of course, familiar with the Gatineau River?

A.—I am, yes.

Q.—Just to run briefly over the power concentrations on that river: the first is the Chelsea and Farmers' concentrations?

A.—Our first connection with the Gatineau River was in 1923, when the Commission had one of its engineers determine the profile of the river from the Ottawa River up to Maniwaki. A few years later we were asked to investigate the possibility of regulating the flow of the Gatineau by the construction of storage dams. That investigation was carried out jointly with the Canadian International Paper Company. It was decided that a reservoir could be built at a certain point in the Gatineau River, taking advantage of the large body of water which formed Lake Baskatong. The Baskatong Reservoir was decided upon in the fall of 1925 and the winter of 1926.

This regulation was made in view of the possible concentration at certain power site falls available in the river. The concentrations then contemplated were Farmers' Rapids, about five miles or so from the mouth of the river, where a head of about 67 or 68 feet was possible.

Q.—That is, about five miles from the confluence of the Gatineau and the Ottawa?

A.—About five miles from the mouth of the river.

The next one was the Chelsea development, where we took the head to be 97 feet.

Q.—What is the distance between the Farmers' Rapids and the Chelsea?

A.—It is a short distance; about a mile and a quarter or a mile and a half.

The Chelsea development practically concentrates at Chelsea all the fall available from the head of the Pêche Rapids down to Chelsea, and eliminates practically all the falls to the foot of Pagan Falls.

Q.—As one scientific concentration?

A.—Yes. I think it is a good concentration.

The next one was Pagan Falls, where a head of about 140 feet has been concentrated.

That leaves another possible site, which we call the Maniwaki group, where there is a possible head of 68 to 70 feet.

Q.—Above that you come to the headwaters and the storage lakes?

A.—Between Maniwaki and the storage dam there is still a possible head of practically 100 feet or so; I am not sure of the exact figure.

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Q.—Is there any name particularly given to that concentration?

A.—There is no advantage in developing those power sites so close to the dam, because they would have to be supplied by water just at the time when the others below are not requiring the water, and that would involve large waste of the storage.

Q.—You mean, so close to the storage dam?

A.—Yes. The area is too small to supply a power house, and there is no advantage in carrying out this development.

10 Q.—Do I understand you to say the logical existence of the concentration at Chelsea runs practically to the top of the Pêche, and then the concentration from Paugan runs up to the tailwater of the Maniwaki group?

A.—Yes.

Q.—Which is not developed?

A.—Not developed yet.

Q.—The Paugan concentration is developed?

A.—Yes.

Q.—For how much installed capacity?

20 A.—I do not know the installed capacity. There is a head of 140 feet.

Q.—I do not think you mentioned the horsepower now being developed?

A.—I do not think it is fully developed yet.

Q.—But the site is developed?

A.—It is developed, but the units intended to be installed there are not all in yet.

30 Q.—Those sites are both owned by the Gatineau Power Company?

Witness: What do you mean by “both”?

Counsel: Both the Paugan and the Chelsea concentrations.

A.—Yes, and Farmers’.

Q.—They are all owned by the Gatineau Power Company?

A.—Yes.

40 Q.—And the investigations you speak of as having been made with a view to determining the advisability of storage were part of the whole scheme of the development of the river?

A.—Yes.

Q.—With a view, particularly, to the great concentrations that were projected for development?

A.—At the time we investigated the storage possibilities we were not at all concerned with the details of the possible concentrations; we simply looked into the possibility of regulating the river,

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as such, without paying any attention at all to what could be done with the water below.

Q.—What is the storage capacity of the Mercier Dam—that is the Baskatong Dam?

A.—As far as we can measure, we take it to be ninety-seven billion cubic feet.

Q.—I think you said its construction was commenced about 1925?

10 A.—It was investigated in the summer of 1925, and the construction was decided upon in 1926. The work was carried out in 1926, and by the spring of 1927 the water was actually stored in the Baskatong Reservoir.

Q.—Have you a general idea of the cost of the Baskatong storage?

A.—Yes, I have.

Q.—Approximately what was the cost of that storage, including the dam and all the matters necessary for the storage?

20 A.—It is part of the duty of the Quebec Streams Commission to determine what the cost was, in view of the charges that may be levied against third parties benefiting from this storage.

Q.—What was the cost?

A.—We take it that the cost has been practically \$5,200,000.

Q.—By whom was that cost paid?

A.—It was paid by the Gatineau Power Company.

Q.—I understand within the last year or two you developed further storage at Lake Cabonga?

A.—Further storage was developed under the same principle as the other. The Company paid for it.

30 Q.—What was the cost?

A.—The Cabonga storage dam is taken to have cost, for the sake of assessment to third parties, practically \$800,000.

Q.—Does Lake Cabonga run into Baskatong?

A.—Yes.

Q.—It feeds it?

A.—Yes.

Q.—How much does Cabonga add to the ninety billion cubic feet that Baskatong brought in?

40 A.—It has not been accurately determined, but we take it to be in the neighbourhood of forty-five billion cubic feet.

Q.—Bringing the total up to something like one hundred and thirty billion cubic feet for the two storages?

A.—Yes.

Q.—I understand you to say those two storages were carried out as a part of the development by the Gatineau Power Company, the defendant in this case—as a part of their general development of the river?

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A.—Yes. The Baskatong storage was carried out at the same time that the Chelsea and Farmers developments were being made. The other was carried out later. It was only in 1928-29 the Cabonga storage was built.

Q.—Am I right in saying there would not be any justification for going to the expense of building storage up there unless a development at Chelsea were projected?

10 A.—There would not be any justification for going to that expense unless large power concentrations could be made on the river. There would not be any justification for going to the expense of that storage if only one of those developments had been contemplated.

Q.—Even one of the great developments?

A.—Even one of the great developments. It would not pay. It would cost too much.

Q.—I presume in no circumstances could it be justified for a small individual head of 10 or 15 feet, if it were available on the river by itself?

20 A.—I do not believe anyone would think of going to that expense for such a small head.

Q.—Am I right in saying that after the reservoirs are built and paid for they are handed over to your Department for administration and regulation?

30 A.—It is only fair to say those dams were built after a contract was entered into between the Department of Lands and Forests, or the Government as represented by the Minister of Lands and Forests, and the Company, whereby the storage works were authorized under certain terms and conditions. Amongst the terms and conditions is one providing that the Company has to pay for the whole cost of building the works, damage caused to third parties, and so on, and damage to Crown lands, and everything. There is another provision to the effect that after the work is completed it shall become the property of the Government, and the Government will cause the Quebec Streams Commission to operate those works in order to regulate the flow of the river.

40 Q.—Am I right in saying that on top of that the Government proceeds to charge the Company and have it pay a rent for the water coming down? May I put it in this way: can you outline the general principle governing the matter of charges to persons who benefit?

A.—I do not think it is altogether right to say that on top of that the Government charges. There is a charge by the Government. In the case of the Baskatong storage the charge of the Government is \$37,000 a year. It was \$35,000, but it has been modified to \$37,000 a year.

I think it is fair to explain that this charge by the Government is not at all an arbitrary one, nor is it a high charge, because in

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authorizing the Company to build that storage dam—and let us take the Baskatong for example—a very large area of Crown lands were flooded, which has not been charged as such. If those Crown lands had been estimated at anywhere near the price private individuals, or even companies, put on their lands, the charge of \$35,000 would appear to be very small.

Q.—I just wanted you to explain that in addition to paying a certain rental per year, as it were, for the use of this stored water, the Company pays the operating charges of those dams?

10

A.—Yes, it does.

Q.—To the Quebec Streams Commission?

A.—It reimburses the Quebec Streams Commission any money the Commission has to spend in the operation of those dams. However, it is only fair to state this operating charge is likely to decrease when third parties come in and take advantage of the storage.

Q.—Is the figure of \$37,000 which you mention in addition to or apart from the Cabonga?

20

A.—It is apart from the Cabonga. It covers only the Government charge applicable to the three power sites on the Gatineau which the Company has developed, Paugan, Chelsea, and Farmers, and is not subject to change by the fact that other developments come on, and is not at all applicable to Cabonga. There is a different charge for Cabonga.

Q.—What is the charge to the Company for Cabonga?

A.—The charge for Cabonga is on the basis of 50 cents per additional horsepower year, which practically amounts to \$36 per foot of head.

30

Q.—What is the per annum charge? \$10,000, is it not?

A.—I think it is \$10,728.

Q.—And for storage generally that is added to the \$37,000?

A.—Yes.

Q.—Bringing the charge up to something like \$47,000?

A.—Yes.

Q.—I understand that is what the defendant Company is paying, and presuming for the moment some third party other than the Company defendant were to develop power up above on the Gatineau, the Company would still have to pay?

A.—Yes, they would have to pay.

40

Q.—Prior to the Company defendant, or its auteurs or associated or affiliated companies, going into this matter of storage, had there been any serious investigation made with a view to installing storage on that river by the Government?

A.—Not that I know of. The first Government investigations as regards the possibilities of regulating the river were made in 1925. I am now speaking of Provincial Government investigations. I know

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there were some small investigations made by the Federal Government prior to that.

Q.—But nothing was actually done for the purpose of consummating this storage?

A.—Not until 1925.

Q.—And then only as a part of this general scheme for development?

10 A.—Yes. There is no need of storage unless you have power plants to take the additional water.

Q.—Would you mind defining the difference between storage such as you speak of, and pondage, in respect to a power development?

A.—There is a vast difference between the two. I do not know that I can express it clearly, but there certainly is a great difference.

20 Storage involves a body of water which has a volume such that it can be used to modify or to change the distribution of the natural water as between one season and another. For example, during the periods of high water in the year you can store the surplus, hold it back in a reservoir, and distribute that surplus at another period of the year when the water is low, the result being an improvement in the low water conditions of the river.

Q.—That is what storage is designed to accomplish?

A.—That is what storage is intended to do, and that is what it does—of course, not always to the extent we would like.

In other words, storage is a change in the distribution of the available supply of water on a stream as between one season of the year and another.

30 Pondage is a body of water which will permit of changes in the flow of the river from hour to hour of the same day—between different hours of the same day. The idea is what you take from the pondage to increase the flow for certain hours of the day you must restore into the pond by taking less water at other hours, so that there is no variation on the twenty-four hours.

Q.—And to restore it you have to shut down some of your units and not allow the water to run through the wheels?

A.—Yes. Perhaps I might make myself clearer by taking the Gatineau River as an example. The Gatineau River is regulated to 10,000 second feet—that is, a regular, continuous 10,000 second feet.

40 Q.—Regulated by reason of the storage?

A.—Yes; every second of the day. With pondage facilities at a given power plant it is possible to draw through the powerhouse, say, 12,000 second feet for, say, four hours. Then, if during the remainder of the day—twenty hours—water is drawn only at the rate of 9,000 odd second feet, the result of the whole day's operation is 10,000 second feet, and you have simply fluctuated slightly the basin oppo-

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site the power plant in order to increase your hourly supply of water to meet the demand.

Q.—Of course the word “ pond ” is not used perhaps strictly in the sense one expects. It means an area of available water behind a power development which is susceptible of being drawn down in that way?

10 A.—Pondage is looked upon more in the light of its area rather than its depth. The value of pondage lies in its area. If you have an area of two square miles, you can draw down, say, one foot, and have so much water; while if you have an area of one square mile, and you want to draw down the same amount of water, you have to draw it down two feet.

Q.—So that the manipulation of the pondage of a power development is a matter of how a company is able to draw from its pondage?

A.—Yes, it is.

20 Q.—I suppose although you referred to the fact of it being a matter of hours it might accommodate local eventualities for perhaps a day or even a week?

A.—Some plants, according to the requirements and the pondage possibilities, are operated on the basis of using the pondage not only for hourly fluctuations but for daily fluctuations and also for weekly fluctuations, with the idea that on Sunday, for example, the load is reduced, and the same amount of water goes to the pond and the level is restored. The St. Maurice plants at Grand'Mere, Shawinigan, and so on, are operated in that way.

BY THE COURT:

30 Q.—Am I to understand that the ponds are generally situated near the powerhouses?

A.—Generally speaking, yes. The pond is built more for head, and it is only in the case where you have a large area that it is possible to fluctuate it to advantage.

BY MR. KER (continuing):

40 Q.—It is really the whole available area behind a powerhouse that is susceptible of being drawn down?

A.—Yes.

Q.—I suppose you can imagine circumstances in which with a very small area behind a power development the use of pondage would be impossible?

A.—Generally speaking, a small area behind a power plant is not considered to be pondage worth while.

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BY MR. KER, K.C. (continuing examination-in-chief):

Q.—When we adjourned on Friday we were discussing the question of the differences between storage and pondage, and the last question I asked you was:

10 “ Q.—I suppose you can imagine circumstances in which if a very small area behind a power development was used the pondage would be impossible?”

And your answer was:

“ A.—Generally speaking a small area behind a power plant is not considered to be pondage worth while.”

20 Before we go further with this matter, would you be good enough to state what is the basis upon which your Department computes the cost which persons developing on a regulated river shall pay for the water they use as a result of that regulation? On the Gatineau, for instance?

A.—In a general way, the yearly charges are determined so that they will cover the interest on the capital cost, the sinking fund in thirty years, and the cost of operation and maintenance.

Q.—Of the storage works?

A.—Of the storage works, yes, sir.

Q.—In a general way, how is that annual cost allocated against the power properties that are benefited by inclusion?

30 A.—It is allocated on the basis of the head used at the different power plants which benefit.

Q.—That is to say a power plant utilizing storage, and working under a certain head, would pay a certain percentage based on the amount of head it utilizes?

A.—On the proportion of the total head benefiting from the storage. On the proportion of the head they use to the total head.

Q.—I take it you are familiar with the stretch of the Gatineau River in question in this case, from the upper part of the old Canada Cement Company property, known as the Cascades, to the foot waters of the Paugan development?

40 A.—I have seen that stretch of the river many times, yes.

Q.—Have you examined the calculations of head made available, or head possibly available, under varying conditions, on the property of Mr. Cross, which calculations have been produced in this case by Mr. Scovil. If you have examined them will you please state whether, in your opinion, those computations are based upon a proper scientific method of calculation?

A.—Yes, they are.

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Q.—In order to arrive at absolute scientific accuracy, what is really needed in the way of investigation of stream flow, and of head, in any given circumstances? Would you say cross sectioning was one of the things that should be done?

A.—If it is only a question of determining the actual slope of a stream, actual levels taken under certain flow conditions is about the best thing you can do. If it is a question of determining the effect of back water in a certain stretch on other stretches of the river—what we call back water effect—it has to be established by calculations; and the only way to arrive at a satisfactory result with those calculations is to proceed by taking cross-sections of the river, and the more cross-sections you have the better.

Q.—Will you briefly explain what you mean by the back water effect? What is the scientific explanation of back water?

A.—There is no scientific explanation of back water that I know of. Back water effect is that effect which is brought about in the slope of a river as a result of one rapid being eliminated, for example by water being raised against it.

Q.—Am I right in saying it is the effect of mounting water—piling up water, as it were—behind a dam, for instance? Would that cause back water?

A.—Yes, sir, it will cause back water, and it will eliminate a certain number of rapids; and the question is, having eliminated such and such a part of the upper rapid, what effect that may have on the rapids above that particular section.

Q.—Would you say it was necessary to study very carefully the back water conditions in estimating head available at a place such as the Cross property, with a view to determining what effect it would have upon the Paugan development?

A.—Yes. You have to determine by calculation how much water you can back against the La Pêche Rapids, for example, without affecting the river above.

Q.—Then, under ordinary natural conditions would there be a back water effect?

A.—If you go over a certain point.

Q.—You would have the result of raising the water at the foot of the Paugan tailrace?

A.—Yes.

Q.—One of the witnesses for the Defendant, Mr. Simpson, stated that in his opinion that even if Mr. Cross were developing up to the tailwater of Paugan he would not have sufficient pondage to be useful to him in any way. Have you given any consideration as to whether that is or is not a correct statement, in your opinion?

A.—I understood the area of the pond above the dam would be 470 acres: that is practically 75 per cent of a square mile. That could be used as a pondage, strictly speaking, to take care of small

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variations in the flow required from hour to hour in a day.

Q.—Mr. MacRostie, who testified for the Plaintiff, stated in his evidence:

“ I would say for a 300-day development you will get about 5,000 second feet, on a 300-day.”

He was asked:

10 “ Q.—That storage, with the average 300-day?

and his answer was:

“ A.—In the river as it was at that time.”

Later he was asked how he would expect to handle the remaining 65 days of the year at that flow, and he said in these circumstances he would take care of it through his local storage.

20 From any investigations you have made, do you think it possible to operate a plant at the Cross' property in the manner stated by Mr. MacRostie: that is, to utilize this pondage for 65 days of the year making up the full quota of power in that way?

A.—I do not think Mr. MacRostie meant he had as local storage above the Cross plant a sufficient quantity of water to help him out for 65 days. He certainly did not have that amount of water. It is not possible to take care of such a situation with local storage.

30 Q.—Mr. Scovil, who was examined on behalf of the Defendant, gave the unregulated ordinary minimum flow of the Gatineau as 3,000 second feet. What would be your opinion as to that?

A.—We take it to be between 2,800 second feet and 3,000 second feet.

Q.—I think the Reports of your Department bear that out?

A.—We stated 2,800 second feet.

Q.—What is the regulated flow?

A.—10,000 second feet.

40 Q.—Have you examined the charts and calculations prepared by Mr. Simpson, relating to the question of pondage as applied to the Chelsea development, and the difference in amount of pondage above 306?

A.—Yes, I have checked them.

Q.—Do you agree that his deductions are correct in that respect?

A.—Yes.

Q.—He stated in his evidence (page 309):

“A.—My chart shows the draw-down that is taking place at the Chelsea plant, and which has taken place over a consecutive

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period of three months, which I consider as normal operating conditions for the Chelsea plant ”.

Do you consider that is a normal period on which to calculate it?

A.—I understand he has taken it from the actual records of the plant. I have not checked that at all.

Q.—He was asked:

10 “ Q.—How much does that represent in horsepower? Have you figured that out ”?

and he answered:

“A.—I gave an estimate of 1,035 horsepower, at 70 per cent load factor, as being the amount of power by reason of the upper pondage ”.

20 Would you consider that to be a fair statement of the matter?
A.—He gets that because he can operate at the same load factor practically with less loss of head, and he gains power by reducing the loss of head.

Q.—Would you consider that calculation has been properly made and that it fairly represents the situation?

A.—To me it is a sound basis of arriving at a calculation as to the value of the pondage.

30 Q.—As against that, one of the witnesses for the Plaintiff stated that the annual advantage in horsepower would figure up to something like \$700,000. That was the estimate given by Mr. Robertson.
What would be your opinion as to that statement?

A.—The calculations made by Mr. Simpson do not show any such result as that.

I think Mr. Robertson has figured he would use as pondage a depth of many feet of water; I do not know how many—10 feet or so. We do not think this would be a practical way of operating that plant.

Q.—As a matter of fact, is this Cross property which we are now discussing a low head or a high head proposition?

A.—Everybody admits it is a low head proposition.

40 Q.—Ordinarily, what is the difference in cost of the development of a low head as compared with a high head? Is it relatively lower, or higher, than a high head proposition?

A.—Generally speaking, a high head development is a good deal cheaper than a low head development.

Q.—In your opinion, is it possible to assume a general price for raw water power in comparing a high head proposition with a low head proposition such as this?

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10 A.—No, it is not possible to assume a general price for low head water power sites. The fact that a site is worth a certain amount of money at one point does not mean that another site, even nearby—even on the same stream—may be comparable to it at all as regards value. It all depends on the physical conditions, the geological conditions, the facilities for development, and so on; which may be altogether different at the two sites. Every site has to stand on its own merits. A water power site may be absolutely impossible of development, if, for example, rock is not available whereon to place the dams and the power houses and the works which are required.

Q.—In connection with the work of your Department in studying a river, what attention do you give to the low head properties on the river?

20 A.—I must say that part of the work which the Commission has to do for the Government consists in the study of the rivers as regards the possibilities of their development for power, and this work is important for the purpose of determining a proper division of the groups, as we call them, which would guide the Government in leasing different sections of a river; how should the division lines between those different sections be arrived at; what is the best method of locating the lines, and so on. In so doing we are always looking for the possibility of high head concentrations. We do not consider that a power site is economically usable if the head is less than 20 feet. Whenever we meet the condition that we have a head which is less than 20 feet, it means it has to be included with other development, or else it would have to be practically abandoned for the moment at least.

30 Q.—In other words, it is generally found that heads under 20 feet are low head propositions in themselves, and are not really susceptible of proper economical use?

A.—They are susceptible of being used, and a lot of them are used in a small way, for just local purposes. I must say, however, that the trend of water power development today is all in the direction of high head developments; in fact, I do not think a low head development for the purpose of distributing power has been developed in the Province in the last fifteen years. No central electric stations have been lately developed under low head developments.

Q.—What do you mean by central electric stations?

40 A.—I mean power plants from which power is distributed in cities, and towns, and so on.

Q.—Some reference has been made by the Plaintiff, by way of comparison, to the Darwin and Manchester Falls properties on the Ouareau River, and it has been sought to show there is a comparison to be made between that power and the power on the property in question here. Reference was also made to the Masson property, to the St. Ursule Power, to the Métis Power, to the Paugan

Power, and to various other high head propositions. What would be your opinion as to the possibility of comparing such propositions?

A.—My answer is, as I stated previously, there is no comparison that can be made between a raw power site at one point and a raw power site at another point. Generally speaking, however, a power site affording a high head is preferable to a power site with a low head.

10 Q.—For instance, if you get a purchase price for a high head proposition would you in any way assimilate that, in the way of raw power, to a very low head proposition?

A.—No. In my opinion, you cannot even compare a high head development on a stream with another high head development adjoining it on the same stream.

Q.—Have you examined the estimates prepared by Mr. Simpson as to costs for a development of a proposition on the property in question here?

A.—Yes, I have. I have discussed the basis of the estimates, unit prices, and so on, with Mr. Simpson.

20 Q.—Do you consider them to be in all respects proper in the circumstances?

A.—I consider his estimates are fair.

Q.—In each case, I think, even for the sake of argument, giving Mr. Cross the benefit of the head up to the Pêche (which apparently is not his property), Mr. Simpson arrives at the conclusion that a development could not be economically made. Do you agree with that statement?

A.—I do, yes; on the basis of the cost of power.

30 Q.—Those estimates were in respect to the possible development of this site in itself. Mr. Simpson also spoke of the cost of including the head above 306—that is, at the lower part of Mr. Cross' property—up to the foot of the Paugan, and he stated his investigations showed that from the Company's point of view that was not an economical addition to the Chelsea development. Have you investigated that matter at all, and, if you have, will you please give us your views on it?

A.—Yes, I have.

40 It is found that level 306 is the maximum to which the water can be raised by the construction of a dam at Chelsea without necessitating the relocation of a section of the Canadian Pacific line and a section of the highway. The relocation of those two systems of transportation were given to me as having cost in the neighbourhood of One Million Dollars or so; I am not sure of the figure—\$900,000 or thereabouts. It is, therefore, obvious that unless the water is raised so as to gain a certain number of feet of head, this expense would not be justified, and my interpretation of the figures is that unless you go up to about 12 to 14 feet over 306 you cannot make it

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an economical development. If you go up 12 to 14 feet, then it becomes a paying proposition.

10 Q.—I think Mr. Simpson stated there was a section above 306— I think he said 10 feet—that the next 10 feet above 306 to be developed in connection with the Chelsea meant a very considerable loss of power each year, but that to go up from the top of that extra 10 feet another 4 feet the whole thing averaged up a very much smaller loss. The plaintiff appears to have found that rather strange, and seemed to have difficulty in appreciating that just that particular section of the river should be the one to cause a loss. Can you make a brief statement of how that might arise in connection with this matter?

A.—The whole thing appears to be that way, because the cost of the relocation of the railway and of the highway has been charged wholly against the Cross property in Mr. Simpson's way of analyzing the situation. As a matter of fact, it should be charged over anything that is a gain over the 306, and not only limited to 10 feet.

20 Q.—You noticed in his estimates he charged it against the Cross property, then he gave the loss on the Cross property credit for the additional 4 feet. Do you consider that to be a proper way of doing it?

Witness: In other words, in order to justify that expense you have to go more than 10 feet?

Counsel: If you go 10 feet the expense would not be justified, but if you go another 4 feet your loss is met.

A.—Yes.

30 Q.—You have had a great deal of experience in these matters. If plans were laid before you for a development which stopped at 306, that is at the lower part of the Cross property, and if by stopping there it would mean a stretch of the river between 306 and 316, or 321, was forever going to remain undeveloped, or was uneconomical of development; what would be your opinion as to the inclusion, or the advisability of inclusion, of that extra head in the development?

40 A.—I would certainly recommend that the available head above be included in the development, unless it could be shown to be absolutely prohibitive as to cost.

Q.—In other words, you would think it would be the policy to force a Company to develop all the possible head on the river, and leave none undeveloped forever?

A.—I do not know I would go so far as to say it would be the policy to force a Company, but if my opinion were asked in the matter I would certainly recommend that the additional head be included.

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Q.—And you would recommend that whether the loss of the total raising amounted to approximately \$11,000 or \$12,000 a year? You would consider that to be not too extravagant a loss for the Company to make?

A.—I would look at the proposition of the Chelsea development as a whole, and so long as the addition of that head does not bar the development from the limits of economy I would insist it should be in.

10 Q.—I suppose the Government from time to time submits to you plans which have been filed for approval?

A.—I think I should make it clear that the plans which are submitted to the Government for approval, as regards the development of power, or storage, and so on, have to be approved by the Hydraulic Service of the Department of Lands and Forests, not by the Quebec Streams Commission. In most cases, however, those plans are submitted to the Commission for the sake of advice as to any changes which may be required in levels, and so on; and if such a plan as this had been submitted to me, as Chief Engineer of the
20 Commission, without the inclusion of the property above, I would certainly have asked the reason why it was not included.

Q.—Am I right in assuming that, in a general way, where there is any large variation in flow in a river, at a given point, as the flow increases, the head at that particular point will be lowered—if you have a dam in that particular stretch in the river?

A.—Generally speaking, the head available in a small rapids is less under high water conditions than it is under low water conditions.

30 Q.—Taking it for granted that the property in question here had a working head of 9 or 10 feet under regulated conditions, that is under 10,000 cubic feet per second. Would that head be reduced at flows higher than the regulated flow? For instance, would it be reduced by flood flows?

A.—I think it would be reduced, yes. I do not know how much.

Q.—Assuming that in flood times the river runs up to, say, 75,000 cubic feet a second. In your opinion, is there any critical point between 10,000 cubic feet and 76,000 cubic feet at which that reduction in head would stop?

A.—No, sir.

40 I may say I do not understand what is meant by a critical point under those conditions.

Q.—Neither do I. I asked you because I thought you might understand something which I did not.

As a matter of fact, will that head decrease continuously as the flow increases from 10,000 cubic feet up to 76,000 cubic feet?

A.—I think it will.

Q.—In other words, there is a tendency for the water to level

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itself out as the flow becomes greater?

A.—Yes.

Q.—So if a person had a working head of, say, 9 feet at a 10,000-foot flow, he could not expect to utilize that same head at a 75,000-foot flow?

A.—No.

Q.—The point I had in mind is covered by the testimony of Mr. MacRostie, one of the Plaintiff's witnesses (page 185):

10 “ Q.—How would your head be reduced for flows in excess of 50,000 cubic feet?

A.—If my memory serves me right, I think the critical point is 40,000.

Q.—What do you mean by the critical point?

A.—Where you have your minimum head I have one level taken, at the discharge of 46,000, if that will answer your question sufficiently closely. The elevation of the tailwater would be 310.85 under normal conditions.

Q.—The tailwater would be 310.85 under 46,000?

20 A.—Yes. In addition to your 18 feet head you would have the increase above 18. That is an abnormal condition. I would say you would have close to 9 feet ”.

I was putting the question to you largely on account of the use of the words “ critical point ” by Mr. MacRostie. Is there any such thing as a critical point in the increase of stream and the reduction of head?

30 A.—It is a practice I never used, and I really do not understand exactly what Mr. MacRostie means. I would be very glad to have enlightenment from him when I have a chance.

Q.—I think you stated you had not made any particular calculations to see how that head would be reduced?

A.—No.

Q.—May I cite the evidence of Mr. Scovil, one of the witnesses for the Defendant (page 190):

“ Q.—What reduction would take place in that head, the regulated flow, 10,000 cubic feet, being considered?

40 A.—At a flow of 10,000 cubic feet, the limiting elevation at point ‘A’ without affecting Paugan would be 316.2; and the elevation at point ‘C’, with a flow of 10,000 feet, would be 305.03—showing a gross head of 11.17. Deducting 1.3 feet, the remaining head would be 9.9 feet.

Q.—It is absolutely accurate to say that the head available for 10,000 cubic feet per second flow (which is the present flow of the river) on that property, by moving the water up as high as you could, would be 9.9 feet?

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A.—Yes.

Q.—At the higher flows it would be similarly reduced?

A.—Yes. At flood stage, of 70,000 second feet, natural conditions would prevail, and the elevation at point 'A' would be 317.9, and at point 'C', 312.2; leaving 5.7 feet”.

Witness: Those examinations are not the result of calculations; they are the result of actual measurements.

10 Q.—Mr. Scovil's testimony continues:

“ It would be reduced to

A. (interrupting)—5.7.

Q.—Is that the net?

A.—No, that is the gross. Deducting 1.3 feet would leave a net head of 4.4 feet”.

20 Is that a proper hypothesis: that as the flow increases up to 70,000 feet there might be a reduction down to 4.4 feet on a 9-foot head?

A.—That is generally the case.

Q.—You spoke of raw undeveloped power properties not being susceptible of comparison from the point of view of head or general conditions. Are there, to your knowledge, any other small low head rapids on this river which might perhaps be assimilated to the Cross rapid?

30 A.—To the best of my knowledge I think the La Pêche Rapids might be assimilated. And further up the river, in the vicinity of Maniwaki, there are other small sites which might be assimilated, as regards head in any event. I do not know about the facilities for development, but as regards head available they might be comparable.

Q.—What are the names of those you have in mind?

A.—I have in mind particularly the Rapides des Os, above Maniwaki, where there is a head of about 7 feet.

Q.—And the Calumet?

40 A.—Calumet is a rapid which has a certain head over a certain distance. It would not be altogether comparable to the property of Mr. Cross, in the sense that on the Cascades I think you have more of a drop. The other is a long rapid.

Q.—You think the des Os is more comparable?

A.—I think it is.

Q.—Have you any personal knowledge of what the des Os Rapids were purchased for?

A.—I have no personal knowledge of what the des Os were purchased for.

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Mr. St. Laurent: In any event, I do not think we should have verbal evidence of that. I do not know whether there was a purchase or not, but if there was one it was presumably covered by a Deed.

BY MR. KER (continuing):

Q.—Will you just tell us what you know about the dealings with respect to the des Os Rapids personally?

10 Mr. St. Laurent: I think I should enter an objection to any verbal evidence of sales which would be covered by Deeds of Sale.

Mr. Ker: I am simply asking the witness if he has any personal knowledge of offers that may have been made to the owners for the des Os Rapids.

20 Mr. St. Laurent: I do not know that we would get anything from such evidence as that. We have had an offer of \$1,200 for something for which we are claiming \$600,000. I do not believe evidence of an offer would be of any assistance in determining the price.

Mr. Ker: I understand the situation to be this: an offer was made for the des Os Rapids, and Mr. Lefebvre was consulted as to whether it was a reasonable one. After examining the whole matter he gave his opinion. I submit that is surely competent evidence. The witness has stated the des Os Rapids is comparable to the Cross' property, and the opinion he gave to the owners of the des Os property was his opinion as to the value of it.

30 His Lordship: He might give his opinion as to the value, based upon his examination of the property: but, is it competent to prove the contents of a Deed by verbal testimony?

Mr. Ker: As a matter of fact, we have the Deed, and we will produce it. It will show that the price mentioned by Mr. Lefebvre was the actual price which was eventually paid for the property.

40 His Lordship: I think I might allow the evidence to be made under reserve of the objection, and subject to whatever the Deed may contain.

BY MR. KER (continuing):

Q.—I think you have a personal knowledge of the des Os Rapids?

A.—Yes. I was consulted by the owners of the property as to price that was offered to them for it.

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His Lordship: That is just what is objected to by Mr. St. Laurent. The Deeds will speak for themselves.

Mr. Dessaulles: It does not prove the offer, but it proves the witness was consulted by the owners, who said to him: "We are offered so much. What do you recommend?" That is a fact, which is subject to verbal proof.

10 His Lordship: Then, it would be hearsay.

Mr. Dessaulles: His consultation and his opinion would not be hearsay.

Mr. St. Laurent: It may be he can state his opinion, but I submit it is not open to him to relate a conversation he had with some outside parties at which we were not present.

BY MR. KER (continuing):

20 Q.—You state you are familiar with the des Os Rapid?

A.—I saw it, yes.

Q.—In your opinion, what would be a reasonable and proper price to pay the owners for the des Os Rapid, undeveloped, just as it stood?

A.—I gave it as my opinion at that time that an offer of \$200.00 per foot of head was reasonable and should be accepted.

Q.—To whom did you give that advice?

30 A.—To the owners of the power site, who wrote to me asking for my opinion on the matter. I gave them my opinion in a letter which is on file.

Q.—Who were the owners?

A.—The Oblate Fathers, at Maniwaki.

Q.—When was this?

A.—In the month of May, 1927, if I am not mistaken.

Q.—And, you say you recommend they should accept \$200.00 per foot of head?

40 A.—Yes. I told them they could not hope to make a separate development out of the small head available, and that the only value this could have would be the possibility of incorporating it with some other development in the vicinity, and that in the circumstances I thought a value of \$200.00 per foot of head was a fair price for them to accept.

Q.—Presuming the same question had been asked you by Mr. Cross, what would your reply have been?

Mr. St. Laurent: I object to that. We did not ask Mr.

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Lefebvre the same question, and I do not think that is the way to establish the value.

If my learned friend wishes the witness to give his opinion of the value of the property, he may have him do so. We did not ask for it, and I submit my learned friend should not assume we did and make the evidence on that basis.

Mr. Ker: Perhaps I might put it in another way.

10 BY MR. KER (continuing):

Q.—Taking into consideration the various elements you have mentioned with respect to high and low heads, and taking into consideration the statement you have just made with respect to the des Os Rapids, in your opinion what would be the value of the rapids on Mr. Cross' property?

20 A.—Assuming conditions to be the same, I would say that Mr. Cross' property would be somewhat more valuable than the other, per foot of head; because the drainage area is a good deal larger. There is a big tributary, such as the Desert River coming in between the two.

On the same basis I would say \$300 per foot of head would be about fair.

Q.—That is speaking of Mr. Cross' own property?

A.—Yes.

Q.—And giving effect to the advantages you spoke of as belonging to that property, as against the des Os?

A.—Yes. There is more water available.

30 Q.—Giving effect to the fact that there is more water available, and to the other advantages you have spoken of, you would consider \$300 per foot of head to be about fair for the Cross' property?

A.—Yes.

Q.—Of course, you are an entirely independent witness, and you have no interest in this case one way or the other. Had this Cross case come up at all at the time you asked your opinion in regard to the des Os property?

A.—Not to my knowledge.

40 Q.—Can you state, in a general way, what would be the yearly cost for storage if a development were made on this Cross' site?

A.—I can only tell you what it would be per foot of head. I would not undertake to fix a sum.

Q.—What would you say it would be per foot of head?

A.—If the cost of storage is estimated to be about six million dollars, the yearly interest charges on that at 8½ per cent, would be \$510,000. This charge, under present conditions, would have to be paid for by the power developments that are in operation. This

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would cover a total head of 319 feet, or at the rate of \$1,595 per foot of head.

Q.—\$1,595 per annum, per foot of head?

A.—Yes. That would cover the interest charge.

Then there is another charge which corresponds to the annual amount paid to the Government, amounting in this instance to \$37,000 a year. This is applicable to Paugan, Chelsea and Farmers—a total head of 303 feet. This figures out at the rate of \$122 per foot of head in the case of Baskatong, and a similar charge corresponds to
10 \$36 per foot of head in the case of Cabonga—a total Government charge of \$158 per foot of head.

Then there is the cost of operation. If we take the cost of operation of those dams for the years of operation, it amounts to \$59.50—practically \$60—per foot of head.

A total of \$1,813 per foot of head is the charge which would have to be met under the present conditions.

This charge is liable to vary when additional power plants are put in operation, such as Carillon, for instance, or the plant on the Ottawa River, where there is a possible head of 60 feet. There is also
20 what we call the Maniwaki group, on the Gatineau River, which I have taken as a possible head of 75 feet.

Q.—In other words, the more head developed the less the contribution by the others?

A.—Yes.

In this set of conditions, when all the available heads are ultimately developed, the total head will be 454 feet. \$510,000, divided by 454, gives \$1,123 per foot of head.

The Government charges do not change, or are not affected at all, but the cost of operation would be reduced to \$42 per foot of
30 head.

That is a total of \$1,323.

Q.—It is improbable, then, they would go below \$1,000 under the best conditions?

A.—This last figure I have mentioned is the lowest the charges could be.

Q.—And what is that figure?

A.—I figure it at \$1,323 per foot of head.

Q.—Below which it is unlikely to go?

40 A.—Yes.

Q.—That is a yearly charge, per foot of head?

A.—Yes.

Q.—So that we may have it of record, will you please tell us what investigations, if any, have been made by your Department with respect to storage on the Ouareau River?

A.—The Ouareau River was investigated for storage possibilities, I think in 1922, or 1923—I think it was 1922. In any event, the

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Report of the investigation is published in the Annual Report of the Commission for the year 1923.

Q.—That Report would, of course, be available to anybody who purchased a power site on that river in 1927? The results of your investigations, and your Reports, were available?

A.—Yes.

Q.—Do you recollect what possibilities were thought to exist with respect to the increase in flow in that river by storage?

10 A.—At the time the investigation was made our data as regards the flow of the river was very incomplete. We had a tentative figure of 760 feet or so as a possible regulation at the mouth of the river. I must say that since that time continuous records of the flow have been kept, and it has been found that this figure of 760 feet has to be reduced to something like 550 second feet in the low years.

Q.—Considerably reduced?

A.—To about 550 second feet in the lowest years.

20 Q.—Under a head of 212 feet, which according to the evidence I understand exists on the Darwin and Manchester propositions, what would the minimum 550 cubic feet second by regulation yield in water horsepower?

A.—It would be 212, multiplied by 550, divided by 8.8. I can figure it out for you if you wish.

My calculation comes to 13,250 horsepower.

Q.—I refer you to the evidence of Mr. Robertson, one of plaintiff's witnesses, who stated in regard to this river (page 254):

“ Q.—Is that a regulated river?

30 A.—No, not any more so than there may be an odd little lake with a lumbermen's shack on it.

Q.—Do you know the river personally?

A.—Yes, I have been on it. As a matter of fact I looked at those falls twenty-five years ago for some other person who was thinking of purchasing. That transaction was recorded as \$200,000, paid in cash, and the amount of power available is just a little less than 4,000 horsepower; that is about \$50 a horsepower.”

40 I understand with your minimum of regulation there would be approximately 13,000 horsepower instead of 4,000 horsepower in that river, under a 212-foot head?

A.—Yes, that is what there would be with a flow of 550 second feet.

Q.—Would you please give me your opinion as to the accuracy of this statement with respect to regulation: “ There may be an odd little lake with a lumbermen's shack on it ”? As a matter of fact, what lakes are possible of utilization for storage up there?

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A.—The statement is correct as to the regulation. There is no regulation.

Q.—Will you state what lakes are available for regulation at the head waters of the Ouareau River?

A.—There are two big lakes available for storage purposes, but they are not controlled at the present time.

Q.—There is no question as to the scientific possibility of actually using them as storage lakes if it were necessary?

A.—The Report shows the possibilities. I forget the figures.

10 Q.—Would you kindly make the calculation to cover 13,250 horsepower at a price of \$200,000?

A.—Just slightly over \$15 a horsepower.

Q.—That is potential horsepower, of course?

A.—Yes.

Q.—As against the \$50 estimated by Mr. Robertson?

A.—Yes.

20 We investigated those storage possibilities in the summer of 1922, and submitted a Report to the Government in the fall of 1922, and at the Session of the Legislature in 1922 a Bill was passed, Statute 12, George V, Chapter 10, authorizing the Commission to regulate the flow of the Ouareau River whenever conditions would require it.

Q.—We have worked out the potential horsepower on the Darwin and the Manchester at something like \$15, instead of \$50, under storage. I think I understood you to say that, in your opinion, that was not a power comparable in any way with the Cross property on the Cascades?

30 A.—I do not admit that under any conditions you can compare a power site at one point with a power site at another.

Q.—The Darwin and Manchester propositions are, of course, very high head propositions?

A.—Yes, Darwin and Manchester are very high head propositions. They are practically sheer drops.

Q.—Do you know anything about the Metis site, which has been referred to in the evidence here?

40 A.—I do not know anything in particular about it, except what I have seen of it on the profile of the river as determined by one of the engineers of the Commission. That profile shows it is a sheer drop of 100 and some odd feet.

Q.—Would it, in your opinion, be comparable to this little property at Cascades?

A.—Oh, no.

Q.—Have you had occasion to give any special attention to the examination of the little Meach Creek power?

A.—No, I have not examined the property at all.

Q.—You could not express any opinion as to its possibilities?

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A.—I know where it is situated, and I know the drainage area of the creek, and I know the power possibilities in a general way, but I have not examined the property at all.

Q.—Have you formed any opinion as to the available permanent power in that creek?

Mr. St. Laurent: Does my learned friend think that is quite in order, in view of the fact that the witness has just said he never examined the property?

10

BY MR. KER (continuing):

Q.—In any event, it is not a very great power development?

A.—It is a small power plant.

Q.—What would you consider to be its continuous or permanent force?

A.—I think we had better have an understanding as to what is meant by a permanent power. If you mean a power that would be available every second and every hour of the year, I would say the plant there would have a rather low figure. Perhaps it might be somewhat different if the very low seasons were eliminated, but then you would not have what is called permanent power.

20

Q.—Would there be a continuous, or permanent, or dependable power of 200 or less horsepower there?

A.—I am positive there would not be 200 permanent horsepower, in the sense I have stated as to what is permanent horsepower.

Q.—You are, of course, familiar with the regulation on the Lièvre River?

30

A.—Yes.

Q.—What is the present regulated flow?

A.—The flow regulation on the Lièvre River was undertaken by the Maclaren Company under practically the same terms and conditions as those imposed on the Gatineau Power Company on the Gatineau. The creation of a reservoir was made by the construction of a storage dam across the Lièvre River at a point about 50 miles north of Buckingham. The flow of the Lièvre River is regulated to 3,400 second feet in normal years, and this may have to be reduced to about 2,800 second feet in the low water years. Under natural conditions the Lièvre River would have a low flow of about 1,500 second feet in normal years, with a minimum as low as 900 second feet in the very low years.

40

Q.—And you say it is now being regulated to 3,400?

A.—3,400 in the normal years, and 2,800 in the dry years.

Q.—Are there further possibilities of regulation on the Lièvre River?

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A.—I believe there are. I have not investigated that, but I believe there are further possibilities of regulation.

Q.—Which have not been developed at all?

A.—No.

Q.—In your opinion would the drainage area on the Lièvre justify an eventual regulation to, say, 4,000 feet?

10 A.—Yes. The Lièvre has a drainage area of 4,000 square miles, and I am sure its flow can be regulated to a minimum of 4,000 second feet in normal years. I am not so sure as to the very dry years.

Q.—But you think it could be regulated to 4,000 cubic feet second under normal conditions?

A.—Yes.

Cross-examination

CROSS-EXAMINED BY MR. ST. LAURENT, K.C.,
OF COUNSEL FOR PLAINTIFF:

20 Q.—This determining of back water effect is, I understand, a calculation which involves the determination of how fast the water will get away from a given point at a given flow per second?

A.—Yes.

Q.—And that is arrived at by actual observation of a number of different stages, and then calculation to correlate those different stages?

A.—If you refer to actual conditions as you find them, the determination is made as you say. Then there is no need for calculations.

Q.—But is it not necessary to get a certain amount of data from actual observation, and from that you can plot a graph which will complete the in-between points?

30 A.—I am afraid I do not quite catch your meaning.

Q.—After you have observed the conditions at certain stages, you have to get an idea of what would be the probable effect between those points you have observed?

A.—Yes, you make a curve.

Q.—Using the points you have actually observed?

A.—Yes.

Q.—And by means of this curve you get the approximate effect between the points observed?

A.—Yes.

40 Q.—I suppose if you had a complete cross-section of your channel you could arrive at the back water effect by calculation?

A.—That is the only way you could do it.

It does not seem clear in your mind as to the stage when calculations are required. If you have a certain drop—a certain rapid—say 4 feet, you do not require any calculations to establish what that drop is under different conditions; you only have to take measurements. But when you want to destroy that drop by backing water

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against it, and you want to figure out what the effect above will be, then it is necessary to have calculations to determine what that effect will be. If you could back the water, and observe what the conditions are under such destruction—what change is taking place above—it would be better than any calculation.

Q.—So actual experience is really the best test? When you can observe it, it is really the best test?

A.—Yes.

10 Q.—And I assume that because of the rapidity of the flow at given stages there are a great number of factors which are affected?

A.—Yes. Generally speaking, hydraulic computations are always liable to be questioned, and measurements are to be preferred in every case.

Q.—As a matter of fact, you know the elevation to which the water is backed against La Pêche is 318, or 319, or 320?

A.—Yes.

Q.—That is what has been done since 1927?

A.—Since the Chelsea plant has been in operation.

20 Q.—When your attention was called to Mr. MacRostie's evidence with respect to the possible use of pondage over the Cross property, I think you said you did not understand him as meaning to affirm that that pondage could take care of 65 days' shortage?

A.—I do not think he meant that. I am sure he cannot do it.

Q.—And you did not understand him as meaning that?

A.—I do not recall that I paid particular attention to that statement. I have no particular recollection as to what he meant. In any event, I am sure he cannot do it; and I do not think he meant that.

30 Q.—As a matter of fact, all a pondage can do is to take care of the hour to hour fluctuations in the same day?

A.—Yes: otherwise it is not pondage, it becomes storage. Although at the time he was speaking of local storage.

Q.—Am I to understand the pondage enables you to run out during certain hours of the day more than is coming in, provided that during other hours of the day you run out less than is coming in, to compensate?

A.—And to restore conditions.

Q.—That is pondage as worked in a practical manner?

40 A.—That is the way daily pondage is worked. Sometimes the same operation is carried out over a week, then it is called weekly pondage—it is only an extension of the same system.

Q.—Where it is carried out for a week, I understand you to say that sometimes at the end of the week there is a shut-down which enables the owner to collect into his pond water to compensate the surplus which has been run out during the active days of the week?

A.—Yes. The storage dams let out the same amount of water

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over the seven days of the week, and the power plant owners below usually take advantage of the Sunday slackening in the power demand to replenish their ponds above their plants.

Q.—So, if in the operation of a plant you have three, or four, or five hours a day in which you have a peak load, and a certain number of hours in which you have a load under the average, you can take care of the peak load by running out more water than is coming in, and then compensate it by water you do not require when you get to the low load?

10 A.—That is exactly the function of pondage.

Q.—And, what you can afford to use up for your peak load is replaced by what you can expect to get back during the period of low load before you have to get back to another peak?

A.—Yes. It is limited also in another way by the loss of head which the drawing of surplus water at certain hours may make. If you have a pondage area which is small, that would involve a loss of head which might affect the efficiency of the plant, especially if the head is not large.

20 Q.—You have to observe your conditions, and calculate, so that you will not lose as much by loss of head as you gain by the additional water?

A.—Absolutely.

Q.—And, when Mr. Simpson spoke of 1,035 horsepower as resulting from the additional pondage here, you checked the calculation as meaning that having the additional pondage his head was kept up?

A.—By using the same pondage he loses that much less head.

30 Q.—If he did not have the additional pondage, to get the same result he would lose head enough to gain the 1,035 horsepower?

A.—That is exactly the situation.

Mr. Ker: I do not think there was any reference in respect to 1,035 horsepower in connection with pondage on Mr. Cross' property.

Mr. St. Laurent: If my learned friend wishes to go over it again he may do so. I have it as clearly as I can understand it.

40 Mr. Ker: It was related directly to the Chelsea development: not to the Cross' property at all.

BY MR. ST. LAURENT (continuing):

Q.—Is it not a fact that the availability and use of pondage can allow the owner of a plant to contract for a much larger quantity of firm power at a low factor, or relatively low factor—a seven-day load factor—than he could otherwise do?

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A.—That would not apply to firm power. As I understand firm power it is power which is available twenty-four hours a day.

Q.—But, is it not possible to contract for power at 70 per cent load factor and rely upon storage to take care of the peaks that will occur in your plant?

A.—It is very desirable that such a condition should exist at any power plant.

Q.—Otherwise, there would be no advantage in bringing down the percentage of load factor?

10 A.—Otherwise you would have to operate under practically 100 per cent load factor.

Q.—You spoke of this Cross' property as being a low head property?

A.—Yes.

Q.—A great number of other properties have been referred to as high head properties—the Chelsea, the Farmers, and the Paugan, for instance, are high head developments as compared with the Cross' property?

20 A.—Yes.

Q.—I think you said you did not know, or did not remember, of any low head development for a central plant for cities and towns in the last fifteen years?

A.—Yes, I said that.

Q.—The trend has been to concentrate the head available on a river in high head developments?

A.—Yes: That has been the trend, and it is yet.

Q.—And, that has been the trend for the past two or three decades?

30 A.—That has been the trend since the advent of the present waterwheel—the turbine—since about 1890, or so; and with the improvement in the waterwheel, the trend is that way.

Q.—When was the first important hydro-electric development under a high head made in the Province?

Witness: The first under a high head?

Counsel: Yes.

40 A.—I do not know that I can answer your question, as to exactly when the first was. It would be around Shawinigan. The development commenced about 1902 or 1903.

Q.—Was that not about the first important high head hydro-electric development?

A.—I think it was one of the most important, in any event; if not the most important.

Q.—And, it has been practically from the beginning of this

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century those hydro-electric developments have been going on in this Province of Quebec?

A.—Yes.

Q.—Prior to that the use of water powers was by means of dams not constructed in the manner in which they are constructed at the present time?

10 A.—Not at all. Further than that, until the advent of the turbine, in 1850 (I said 1890 in one of my previous answers, but I should have said 1850) the water was used by means of the rough waterwheels.

Q.—Paddle wheels?

A.—Paddle wheels, either undershot wheels or breast wheels, or overshot wheels.

20 Up to that time, owing to that limitation in equipment, the heads used were, and had to be, all low heads. Up to that time it was not possible to use a high head; in fact, any high head had to be divided into steps. They had to do then just the reverse of what they are doing today. At the present time they take a number of small steps and concentrate them into a high head. At that time they had to do the reverse.

Q.—And although, as you say, the turbine may go back to 1850, its use in a general way commenced in this Province about the beginning of this century?

A.—Between 1895 and 1900.

Q.—And has been developing very rapidly in the last fifteen or twenty years?

A.—Yes.

30 Q.—According to your information, how far back does this method of concentrating drops at one point go? When they commenced to put in those high head developments, is it not a fact they went to the point where there would be practically a sheer drop, and developed it?

A.—They went to the easiest points.

Q.—And those were all points where there were practically sheer drops?

A.—Yes.

Q.—When they put in dams they backed the water for a great many miles behind the dams?

40 A.—That practice commenced, according to my recollection, within the last fifteen years. They were limited not only by the power demand, but up to that time they were also limited by the facilities for transmission.

Q.—But it is within the last fifteen years that this new system of putting up a high dam and backing the water for a number of miles behind it has come into practical application?

A.—I would say in the Province of Quebec, yes. Up to that time

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the developments most looked for were those with the sheer drops, as you say. Later on they had to resort to more costly developments, and they began to resort to those concentrations.

Q.—And now the practical way is to determine what is the total drop of a river, and to divide it up into as small a number of concentrations as seems economically advisable?

A.—That is right.

Q.—And that is done over very long stretches of river?

A.—Yes.

10 Q.—For instance, what is the distance from the mouth of the Gatineau to the point where the Pagan backwater ceases?

A.—I would say, roughly speaking, about 55 to 60 miles. I am subject to correction on that.

Q.—Something over 50 miles is involved in the three concentrations, Farmers, Chelsea and Pagan?

A.—I would say about 50 miles, because below Farmers there is a certain stretch of river, I think about 5 miles, which is not developed, and which is not susceptible of development either. That, however, means a small loss in head.

20 Q.—I understand there are even stretches longer than 50 miles involved in works which are in progress on the upper St. Maurice, for instance? Has not the Shawinigan a stretch of over 100 miles there in two or three concentrations?

A.—They have a stretch of river of about 60 miles or so, and they propose to put in six concentrations.

Q.—Six concentrations in the 60-mile stretch?

A.—60 or 70 miles.

30 Q.—And that method of concentrating by means of a dam which backs water over a long stretch is in effect in a great number of places in the Province?

A.—Yes.

Q.—And that method involves submerging the smaller powers—the low head powers?

A.—It does, yes.

Q.—You said that, in your opinion, it would be unreasonable to try to fix any general value for undeveloped waterpower, for the reason that each site had to be examined as to its own possibilities in order to determine its value?

40 A.—Absolutely. That is my opinion.

Q.—And you gave as an illustration of a reason for that the fact that in some places there might not be proper foundations?

A.—Yes.

Q.—And without proper foundation it might be an absolute economical impossibility to make a development?

A.—Yes. There might be other factors also. I mentioned the matter of foundations as an illustration.

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Q.—A foundation would be an essential feature, and without it you could not go on?

A.—That is right.

Q.—But you were not suggesting there might not have been a proper foundation on the Cross property?

A.—Not at all.

Q.—As a matter of fact, without having made any close examination of the property, are you not of opinion there would have been a proper foundation there?

10 A.—Oh, yes, there is.

Q.—Did I understand you to say that wherever in your investigations you meet the possibility of having under 20 feet head you look about to see if it cannot be concentrated with something else?

A.—I am afraid I may not have made myself quite clear on that. We look for the highest possible concentrations, whether they are a concentration of rapids of 20 or 30 or 50 feet or so. If we have a rapid that is 20 feet or less we know we have to concentrate it with some others in order to use it.

20 Q.—You know the best economical development, in view of this modern trend and the possibilities of the waterwheels, and so on, will be to combine it with something and get a greater head than 20 feet?

A.—Yes.

Q.—It has a greater economic value in that way than it would have developing it alone?

A.—That is the only way you can give it any economic value.

Q.—Those concentrations are usually very large undertakings, are they not, running into millions of dollars of capital investment?

A.—Most of them do, yes.

30 Q.—When you spoke of elevation 306 as being the maximum to which one could go without relocating the C.P.R. and the highway, were you speaking from your own investigation or just from the information that has been made available to you?

A.—Just from the information that was given in evidence here.

Q.—You made no examination of it personally?

A.—I made no actual measurements.

40 Q.—And the same is true, I suppose, about this relocating cost of one million dollars? You were told that above elevation 306 there had to be relocation of the C.P.R. and of the highway, and that the cost would run to about one million dollars?

A.—I know from my personal knowledge of the sites that the C.P.R. and the highway had to be relocated in order to include that development. Whether that relocation became necessary at 305, or 306, or 307, I am not sure. I do know positively, however, that they had to be relocated in order to include those properties.

Q.—And do you not know whether it became necessary at 302?

A.—No, I do not, except what I heard in evidence here.

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Q.—And you do not know whether it cost one million dollars or not. All you know is it involved an expenditure of large sums of money?

A.—When Mr. Simpson says in evidence here the relocation of the C.P.R. cost so much, and the relocation of the highway cost so much, I accept his figure.

Q.—But you made no check at all of those costs?

A.—Not at all. I do not think it is necessary.

10 Q.—When you say that unless you go twelve or fifteen feet above 306 it does not pay, that is on the basis of the figures supplied by Mr. Simpson?

A.—It is on my own deductions of the figure given to me as the cost of the relocation, and comparing that with the amount of power given by the addition of each foot of head. It is obvious, for example, it would not pay to spend \$900,000 in order to gain one foot of head, because one foot of head will only give you 1,000 horsepower, and if you spend \$900,000 for that, it is \$900 per horsepower. So it is obvious you have to go a certain number of feet before it becomes an economic proposition.

20 Q.—You say one foot would only give you 1,000 horsepower. As a matter of fact, it is something better than 1,000 horsepower per foot, is it not?

A.—Usually we take the power possibilities on a 90 per cent basis, and we take that to be the head, multiplied by the discharge, divided by 10. That is as accurate as anything else, and it has the advantage of being very easy to figure out.

Q.—Whereas the actual figure is to divide by 8.8?

30 A.—8.8 is theoretical power. You never get that in a power plant. You would be satisfied if you got 90 per cent.

Q.—Where are the des Os Rapids located?

A.—Somewhere above Maniwaki.

Q.—About how many miles from this property?

A.—It would be 75 miles, anyway.

Q.—In your opinion, were those rapids susceptible of individual development?

A.—No, sir, they were not.

Q.—Were they in the vicinity of any other rapids, with which they could have been tied up to produce a head of over 20 feet?

40 A.—Yes, they could be connected with the Maniwaki group of development. In fact, I understand that is the very purpose for which the purchase was negotiated.

Q.—To whom did the other rapids belong? Were they still part of the Crown domain?

A.—I believe they were leased by the Department to the Gatineau Power Company.

Q.—A lease which was a part of this general scheme of devel-

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opment of the Gatineau River?

A.—I do not know about that.

Q.—At the moment you have not any precise recollection about this lease?

A.—If I remember correctly, the lease was negotiated practically at the same time as, or a short time prior to, the negotiations for the carrying out of the storage works; so I think you may say it was a part of the general development.

10 Q.—Was this the only rapid that was privately owned in that vicinity?

A.—That I do not know.

Q.—You do not know there was any other?

A.—There are other rapids, but I do not know whether they are privately owned or not.

Q.—You mentioned a price of \$200 per foot of head. Upon what was that based. Is it an arbitrary figure, arrived at because you thought it was proper to pay something for a thing the owner could not use himself?

20 A.—The Oblate Fathers, the owners of this property, wrote to me, through Father Levesque, and told me they were offered a price of \$200 per foot of head for this property, and they wanted to know whether I considered that price was a fair one and whether I considered they could do anything with the property themselves. I told him they could not expect to do anything with the property themselves, and that the only way this property could be used would be by including it with some adjoining power sites. Then I figured approximately the number of horsepower they could get at that point of the river, under a head such as they had, and I told them \$200 per
30 foot of head was, in my estimation, a fair offer and that they should accept it.

Q.—Was this based upon anything definite, or was it just merely based upon the fact that there should be some kind of a value attached to it but there was nothing to go by to fix it?

A.—Probably. I was convinced there was not much of a value anyway, and inasmuch as there had to be some value, I thought that was a fair value.

40 Q.—It was not fixed mathematically? You considered it was a thing the owner could not use, and that he should get something for it?

A.—That is it.

BY THE COURT:

Q.—Would the \$200 be a guess?

A.—Not absolutely a guess. I simply figured that under a head of 7 feet at that point they could get so much horsepower. There was

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a possibility there of so much horsepower. In my estimation (and I am giving you my candid opinion) a raw horsepower site has very little value generally speaking, and I thought I was giving them good advice when I told them to accept that figure.

BY MR. ST. LAURENT (continuing):

10 Q.—Starting from the opinion you have (and which I am not disputing at all), raw horsepower, even susceptible of development, has very little value?

A.—Raw power, as such, has very little value.

Q.—And this was a raw power, which was not susceptible of separate development?

A.—That is right.

Q.—And you could see no use to which the owner could put it?

A.—No.

Q.—And, having an offer of something for it, you thought you would be giving them good advice in advising them to take it?

20 A.—Yes. I considered it was more or less found money for him.

Q.—And it was on the same footing that you mentioned \$300 with respect to the Cross property?

A.—I want to make myself clear on that point. I do not attempt to compare the two sites at all, because I stick to my opinion that no two sites are comparable.

30 I was asked on the basis of the power that could be produced at the des Os Rapid, and the power that could be produced at Mr. Cross' property, and assuming the condition should be the same, I was asked what would be the value.

Q.—But in your opinion they are not comparable?

A.—They are not comparable, no.

Q.—So the basis you were asked to assume, and on which you founded the figure of \$300, is not, in your opinion, proper basis?

A.—That is one way of putting it, and it is right. It is not a proper basis. I do not admit any proper basis to compare raw power sites.

Q.—And the \$300 was merely made up on that basis, which, in your opinion, is not a proper basis?

40 A.—That is absolutely correct.

Q.—With respect to the Ouareau River, did I understand you to say the revised figures showed that there could be a regulation at 550 second feet?

A.—That is what I said, yes.

Q.—I just want to have it clear in my mind. Are you saying there is that much water, which, if properly controlled, would give 550 cubic feet second; or are you saying that the topographical con-

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ditions are such that you could make a control which would produce that?

A.—The topographical conditions are such that we can make a control up to that extent, but there is much more water than that.

Q.—Have you any recollection of what that storage would cost?

A.—I think we have an estimate that it would cost in the neighborhood of \$550,000.

Q.—That would be without Government charges?

10 Witness: What do you mean by that?

Counsel: It would be leaving out of account the charges which might have to be paid to the Government for the use of the basins of those reservoirs?

A.—That would be the capital cost involved in the creation of the reservoirs required to obtain that regulation.

Q.—The capital cost for building the dams, the gates, etc?

A.—Yes.

20 Q.—And, in addition to that there would be the proper charges, whatever they might be?

A.—There would be annual charges to cover that capital cost.

Q.—And to cover whatever rental the Government might see fit to require for the use of the basins involved?

A.—Yes: and the cost of operation and maintenance.

Q.—Do you know what is the unregulated flow of the Ouareau River?

A.—Something of the order of 175 feet or 200 feet.

Q.—From 100 to 200 feet?

30 A.—To my mind the unregulated flow of the Ouareau is something like 200 second feet, at Rawdon—about 175 feet or 200 feet at Rawdon.

Q.—And, if 550 second feet give about 13,000 horsepower, Mr. Robertson's estimate of 4,000 horsepower for the unregulated flow would be just about right?

A.—I do not at all question the correctness of his figure.

Q.—Would it be a fair inference from your evidence to say that, in your opinion, undeveloped raw horsepower has very little value, and that the various transactions Mr. Robertson mentioned

40 in his evidence were made at too high prices?

A.—Yes, that is my opinion.

Q.—But, you are not disputing the fact that they were so made?

A.—I am accepting the fact. I am regretting it, in many instances, for the public.

Q.—They may be a series of illustrations of the truth of the statement that lots of foolish things have been done in the last decade?

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- A.—Yes, absolutely.
- Q.—Of course, the Gatineau River, because of its slope, and because its large drainage basin, is an important power river?
- A.—It is very important.
- Q.—Possibly, with the St. Maurice, the most important power river—with the exception, of course, of the St. Lawrence?
- A.—And the Saguenay.
- Q.—Those would be the three most important power rivers in the Province?
- 10 A.—And the Ottawa.
- Q.—The Ottawa, which is fed by the waters of the Gatineau Basin?
- A.—In the lower section only.
- Q.—Did I understand you correctly as saying that the Lièvre River, without regulation, would have a flow of about 900 second feet in the low years?
- A.—That is what I said, yes.
- Q.—And, about 1,500 second feet for the average years?
- 20 A.—About 1,500.
- Q.—And, the regulation, which is being prepared. . . .
- A.—(Interrupting): It is effective now.
- Q.—Then, let us call it the present regulation—would give about 2,800 cubic feet second for the years in which without regulation it would be 900?
- A.—Yes, that is practically what it means.
- Q.—And, 3,400 cubic feet second for the years in which without regulation it would be 1,500?
- A.—That is right.
- 30 Q.—Are there rapids known as The Sixes in the Maniwaki group?
- A.—Yes, there are.
- Q.—Is there not one of those rapids which is used in a small way?
- A.—There is a power development there, near Maniwaki.
- Q.—A small power development?
- A.—I do not know the particulars of it. I know it is a good size power development.
- Q.—It is not what is usually regarded as a permanent dam?
- 40 A.—I think there is a permanent dam.
- Q.—Do you recollect how much head is developed there?
- A.—No, I do not recollect. I could check it up very easily. I know it is a low head plant.
- Q.—Just a few feet?
- A.—It is more than a few feet. I can give you the figures. The head is 16 feet. It is on the rapid known as the Corbeau, 5 miles below Maniwaki. The head is given as 16 feet.

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Q.—That is the developed head?

A.—Yes.

Q.—Would that be a part of the 319 feet to which you have referred?

A.—No. It would be a part of the 454 feet I have mentioned.

Q.—And, if it is developed at the present time, it is not taken into account?

A.—I do not think the plant is in operation.

Q.—Is it not producing power for the lighting of Maniwaki?

10 A.—I do not know. In any event, it is not taken into account.

Q.—So, if it is in operation it has not yet been assessed for storage purposes?

A.—No, it has not been assessed for storage purposes, for the simple reason that, as I understand, it is the property of the Gati-neau Power Company. It has never been taken into account. It is supposed eventually to be a part of the Maniwaki group develop-ment.

20 Q.—And it, perhaps, would not be benefiting very much from the storage, if it is just a low head local power, or used for local purposes?

A.—Yes.

It has not been taken into consideration: I do not know why.

Re-examination

RE-EXAMINED BY MR. KER, K.C.,
OF COUNSEL FOR DEFENDANT:

30 Q.—In respect of the effect of back water, Dr. Lefebvre, did I understand you correctly to say, that if a dam is built, and you are desirous of ascertaining the back water effect from that dam, it is a matter of some accuracy because the dam is there, and the back water effect can be easily determined when the dam is placed?

A.—When the dam is placed there the actual test can be made.

Q.—There was, of course, no dam at Cascades at any time on this property of Mr. Cross? There is no dam there, and never has been?

A.—No.

40 Q.—So in estimating the back water effect or possibility of development there, what, in your opinion, would have been abso-lutely necessary to do in order to make an estimate of what the supposed back water effect would be from such a dam?

A.—One has to take cross-sections of the river at different points, and enough of those cross-sections to have a fair representa-tion of the actual conditions in the river, and then apply hydraulic computations to these conditions.

Q.—Is it your opinion that could be done without cross-sec-tioning the river?

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A.—No, it could not. It is absolutely essential to have cross-sections.

Q.—What I meant was, you could not compute it by taking elevations or levels, before, without any dam being in? You would need to cross-section the river?

A.—Generally, we would need to cross section the river.

Q.—There was just one other point I wanted to enquire about again, on which you were cross-examined, that is with respect to the comparison between des Os and the Cascades? I understood
10 you to say that in a general way no comparison could be made between any two of those powers?

Witness: As to value?

Counsel: As to value.

A.—As to value.

Q.—But, with respect to the Cascades, was I right in understanding you to say that first of all it is clear they are both on the
20 same river, the Cascades and des Os?

A.—They are both on the Gatineau.

Q.—Would both be subject to the maximum and minimum flows?

A.—Except for the difference which the tributary area between the two may make.

Q.—They would both be subject to the same regulated flow now, of course?

A.—Practically, yes.

Q.—And was I right in stating that in your opinion they are
30 similar inasmuch as you believe they are not either of them susceptible of commercial and economical development in themselves?

A.—Well, I stated that, yes.

Re-cross-
examination

RE-CROSS-EXAMINED BY MR. ST. LAURENT, K.C.,
OF COUNSEL FOR PLAINTIFF:

Q.—What is the point on the Gatineau River for which the regulation of 10,000 cubic feet second is devised?

40 A.—At either of the power plants at Paugan or Chelsea. It makes no difference.

Q.—Does it not happen that in these regulated schemes, that when there is water flowing from that part of the drainage basin below the dam, the water is being conserved in the water dam?

A.—Absolutely. It has to be that way. That is the only way we can get storage.

Q.—How far below the storage dam is this des Os Rapids?

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A.—It is just about 25 miles or so.

Q.—So that it would be almost directly affected while water was being withheld in the storage reservoir?

A.—Yes, it might be at times.

Q.—There might be periods when there would be water enough coming in for Paugan and Chelsea to give the 10,000 cubic feet, and water would be in the process of being stored in the reservoir?

A.—It would apply if the des Os Rapids were developed at the actual site, but if it is concentrated on the Maniwaki group, that
10 does not apply.

Q.—It brings it down?

A.—It brings it down below the Desert River.

Q.—But it did affect it in its natural condition?

A.—It would, yes.

(And further deponent saith not.)

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20 DEPOSITION OF WILLIAM S. LEA, A WITNESS PRODUCED
ON BEHALF OF THE DEFENDANT.

On this ninth day of November, in the year of our Lord one thousand nine hundred and thirty-one, personally came and appeared

WILLIAM S. LEA,

30 of the City of Montreal, Consulting Engineer, aged fifty-four years, a witness produced on behalf of the defendant, who, being duly sworn, doth depose and say as follows:

EXAMINED BY MR. T. R. KER, K.C.,
OF COUNSEL FOR DEFENDANT:

Q.—You are by profession a Consulting Engineer?

A.—Yes.

40 Q.—Do you devote yourself to any particular branch of your profession?

A.—I have been mostly connected with hydraulic work. I do not devote myself entirely to one. I do everything I can do, but it has been largely with water supply, sewerage and hydraulic electrical structure and hydraulic investigations of rivers.

Q.—You are graduate of what University?

A.—I am a Science Graduate of McGill University.

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I am a member of the Engineering Institute of Canada and of the Corporation of Professional Engineers of the Province of Quebec, and of the American Society of Civil Engineers, and four other minor societies.

Q.—How long have you been practising your profession?

A.—31 years. I might say I graduated in 1908, but I had been working before I went to college on hydraulic work, amongst them since dams were constructed, with 74 dams, and I was on outside work as an engineer on construction.

10 After graduation from McGill I was for three years with a company here, a contracting company who controlled the rights to build in Canada the Amberson dam, the Raymond pile, with concrete reinforced with a special bar, and during that time I was an estimator and designer for that company, and built several dams in Canada, and designed a good many reinforced concrete structures.

20 I also, during those three years, gave lectures at McGill University on water supply, sewerage, and in the last year I was connected with the University, the class in hydraulics, which is the Fourth Year class, was divided, and I taught one branch of that class, and after that I went to Vancouver and was in the employ of the City of Vancouver in charge of the water department, bridges, and all sub-structures such as subways, and everything that did not come under the street department and sewer department, and that brought me to 1913 when I returned to Montreal, and went into partnership with my brother, R. S. Lea, under the name of R. S. & W. S. Lea. I continued in that connection till 1919, and since that time I have been a Consulting Engineer myself, and as I said, we have had a good deal to do with hydraulic investigations and in the design of dams.

30 I may mention quite a few, but the largest ones are a dam in Winnipeg, that was just completed on September 1st of this year. It is a hydro-electric development of 100,000 horsepower, at Slay Falls.

I was employed by the City of Winnipeg first of all to determine to what height they could raise the water back of that dam without back flooding properties six miles up the river, and I was also asked to approve of the stability of every structure in that work. And following that, I was, within a month or two, engaged to advise them during construction, and that engagement lasted for two years. It 40 terminated with the opening of plant on September 1st.

Subsequent to that I have been engaged by the City of Winnipeg to report upon sewage disposal plans for the city.

I am a member of the Sewers Commission, and have been for five years, and although not in name I am in effect the Consulting Engineer of that Commission who are carrying out quite an extensive sewer programme here.

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Q.—Latterly, can you name some of the hydro-electric develop-
ments?

A.—I think the Back River power has been mentioned. I think
almost every engineer here has had something to do with that.

10 I can tell you what I did in 1924. We submitted a report to Mr.
A. J. Nesbitt, of Nesbitt & Thompson, at that time who was investi-
gating that, and we were asked to determine three things, first of all,
what flow they could depend on, secondly, what the flooding damages
would be in that stretch of the river, because they are damming the
water up against the foreshore of the City of Montreal by allowing
the only and maximum head they could get. Now, that involved a
calculation of back water for, I think it was, about five miles up to
Cartierville, and it is rather an important thing to do, because flood-
ing damages in Montreal are very, very valuable.

20 At Cartierville I know that the construction of that plant was
going to be upset at Ottawa by the property owners at Cartierville,
including some of those very valuable properties—I believe Lord
Atholstan and Colonel Meighen and several other people there. As
a matter of fact, I did in the end report to them in that connection—
I forget by whom I was employed, but it was a legal firm, his name is
Mr. Mulvena.

Q.—Of the firm of Foster, Hackett & Mulvena?

30 A.—Yes. I also negotiated an agreement with the City of Mont-
real and the Provincial Board of Health with regard to the construc-
tion of that power, because their rights, as granted by the Province
of Quebec, were contingent on that, and I think for that plant I was
asked by Mr. Wurtele, the Chief Engineer of the Power Corpora-
tion, the discharge capacity of the dam. I designed the remedial
works which they had to build to protect the City of Montreal
against flooding, and during construction I was also asked to deter-
mine the height to which the coffer dam should be built by the con-
tractor, in order to pass the spring floods. As a matter of fact, I never
did the last one, because the flood came before I got it done.

Q.—You have then been minutely concerned with the construc-
tion of what is now the present Montreal Island Development at
Back River?

A.—Yes.

40 Q.—You spoke of devoting some particular time to backwater
studies?

A.—Yes.

Q.—Would you indicate briefly just what is meant from a hy-
draulic point of view by backwater, and what its effect in a general
way may be upon power developments?

A.—Well, back water studies become necessarily as a problem
part of the design of nearly all hydro-electric plants, or, for that
matter, dams on any kind of rivers or streams, for the reason that

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when the dam is built there it raises the water level at the point where it is built, and the height to which that dam can be raised is usually limited by the flooding of possibly some other plant upstream, flooding its tailrace and cutting off its power, or flooding properties upstream which are too valuable to flood, and the necessary investigation involves taking cross-sections of that river.

10 What we mean by cross-sections is that surveyors are sent out who, in the first place, prepare a plan of the river, and they will take levels across it at certain intervals, which will show in an elevation the section at every point. This data is necessary for the engineer to determine in any particular case if the dam is raised, say ten feet at this point, how much it will affect the level, if any, five miles or two miles upstream.

Q.—Is it possible in your opinion to determine it otherwise accurately than by cross-sections?

A.—No.

Q.—The effect of back water?

A.—No. That is the only data you have.

20 Q.—Would it, in your opinion, be a satisfactory method of proceeding to estimate it perhaps more or less at random from the elevation at which you are supposed to be working?

30 A.—I am speaking now of a dam that is going to be built. I mean, the river elevations, it is true, are important, as before that dam is built you will get all the data you possibly can of that surface grade, that is, the slope of the river at different discharges. That will help you in the first place to spot where there may be restrictions below the surface which would not be apparent to the surveyor when you send him out to take the cross-sections of the river. If he is there and knows the actual slope of the river, if he sees a place where the river is sloping in quickly or falling rapidly, he knows there must be something down there in the bottom that is restricting flow, and he will, of course, take a cross-section and make the survey much more carefully and much more intimately in that section than he would in a reach where there is scarcely any flow provided. All that data is important, but it must be supplemented by the cross-sections above because, when the dam is built, the river is flowing in a different channel.

40 Q.—What is your opinion as to the possibility of valuing undeveloped water powers by way of applying to the general market price throughout the country, per horsepower? Is it possible, in your opinion, to do that?

A.—No, it is not possible to do that, in my opinion.

Q.—Would you state what the elements are that would necessarily require to enter into the consideration of the value of any power site as a power site?

A.—To determine the value of a power site, it is necessary to

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do what has been done here, prepare such plans, of the possible development, as are necessary to determine what is the cost to develop that site, and having found the cost of development, and likewise the cost of producing one horsepower, it is a simple matter to find out whether it is worth while developing or not. The only other factor you need is the price that power can be sold for in that district.

Q.—Applying those principles to the matter of this power site of Mr. Cross, have you had occasion to investigate the possibilities of developing at that site?

10 A.—I have examined and made an estimate of the cost of developing that site under what I considered were the best conditions from an economic point of view. I have taken the design which is referred to as 3-D because, in that design, they show a normal forebay level up to elevation 317.6, which is higher than it showed in any other of the plans which they submitted, and it is unquestionably the design which will give the cheapest power development.

Q.—You are now testifying quite independently of any head between those two levels?

A.—Absolutely.

20 Q.—Taking the highest possible head to which reference has been made (I think by the witness Mr. Simpson), would you state what, in your opinion, would be the result from the point of view of possibility of economic development?

A.—I have taken Mr. Simpson's design and his estimates, and I have checked them over, and I have found this, that while I would not design some of the structures in the same way as he has, and while I would not apply precisely the same unit cost to some of the items of his estimates, the fact is that I would not estimate that
30 power any cheaper than he has. I think he has taken a minimum estimate for the development he has proposed there.

I may add that I have taken his own figures for the power house hydro-electric equipment. That, I understand, of course, is a question of fact, a quotation which I presume has been put in as an exhibit, and I do not know anything about highway flooding, the railway flooding, I have simply taken the figures for this item.

Q.—Do I understand you to say that apart from those items which you mentioned, you have worked out independently yourself a plan to estimate the cost, independently entirely of those which Mr.
40 Simpson has made?

A.—Well, I started with the same thing as he started with, that is, the coffer dams.

Now, I may say in fairness to that estimate, that his price of \$9 per cubic yard, on the face of it, is fairly high for the erection and removal of that coffer dam, but in this case here I cannot see how the contractor can proceed to do that work in one summer unless, in the first place, he excavates rock for his coffer dams, which

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will not be part of his useful excavation, at least, in the very small part. What I mean by that is this, that in some works when a contractor starts to work, he can excavate rock for certain structures which he can use in his coffer dam. He could do that. Slay Falls was a case in point. Their coffer dam for their power house was adjacent to a dam whose base was above the normal river level, and when he started to build his coffer dam there, he cleaned off the earth over the site of that dam which was adjacent to the power house, and the rock that he had to excavate there was simply taken
10 out of the excavation and put in the coffer dam.

Now, I cannot see myself how that can be done. If it can be done I will take \$1.50 a yard off that estimate.

Q.—Is it your opinion, taking the estimate in toto, that it is possible to do that work for any less than has been estimated, or to produce power for any less than the figure Mr. Simpson has arrived at?

A.—No, it is not. In the very next item, which is the sluiceway dam and lock chute and bulkhead dam, I may say that that bulkhead
20 is not put in his statement, but it is really in his estimate. I re-designed that dam because I do not think there is enough concrete in it, and in my judgment I get, for those structures, \$110,000 where he gets \$97,350.

If I may go back. The coffer dams and unwatering—I take \$5,000 less for unwatering than he took, because I am taking for granted in that price that we are paying here for the coffer dams, that they are going to build a very good one, and that the leakage will not be very much, and I consider that unwatering a little high.

His next item is the earth and the rock fill wing dam. I re-
30 designed that structure. I thought I could do it cheaper and better, but I found my estimate somewhat higher than his, so I took his price of \$7,110. If it is worth while I can put this in as an exhibit.

Q.—What I am anxious to know is whether in your opinion that figure could be reduced in any way for the total, the general cost of the whole work?

A.—My estimate of the total cost of that would not be less than his, and I may say that I think he is too low in his power house contract. I think he is too low in his power house excavation.

Q.—Has that estimate been prepared on the basis of utilizing
40 a large excess of head over that, which is located actually on the physical property of Mr. Cross? What would your opinion be as to the economics of development scaling down under the head given under the last estimate you have been examining? Would it be proportionately greater or proportionately less, or what would it be?

A.—It would cost more per horsepower if that site is developed at a lower head.

Q.—Then, to sum up this matter, what is your opinion as to

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whether or not, granted that high head, that could be economically and profitably developed?

A.—It cannot to that extent.

Q.—Is it, then, possible for it to be developed at any lower head economically?

A.—No. The only thing I think is possible to do with that, they might run out a wing dam and make a very, very small development. That is the only chance I see of a power like that, where they run out a wing dam and make a little mill. I have not analyzed it.

10

Q.—Would you expect there any such development as to be able to sell power in a large way?

A.—No, I do not consider that power can be developed continuously in a large way at that site, by any means whatever.

Q.—Are you familiar with the Métis power which has been mentioned by the Plaintiff?

A.—Yes.

20

Q.—What would your opinion be as to the possibilities of intelligently comparing the Métis Development with the development on Mr. Cross' property?

30

A.—The Métis Development has an effective head of around 125 feet. The site is rock; the coffer dam was quite easy. I don't think that the normal flow ever made the depth any greater than three feet in the river, except down at the power house where they had a little trouble. The penstocks leading down from the dam to the power house were scarcely 200 feet in length, and taking it in every way, it was a high head plant, and it was simple to develop. I happen to know about it by reason of the fact that the company who built that, the Foundation Company of Montreal,—I do not know the particulars, but in some way that company in taking the contract for building those works had to be responsible for the plans. Mr. Chadwick, the Manager of the Foundation Company, asked me to re-design it, and he told me at the same time that as they were not allowing anything for that, he could not do very much, and what I did was, I lent him a man from my own office who did design for it, and he paid him during that time. As a matter of fact I never got the man back. Naturally, my former associate came back quite often. I was down there while they were doing construction twice, and I am credibly informed that the initial installation there based
40 on a regulated flow of 350 cubic feet per second, apart from whatever flooding damage there may have been, which I do not know, did not run over \$60 per horsepower. It is incomparably better.

Q.—You are referring now, of course, to the capital cost per horsepower

A.—The capital cost.

Q.—Not to the annual cost?

A.—No, not to the annual cost.

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Q.—There has been some question as to the advantage to be gained by the Gatineau Power Company by pondage made available by the higher level to which the waters have been taken. Did you hear Mr. Simpson's evidence on that point?

A.—Yes.

Q.—Are you of opinion that he has proceeded upon a proper basis to estimate and to investigate the effect of that extra pondage?

10 A.—Absolutely. I not only heard Mr. Simpson's evidence, but I checked it over with him and spent several hours with him on that. It is simply a question of facts. They have the records down on the plan. That is what did happen. The pond did not go down 7 feet or 10 feet. It went up and down as shown by those curves, and I may point out that after all it is not at the volition of the Power Company that pondage is used. No matter how much pondage a company may have available at a plant, they cannot use it any way they like. That depends entirely on the necessity of the customers' load with respect to the time that they want power and at the rate at which they want to use it. The necessities of the load of the Chelsea plant are reflected in the forehead levels which Mr. 20 Simpson presented here, and there is no question of argument at all. It is a fact. I agree absolutely with Mr. Simpson's methods and his statements.

Q.—That being the case I take it you would not agree that there was any such amount of \$700,000 a year represented as additional value of the pondage given in the upper stretch.

A.—No.

30 Q.—Taking into consideration what you have said with respect to the elements that would go into the consideration of whether or not a power property were valuable or not, and applying those principles in the investigation you have made to the Cross' property, would you venture any opinion as to what that site, hydraulic engineering point of view would be worth?

A.—From an engineer's point of view it is not worth anything to Mr. Cross to develop by himself. Any value that it may have above that, due to the fact that some other people want it, or may want it, is in a sense speculative.

40 If I were asked by Mr. Cross to value that power for him, I think I would proceed in the same way as he (*i.e.* Mr. Simpson) has done here. I would prepare plans, not really so much in detail as these are, but sufficient to determine approximately how much it would cost to develop the power, and would ascertain, or have somebody ascertain for me, how much he could get for it, and if it were worth anything on that basis, why, that would be the minimum that he could be advised to sell it at. The maximum would be determined by probably what they were buying powers of that kind for right there on that river. So, if there were two or three people competing

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for these powers, that would give it a speculative value, but I would feel that after I made a report to Mr. Cross showing how much he could make out of it, developing it himself, that I had exhausted my usefulness to him, that he could just as well as any engineer, make up his mind what he would do next.

Q.—In other words, that it would then remain for him, in view of your findings, to determine how he would like to speculate?

A.—Yes.

10 Q.—You spoke of the element of competition. As a matter of fact, would that element of competition as circumstances exist, and have existed on that river for some time, come into the picture at all?

A.—Not from what I have heard here by the evidence that the Gatineau Company had already had plans on the way to approval of practically all the rest of the power that could be developed there. No other large company would be interested in that.

20 Q.—Not only that plans had been filed, but also that they own all the major concentrations on the river which might be susceptible of being the basis of competition later?

A.—Yes. That is what I gathered from the evidence. I did not hear it all.

Q.—That is to say, including also the large Cascades property immediately under Mr. Cross, which is owned by Canada Cement Company?

A.—Yes, now owned by the Company.

Q.—You have examined the methods by which Mr. Scovil has proceeded with his back water studies, resulting from the possibility of development at Cascades?

30 A.—Yes, I went over that with Mr. Scovil quite some time ago, and I agreed with his methods. I did not check his arithmetic.

Q.—Perhaps you could give us something a little more definite with regard to what you would consider the actual value of this site, and I think you compared it with the Pêche or with other similar sites?

A.—Well, I think I said in the testimony that has already been noted, that we could establish a minimum value for the power by determining what it is worth to the owner to develop himself.

40 Q.—In this case you determined that that does not exceed—it is a minus quantity as far as point of view of profit is concerned?

A.—Well, that is already in there. However, that is not the end of it. I would also advise him to find out—I think you mentioned the Pêche. I think there are one or two powers like that,—how much they were getting for them, and I think I would go further than that. I think I would even estimate how much it might be worth to the Gatineau Company possibly. I think I might do that, I have not done that, but I understand by the evidence that has

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been put in, that it is not worth anything again so my maximum value would be the Pêche, and if my recollection serves me right, that was bought for \$1,500, so that all the advice I could give to Mr. Cross is this, if he is offered \$1,500, or something like that, if he does not wish to speculate, why, it is certainly its intrinsic worth.

CROSS-EXAMINED BY MR. ST. LAURENT, K.C.,
OF COUNSEL FOR PLAINTIFF:

Cross-examination

- 10 Q.—Mr. Lea, did you examine this property yourself?
A.—No.
Q.—Your evidence is based upon the statements made by others in this case?
A.—It is really based on this drawing, 3-D. I have taken those contours to be rock contours in the bottom of that river.
Q.—You talk about drawing 3-D. I am not sure I understand just what it is?
A.—Well, it has two letters on it. It is 2-B and 3-D.
- 20 Q.—Then we will identify it with the record by saying that it is the exhibit that was put in as D-99?
A.—Yes, that is the one.
Q.—But you have not yourself ascertained the possible head, or net head, or anything of that kind?
A.—No. I have taken the heads that were given. It is all on that drawing.
Q.—And you have not examined the Canada Cement property either?
A.—No.
- 30 Q.—If that made possible a head of 11 feet, and the other property made possible an additional fourteen feet, would you not, in advising Mr. Cross as to the things he might enquire into, have him enquire into the conditions of the deal concerning the Canada Cement power at 11 feet?
A.—Yes, I would ask him to enquire into anything that you say was similar.
Q.—And if you are to assume that the possible head at the Cascades was fourteen while the possible head of the Canada Cement was eleven, would you not consider that it was worth his while to enquire into the conditions of the acquisition of the Canada Cement Company?
- 40 A.—If this one has really fourteen feet, and the Canada Cement eleven, certainly I would.
Q.—Have you yourself had anything to do with negotiating the sale or purchase of undeveloped water powers in this province?
A.—Yes. I have acted as technical adviser in some cases.
Q.—Had you anything to do personally with any of these pur-

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chases that Mr. Robertson mentioned in his evidence?

A.—No.

Q.—But where you acted as technical adviser you say there are some instances? Are they instances which always went through?

A.—Well, there were four of them went through and one did not. I may say, in order to be correct, three of those were on one deal. I was only acting, roughly, in three cases. One I turned down— at least I did not turn it down, I advised them not to buy it, and the other three, one of those I advised them not to buy that, but they
10 did buy it.

Q.—What were those?

A.—Three of those were out in Coaticook.

A.—On the Coaticook River?

A.—Yes.

Q.—That is a river where there is a very small flow at times?

A.—Yes, a very small flow at times.

Q.—And quite flashy?

A.—It is quite flashy, yes, but it is a nice river to develop. We
20 have a plant there. It is developed; 144 feet head, a spillway dam, no gates; tunnel in rock, not a single pipe exposed to frost, no surge tank, nothing but an extra heavy flywheel. It is a mighty nice development.

Q.—From Coaticook down it flows through quite a wide valley?

A.—Well, it does.

Q.—And in flood conditions, floods that valley to a very considerable extent?

A.—Well, it flooded my dam, I know. It did not make any difference, but it did. It is a flashy river. I do not mean my dam. I
30 mean the dam I designed.

Q.—The first dam below Coaticook is the Gale dam at Waterville, is it not?

A.—I really don't know. I have often driven that road, but I have not been close to observe the dam. I know the river above better than below.

Q.—There are no other substantial heads below Coaticook?

A.—Not that I know of. I really do not know the river at all.

Q.—First, there is a low head back of Waterville, then it flows into the St. Francis?

A.—I really did not know that.
40

Q.—The minimum of that river would get down, you say

A.—It will be down to 100 second feet. It is a regulated flow. They say 150. It probably is 100.

Q.—Did you say it is a regulated flow?

A.—It is in effect a regulated flow, yes. There are lakes which are large in respect to the size of that water shed up in Vermont.

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Q.—But it is not one of these flows regulated by the Quebec Streams Commission?

A.—No, it is not, but it is supposed to be regulated in the same way. There is really another company that built six dams up there, as I understand it. This company is the one that has the plant, and they are paid by all the power users there. I don't know the details of it. They are supposed to do it precisely the same as Mr. Lefebvre does with his storage dams.

10 Q.—The estimate you considered of Mr. Simpson is the one which ties in with the plan D-99, is, I take it, the one which has been filed as Exhibit D-95?

A.—Yes, it is the one that has been filed as Exhibit D-95.

Q.—I believe you said that you took the figures of that estimate with respect to the equipment?

A.—Yes.

Q.—Have you got it here?

A.—I have it here.

20 Q.—As I understand it, the two figures concerning the equipment would be \$660,000 at the foot of the second page, and \$362,000 at the top of the third page?

A.—That is correct.

Q.—Or \$1,022,345 for the equipment?

A.—I get \$1,022,345, yes.

Q.—Then you also took the figure for the damages, \$223,900, from Mr. Simpson's estimate?

A.—Yes.

Q.—Those two together would be a little more than 50 per cent of the total estimate?

30 A.—Almost exactly.

Q.—Almost exactly fifty per cent?

A.—Yes.

Q.—The other large items, if I correctly understand this exhibit, are \$405,160 plus \$159,825 for the power house?

A.—Well, the \$405,160 is the largest other item I see.

Q.—But these two, power house substructure and power house superstructure make up the power house?

A.—They go to make up the power house.

Q.—And that comes to \$565,985?

40 A.—Yes.

Q.—That is for the power house of the dimension shown on D-99, namely, 305 feet in length?

A.—I could scale it. That 305, I think, is the contour there. If anybody would hand me a centre to centre unit, it is easy to make up.

I think it is roughly about 400 feet. I have not got a scale, but it is something like that.

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Q.—Then, the 305 which appears there at the end of the arrow is an elevation, and not a distance?

A.—Yes. That is that contour there, that little circle.

Q.—So it would be really between the tips of the arrow along the line A-7, units, 400 feet?

A.—It scales 380 feet.

Q.—You must, of course, have determined the dimensions in order to determine the quantities that would go into the structure?

10 A.—Yes, the dimensions of the power house, of course, are determined by the units themselves that go in there. I mean, I determined the dimensions of all the improvements. That is a matter of design. The power house is really built to accommodate the units. You have to get that data first from the manufacturer, and then build your plant around it.

Q.—Of course, I suppose it would require similar units for the same quantity of horsepower if they could be used under a greater rated head?

A.—Yes.

20 Q.—And as to those backwater curves, etc., you made no determination yourself?

A.—No, I checked over the method that Mr. Scovil was going to use, in every respect, and found his arithmetic right. I can say it is right.

Q.—But the data on which those calculations were made you took as accurate without any personal verification?

A.—That is correct.

30 Q.—And made no calculations as to the possibility or otherwise of an economic development which would have included 111 feet of the Canada Cement, and 12 or 13 or 14 feet above that?

A.—No.

Q.—Did you ascertain when you were dealing with the Metis situation, what the unregulated flow of that river was?

A.—No, I did not.

Q.—Nor what was the cost of the regulation?

A.—No.

Q.—Nor even the flow to which it was regulated?

A.—I knew that. I knew what it was going to be.

Q.—350 feet?

40 A.—I am speaking from memory now. I know that Mr. McLaren, who was the man who was with me, that went to the Foundation Company, before he could prepare his specifications, for his generators, and his wheels, he had to know that figure. I discussed it with him, but I do not remember whether it was 350 then or not, but I believe so, because he did put in a wheel which would be rated about 350. I did not see it there, but I am satisfied that is what he has.

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Q.—I see it is noted in the publication of the list of water powers as 350 second feet, and that conforms with the recollection you have of the kind of wheels that were put in?

A.—Well, I may also add there is more head down there than Mr. Lefebvre showed.

Q.—You gave the effective head as 125 feet?

A.—I think I did.

Q.—Métis has an effective head of 125 feet?

10 A.—It is between 123 and 125. I believe 125, but I am not sure within about a foot or two.

Q.—With respect to this Exhibit D-95, you came to the conclusion that the coffer dam prices of \$89,340 were possibly \$5,000 higher?

A.—I really took it off the unwatering there, and that was it.

Q.—10,000 instead of fifteen in the item of \$89,340?

A.—Yes, that is correct.

Re-examination

RE-EXAMINED BY MR. KER, K.C.,
OF COUNSEL FOR DEFENDANT:

20

Q.—Just what about did this compare, the development of this Métis water horsepower property?

A.—With the 350 second feet at 125 feet head. It is about 4,000 electrical horsepower.

Q.—And how much water horsepower?

A.—I am taking that for efficiency there of 80 per cent. I can check it over.

Q.—Would it be 5,000 water horsepower?

30 A.—If 4,000 is right, it is exactly five thousand. It is the water horsepower you wish to have?

Q.—Yes, if you please.

A.—It is almost five thousand at the 125 feet.

(And further deponent saith not.)

40

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DEPOSITION OF ARTHUR SURVEYER, A WITNESS
PRODUCED ON BEHALF OF DEFENDANT

On this ninth day of November, in the year of Our Lord one thousand nine hundred and thirty-one, personally came and appeared

ARTHUR SURVEYER,

10

of the City of Montreal, Civil Engineer aged fifty-two years, a witness produced on behalf of the Defendant, who being duly sworn doth depose and say as follows:

EXAMINED BY MR. KER, K.C.,
OF COUNSEL FOR DEFENDANT:

Q.—You are by profession a Civil Engineer?

A.—Yes.

20

Q.—And have been practising how long?

A.—I graduated from the Ecole Polytechnique in 1902. I was employed in the Public Works Department until 1911, chiefly on the Georgian Bay Ship Canal Project, which involved the study of the Ottawa River and of its tributaries.

30

In 1911 I resigned from the Government and I have been in private practice in Montreal ever since, specializing in hydraulic engineering, and latterly in studies which involved both technical and financial studies. For instance, I was asked by the British Columbia Electric Power Company whether or not they should purchase the Western Power Company of Canada for two and a quarter million dollars cash and a guarantee of five and a half million debentures. I went into it generally for American bankers, and I reported on two proposed hydro-electric developments in Wurtemberg. The intention was to issue four millions for the purpose of making these works.

Q.—You went to Germany?

A.—Yes.

Q.—You have had a very considerable hydraulic engineering experience?

40

A.—A good deal, yes.

Q.—I think you have recently been Chairman of the Commission examining canal possibilities?

A.—The Chenecto Canal Commission, but the engineering studies were made by the Department of Railways and Canals. Our function is purely to determine whether it is advisable or inadvisable to go on with the construction, weighing the possible advantages against the possible disadvantages and possible costs.

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Q.—I think you have been engaged very recently on the work you have now in hand?

A.—I have just been on a visit to the Maritime Provinces, taking evidence in the various centres, the commercial and industrial centres, as to the possible traffic for this proposed canal.

BY THE COURT:

Q.—Have you rendered judgment?

10 A.—No.

BY MR. KER:

Q.—I understand you are Past President of the Engineering Institute?

A.—Yes.

Q.—And a member of the American Society of Civil Engineers?

A.—I am a member of the American Society of Civil Engineers, a member of the Corporation of Civil Engineers and of the British Society of Engineers.

20 Q.—Have you been connected with investigations into the St. Lawrence Waterways?

A.—At one time I was a member of the St. Lawrence Commission which was appointed in 1912 for the purpose of settling the difficulties between the navigation interests and the power interests on the stretch between Cornwall and Montreal.

Q.—Are you familiar with the Plaintiff's site on the Gatineau River?

30 A.—I visited the site of Mr. Cross' property at Cascades in December, 1926, in company with Mr. Beïque. This was before the water had been raised.

Q.—Mr. Paul Beïque, Civil Engineer?

A.—Mr. Paul Beïque, Civil Engineer. We took levels on the west side of the river for the purpose of checking up the levels taken by Mr. Farley, and which, I think, are shown on Exhibit D-69. We found that these levels were correct.

Q.—You personally, and Mr. Beïque, I understand, checked on these levels, and examined the place itself on the spot?

40 A.—Yes, we took levels on the slope of the river on that date, and we compared it with the levels shown on the other plans, and we came to the conclusion that the other levels indicated on the plans were correct.

Q.—Have you made any estimate yourself as to the possibility of hydro-electric development at that site?

A.—I have made an independent estimate of five developments, based on the plans prepared by Mr. Simpson, or at that time, 1-A, 1-B and 2-A.

Q.—Do you remember what 1-A was?

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A.—1-A was within the limits of the property itself, points "A" to "C" 3,000 second feet flow and 1-D is the 10,000 feet flow for the same.

Q.—A to C under 10,000?

A.—Yes, and 2-A is 3,000 c.f.s.

Q.—The Scheme 1-A to which you refer is produced as D-88 in this case?

A.—Yes.

10 1-B is Exhibit D-89. 2-A is D-90, 2-B is D-91, and 3-B, D-99. I made an independent estimate of the cost of constructing these various installations. I re-designed some of the structures and took out my quantities personally. I adopted, however, the figures given for the highway and railway diversion and flooding damages by Mr. Simpson. For the equipment I also took Mr. Simpson's figures, which are based on quotations received from the manufacturers.

20 In every cost my cost of development was higher than the figures adopted by Mr. Simpson, and therefore my cost of delivering power to Hull was higher than the cost adopted by Mr. Simpson, so that I considered Mr. Simpson's estimates are conservative, rather low in cost.

Q.—These are the results of independent investigations and computations made by yourself?

A.—Yes.

Q.—Do you agree, then, with Mr. Simpson that the most favorable circumstances under which a development could be made would leave a loss to Mr. Cross?

30 A.—I agree that he could not sell power and make a profit in Hull, and that consequently his property has no special value as it does not constitute a commercial water power development.

Q.—That would, I take it, be even more forcibly true in utilizing the lower heads strictly sticking to his own property?

A.—Well, the expense of developing the lower heads is much greater, and as the greatest part of the cost of producing power is the fixed charges, on the money invested, than the cost of producing or delivering this power in Hull, it is still higher than if you take the other head going as far as Pêche.

40 Q.—Would you explain briefly how it comes about that the cost of development of low heads becomes more expensive than it is at high heads?

A.—It varies with each site. On one side when you can have a development of a low head, it would be comparable with a high head on another site, but on the same site if you develop a low head the chances are that the price for the low head will be higher.

There is also the question of damages which comes in. For instance, in order to use a higher head you have to add an exorbitant

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price for these flood prices; then it is possible that there would not be very much difference in the two, but as a general rule, the lower head is more expensive than the higher head.

Q.—That is perhaps even truer where the higher head is concentrated within a short area in itself?

A.—Well, it is true.

Q.—Well, you have had, as you say, some very considerable experience in applying the result of your professional investigations to the estimation of prices of hydraulic properties. Would you state
10 what, in your opinion, this property of Mr. Cross is worth, granted that it has no value as a hydro-electric power development, which, I take it, you say it has not?

A.—No, it has no value as a water power project, but it has perhaps a nuisance value, that is to say, supposing a company knows that Mr. Cross was going to proceed with this case, and put the company to such an expense that it might have been advisable for them to pay him an amount which was more than his property was worth, just to save the expense of such a suit, but as a water power proposition it is not a commercial proposition.

20 Q.—Have you studied the physical features at all of the Pêche Rapids above it?

A.—No, I have never been as high as the Pêche.

Q.—In a general way, are you possessed of certain information with regard to that stretch of the river to say whether there is a general comparison between the Pêche and the portion of Cascades belonging to Mr. Cross?

A.—The only thing I could see is they are approximately the same fall, but I have never seen the Pêche Rapids.

30 Q.—Would they, in your opinion, offer a basis of comparison from the point of view of market price one with the other?

A.—Well, in view of the fact that they are both rapids, and that they are about the same fall, I should think they are probably comparable.

Q.—They are on the same river? They are subject to the same flows exactly? They are part of the same concentration?

A.—They are just above the other.

40 Q.—And granted that neither of them are susceptible of commercial development, would you think there was a basis of comparison established that way?

A.—Well, I think they are about the same.

Q.—In any event, they resemble each other from these various points of view, am I right in so saying, more than the Masson property, for instance, on the Lièvre River would resemble the Cross property?

A.—Oh, yes.

Q.—Would you say more also than the Métis power? I believe

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you are familiar with that.

A.—I am not familiar with it. I have to say it does not compare at all. I know what the height is. I have never been at the Métis, but I have heard the elevation, and I know the cost of development as given by Mr. Lea, and I am sure there is no comparison between the two points.

Q.—The Darwin and Manchester?

A.—I have been at Rawdon. I know it is a high head, but I have never made an estimate as to probable cost, but, as I say, they are
10 not comparable.

Q.—As a matter of fact, what is your opinion as to the possibility of establishing a general market price for raw power?

A.—I do not think it can be done. I think you have to take each case separately and take into consideration the vicinity of the market, the price at which power is selling in that particular market, and the price at which you can deliver power to that market by utilizing the water power which you own.

Q.—Are you familiar in a general way (I don't know whether you are) with the deal between the Montreal Cottons and the Beau-
20 harnois Company?

A.—Well, I have read about it.

Q.—You know of it in a general way?

A.—Yes.

Q.—In your opinion, does that offer any measure of comparison, or any possible way of comparing that price paid there with the price under discussion?

A.—No, not at all. They had a power which they were utilizing in the first place, and then they gave a volume of water to the Beau-
30 harnois Power Company which was to be utilized on a very high head, about an 80 feet head.

Q.—As a matter of fact, I understand it was not a sale of anything but water to be used under a different head?

A.—It was a sale of water.

Q.—Can Pagan Falls, for instance, be made to possess, in your opinion, any comparison from the point of view of fixing the price of the Cross property?

A.—No, the Falls are not comparable at all. The cost of developing the two would not be the same.

Q.—Have you heard the evidence as to the method of computing storage offered by Mr. Simpson, and storage available from the Chelsea?
40

A.—I have heard Mr. Simpson's evidence, but I have not checked his methods.

Q.—Could you make any statement with respect to whether you consider his methods to be the proper methods adopted under these circumstances?

A.—I feel sure they are, but I have not checked them.

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CROSS-EXAMINED BY MR. ST. LAURENT, K.C.,
OF COUNSEL FOR PLAINTIFF:

Q.—I noted that in your examination in chief the expression “true” and “truer” was used. I do not suppose you took that to mean what the words themselves would imply. There is no suggestion that anything is true and that another thing is truer?

Witness: Did I use that word?

10

Counsel: No, I understood it was used by my learned friend, Mr. Ker. Now, have you yourself negotiated the purchase and sale of water powers in the Province of Quebec in the last ten or fifteen years?

A.—Yes, I know of some.

Q.—There have been quite a number of sales, have there not, of undeveloped water powers in that period?

A.—I don't know.

20

Q.—You know of quite a number yourself?

A.—No, I know intimately of only one.

Q.—And that was in what stream?

A.—On the Ottawa.

Q.—Is that the Carillon Power site?

A.—Yes.

Q.—Was that sold during that period?

A.—Yes.

Q.—That is the only one of which you had personal knowledge?

30

A.—Yes.

Q.—You heard about these other instances that were mentioned by Mr. Robertson in his evidence?

A.—I was very much surprised at the prices paid.

Q.—You did not know of any yourself?

A.—No.

Q.—The estimates you checked over were, I believe you said, 1-A, 1-B, 2-A, 2-B and 3-B?

A.—And 3-D. That is the last one.

40 Q.—The last one was referred to as Exhibit D-99? Is it not rather, so that we may not have any confusion here, D-88 for 1-A?

A.—Yes.

Q.—D-89 for 1-B?

A.—Yes.

Q.—D-90 for 2-A, D-91 for 2-B, and D-94 for 3-D?

A.—I thought you said D-99.

Q.—D-99 was mentioned, but I want to correct it. It is D-95, is it not?

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A.—Yes, it is D-95.

Q.—I wanted to make the correction, because, as a matter of fact D-99 is the plan from which D-95 is the calculation?

A.—I see.

Q.—Am I to understand from your evidence that the only data you yourself verified were these levels on Mr. Farley's plan D-69?

A.—We took levels on the west side of the river.

Q.—You took levels on the west side of the river which checked with the levels put by Mr. Farley on his plan D-69?

10 A.—Yes.

Q.—As to the other matters, you did not yourself get the data which goes into these estimates or designs or schemes of Mr. Simpson's?

A.—No, we did not get the plans. The information which was shown on the plan was taken from this plan, but so far as the quantities are concerned, I calculated the quantities.

Q.—You yourself did not investigate the locality for the purpose of suggesting what, in your opinion, would be the most feasible design to utilize the property?

20 A.—We visited the locality for the purpose of determining if there was any value to it.

Q.—But did you yourself examine the property, and make up your mind as to what might be the most feasible method of utilizing it?

A.—We examined the property, and we adopted Mr. Simpson's method of utilizing it.

Q.—I understand you visited the property in December, 1926?

A.—Yes, before the dam was built.

30 Q.—Are you suggesting that these designs of Mr. Simpson were in existence at that time?

A.—Ah, no.

Q.—They have come into existence quite recently?

A.—Yes.

Q.—At least, you did not know of them until quite recently?

A.—No.

Q.—So, am I to understand the fact is, that checking your visit at that time with the designs you saw quite recently, you did not consider any alternative suggestion?

40 A.—No. We adopted the layout suggested by Mr. Simpson.

Q.—You yourself never prepared any layout, say, on an assumption of a possible head of twelve or fourteen feet?

A.—No.

Q.—You yourself did not verify any of the flooding or damage costs resulting from raising the water at Chelsea to elevation 318 or 320?

A.—No.

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Q.—And you made no estimate as to the possible combination of the Canada Cement property with eleven or twelve or fourteen feet above it?

A.—No.

Q.—If, in fact, the re-locating of the railway and the highway between Chelsea and Cascades by raising the water at Chelsea to an elevation of 318 or 320, is a million dollars, that would be quite an important element to consider in determining whether or not it should be raised to that elevation at Chelsea, would it not?

10 A.—Yes. It depends on what benefit you might derive.

Q.—You would have to anticipate quite substantial profits if you were going to spend one million dollars on relocating the railway or highway because of that elevation?

A.—I think on general principles you would develop the Fall to its highest possible elevation, even if you felt that the last few feet might not represent a very big profit.

Q.—Would you not there still compare your total outlay with your anticipated revenue?

20 A.—Yes.

Q.—In a development of the magnitude of the Chelsea Development, is it not a fact that it takes some considerable time before you get the whole of the power absorbed as firm power?

A.—Well, in that particular case they had, I think, a pretty good contract with the Hydro-Electric.

Q.—Did you not hear Mr. Simpson's evidence that a lot of this was going to be used until 1941 at \$3.40 a horsepower?

A.—Well, I am speaking of the principle the Foundation applied.

30 Q.—The foundation would be for a certain block?

A.—Yes.

Q.—Which, from the impression I got from Mr. Simpson's evidence could have been developed without going over elevation 295?

A.—Yes.

Q.—So that what was being produced by going over the elevation 295 was going to be for a considerable period of time, power at \$3.40.

40 Mr. Ker: I do not think Mr. Simpson said that.

BY MR. ST. LAURENT:

Q.—For a period of time extending up to 1941?

A.—Well, but I understood from Mr. Simpson that the worst he anticipated was a loss of \$11,000 a year on the last development, or a reduction in the profits of \$11,000 a year.

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Q.—That is, after capitalizing losses which ran up to 1944?

A.—Yes. Well, now, if these losses did not run so long, his loss at the end of the period would not be \$11,000, so I would be inclined to take the risk and develop the power to its full head, hoping to be able to find other customers who would take the power at a higher price than \$3.40.

10 Q.—From the elevations you take on the west side of the river, do you agree that at the 10,000 cubic feet second flow you cannot go beyond 305 without impinging on the Cross property?

A.—When I took the level, the flow was not 10,000, but I have not checked that.

Q.—Do you remember what it was when you took the level?

A.—I think it was about 25,000.

Q.—You think it was about 25,000, so it would be substantially above that?

A.—Yes.

Q.—25,000 in December?

20 A.—Yes, it was surprising. They had a lot of trouble that year at Chelsea. That is the note I have in my book. I have not checked it recently. That is the note I have in my book. It was on the 10th December.

Q.—10th December, 1926?

A.—Yes.

Q.—Did you do anything to ascertain what the flow was?

A.—No, it was just by looking at one of the discharge curves, noting the elevation of the water at point "A", and taking the discharge curves on the 10th December, 1926?

30 Q.—That was taken merely from the discharge curve because of the elevation you found?

A.—Well, we did not measure the flow of the river.

Q.—In these estimates I understand you took the equipment figures from Mr. Simpson?

A.—Yes, and I had a copy of the quotations which he got from the manufacturers.

Q.—And you took the damage and flooding figures from Mr. Simpson's?

A.—Yes.

40 Q.—And you used the same power house layout that was shown in Mr. Simpson's schemes?

A.—Yes.

Q.—If the head that could effectively be used was greater than, say, 5.3, as shown on D-95, the water wheels to develop the same power would take less space?

A.—Yes.

Q.—And you made no calculations of any kind for usable heads than those shown in Mr. Simpson's estimates?

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A.—Yes, I made a calculation on the higher head, but it still showed it was not profitable.

Q.—You made a design on a higher head?

A.—Reducing the wheels and so on. I made a calculation of another head.

Q.—What head did you use?

A.—6.4.

Q.—That was the higher head?

10 A.—No, there are some of the other heads of Mr. Simpson's that are higher than that.

Q.—Well, here are the turbines in D-95 at the rate of head of 5.7.

A.—You are speaking of the rating?

Q.—Yes.

A.—Yes, that is true.

Q.—So that if you use the higher head with these wheels you get considerably more power than these estimates show?

A.—You get more power out of the wheel.

20 Q.—And, of course, that would reduce the unit cost of the power?

A.—Yes.

Q.—I want to be sure that I am not making any mistake on those things. In D-88 the head rated is 4 feet?

A.—Yes.

Q.—That is, four as against your 6.4?

A.—No, 6.4 was the total head which would compare on this D-90, 3,000, 6.4.

30 Q.—But on D-90 are the wheels used, not wheels that are designed to give that power at even a four-foot head?

A.—Yes.

Q.—In your scheme what rating of wheels could he use?

A.—They would be the same rating, because it is based on the same type of equipment.

Q.—I had shown you D-88. D-89 is a 4.1-foot rating?

A.—Yes. That is practically the same thing.

Q.—D-90 is a four-foot rating?

A.—Yes.

Q.—D-91 is a 5.3 rating?

40 A.—Yes.

Q.—And D-95 also a 5.3 rating?

A.—Yes.

Q.—And what was your own estimate where you were using the 6.4 head?

A.—It was based on the 6.4 head and reducing the cost of the wheels in proportion. It was rated on a 5.3.

Q.—On 5.3 wheels?

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A.—Yes.

Q.—That is, wheels that would give the amount of power?

A.—Under 5.3 head.

Q.—How was this 6.4 arrived at?

A.—I have not got the rating. I made a mistake. I have not
got at what rating we took these.

Q.—So, in your calculation you have not got the rating at which
the wheels were taken?

A.—No.

10 Q.—That would probably be run at somewhere around 5.7?

Q.—How was the 6.4 arrived at?

A.—6.4 is the figure given by Mr. Scovil as being the difference
of elevation between point "A" and point "B" without the correc-
tion for the flow for the east side flow.

Q.—That is without taking into consideration at all any head
over the actual limits of the Cross property?

A.—Yes.

20 Q.—Would it be fair to say, in a general way, that a head of
twenty to twenty-five feet under a 10,000 cubic feet second would
not be a developable water power?

A.—No. It is worth investigating.

Q.—And as a matter of fact here you have made no investiga-
tion on what would have been the result say of linking up eleven
feet on the Canada Cement property, and twelve or thirteen or four-
teen feet above it?

A.—No.

Re-examination

30 RE-EXAMINED BY MR. KER, K.C.,
OF COUNSEL FOR DEFENDANT:

Q.—Would such a consideration require to enter into your cal-
culations in determining the possible potentialities of this power of
Mr. Cross?

A.—No, I do not think so. I think the only thing necessary was
to investigate Mr. Cross' own property.

Q.—To investigate his own property?

A.—Yes.

Q.—Which you did?

40 A.—Yes.

Q.—And within the limits of his own property, what was your
conclusion?

A.—That he could not utilize it, and even if you included the
Pêche you could not utilize it either.

Q.—That is to say, even if you include all the extra head which
did not belong to him up to and including the Pêche, you could not
do it?

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A.—Yes.

Q.—What head were you working in between “A” and “C”?

A.—I was working on the assumption that the only benefit that Mr. Cross has derived by owning the property of the east side was that it gave him a chance to put the dams across the river. The Fall opposite Mr. Cross' property on the east side is so small that it cannot be utilized, and theoretically if he utilized it, he would have to restore the flow immediately below his power house, so that he could not, if he wanted to, stay within strict limit. I should say
10 that his development would consist of a dam which would start from the west side of the river, going on the bed of the river which he owns and then towards the east side, and by utilizing only half the flow, and utilizing the full fall opposite his property. Of course, such a development is not commercial, because all the studies that we have estimated give a much better chance to Mr. Cross' property, and it does not show any value.

Q.—You would agree, then, with the statement of Mr. MacRostie that nothing could be done with Mr. Cross' property within
20 itself without making arrangements with the people below it?

A.—Well, he would have to get below.

Mr. St. Laurent: Mr. MacRostie did not say that.

Witness: I think he said by acquiring other properties.

BY MR. KER:

Q.—At any rate, that is your opinion, whether Mr. MacRostie said it or not, that nothing could be done there without arranging in
30 some way with the people below?

A.—Well, I don't know that. I will have to investigate to see whether even then it would be any good.

Q.—How much did you say the head you worked upon was between points “A” and “C”?

A.—6.4.

Q.—That is, the gross head?

A.—Yes.

Q.—What would the net head be, then, do you know? Taking
40 into consideration the fact that on the lower reach he only owned half the flow?

A.—I supposed he was going to use only half the flow on that particular side of the river, and the other half he had to return it immediately below his property, and that consequently he could not use it. It was one of the first studies I made of this. Afterwards, I made a study based on Mr. Simpson's, which, of course, favoured Mr. Cross much more, and they were shown not to be economical either.

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Q.—Just referring to the question I asked you previously. I am reading now from page 137 of Mr. MacRostie's evidence, in which he states:

“ I should think both Mr. Cross or whoever owned this property, and the Canada Cement Company, would have to come to some agreement because the line is in an awkward position ”.

10 Speaking of the possible development of that. Are you in agreement with Mr. MacRostie on that point?

A.—Yes.

Mr. St. Laurent: If my learned friend would continue:

“ You do not believe he could do anything by himself?

A.—I do ”.

20 BY MR. KER:

Q.—And he is asked:

“ How would the fact of the people below him or on the other side of him

A.—He would be protected on either side because he owns the land.

Q.—What land?

A.—The property indicated on this exhibit.

30 Q.—Do you mean so far as riparian rights on either side of the river are concerned?

A.—Yes. I should think both Mr. Cross or whoever owned this property, and the Canada Cement Company would have to come to some agreement, because the line is in an awkward position ”.

Mr. St. Laurent: You are implying from that that there could not be anything done without that agreement, and you put the question to him, and he said that is not what he meant.

40

Mr. Ker: I do not think that is exact.

Mr. St. Laurent: “ You do not believe he could do anything by himself?

“A.—I do.”

Mr. Ker: “ Then what could he do ” ?

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Mr. St. Laurent: It may be the witness is wrong in point of fact, but we are just quarrelling now about what he said, and what he intended to say.

Mr. Ker: I asked Dr. Surveyer whether he agreed with that fact.

10 Mr. St. Laurent: What we object to is not the evidence you make but the fact that you implied that our witness agreed with you.

Mr. Ker: I make no implication upon what he meant. I am merely stating what he said.

BY MR. KER:

20 Q.—I take it, then, in connection with your statement that you have examined these proposals made by Mr. Simpson and agree with them, that a commercial development cannot be made there, that anything that would be done would be on the basis of selling the complete output of his power at once?

A.—Yes, because there was no interest calculated during the period of selling.

Q.—No interest in any event in any of your estimates calculated for the period of selling?

A.—Yes.

Q.—Which would indicate he would have to sell his entire output immediately?

30 A.—Yes.

Q.—And that that entire output would have to be sold in immediate competition with the large quantity of power which is available on the Gatineau River at the present time?

A.—Yes.

Q.—I take it that if that could not be sold immediately en bloc the cost would increase accordingly?

A.—Yes, it would increase. As a matter of fact, even if he sold it en bloc he would not make any money, so he would lose all the time.

40 Q.—But he would be worse off as time went on if he did not sell it en bloc?

A.—Yes.

Q.—As to this question of the advisability from the professional point of view of taking the development up in order to use head which would be forever lost if it were not included in that development, in other words, the question has arisen here as to whether it would have been a professional and scientific sound proposition to

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stop the Gatineau Power Company development at the bottom of Mr. Cross' property, seeing that it was not possible to develop the balance of the head at a profit?

A.—It would not have been, because it would have deprived the community of this power.

Q.—Just what is the underlying principle which would guide you in giving an opinion on that, if you were consulted, for instance, by the Government?

10 A.—The thing would be to make available in the district as much power as it is possible to develop commercially. The whole of this Chelsea development constitutes an economic development, notwithstanding the fact that their profits are reduced by \$11,000 by utilizing the last part of them. From the point of view of the Government, I should think they would insist that the greatest possible quantity of power should be made available for the industries in their vicinity.

Q.—In the public interest generally?

A.—Yes.

20 Q.—And where would the insistence upon that policy ordinarily cease? To what point, in your opinion, would the powers that be be entitled to carry that principle out?

A.—If it were demonstrated that to add say 10 feet more would, on account of the heavy damages paid, wreck the complete project, I mean make it a losing proposition instead of a paying one, then I should think that even if the power was going to waste, that they would not insist on the last ten feet being utilized.

30 Q.—What would your opinion be as to the actual loss of \$11,000 after giving credit for the additional head? Would that loss, in your opinion, justify them cutting this balance of this head?

A.—No, because it is a loss that is not absolutely sure. If they managed to sell power quicker than they anticipated, it would be reduced, or if they sell it at a higher figure than they have calculated, it would be reduced, so to determine the probable time when power would be sold, is not fixed or definite enough, to take any such amount as \$11,000 into consideration.

40 Q.—In any event, I take it from your answer, that you believe it to be a sound professional proposition, that because a loss has to be encountered on a development of 10, 15 or 20 feet, that is no reason one should not either willy nilly say it should not be developed?

A.—No.

BY THE COURT:

Q.—You went and examined the properties and made an investigation before the water was raised?

A.—Yes.

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BY THE COURT:

Q.—Would you mind telling me in what that examination and investigation consisted?

A.—It consisted in going over the ground, looking at the physical aspect of the river at that point, and in taking levels to measure the height of the fall available opposite Mr. Cross' property, but we did not take any soundings, nor did we make any surveys to enable us, for instance, to prepare the plans. It is admitted here these plans
10 were prepared by the Company.

BY MR. KER:

Q.—You stated you were accompanied by Mr. Paul Beïque?

A.—Yes.

Q.—And that the result of your levels and investigations insofar as levels or elevations are concerned check with those of Mr. Farley as indicated on the plan D-69?

A.—So far as the falls Mr. Farley was correct.
20

Q.—Mr. Farley being a witness who was examined for the defendant?

A.—Yes.

Re-cross-
examination

RE-CROSS-EXAMINED BY MR. ST. LAURENT, K.C.,
OF COUNSEL FOR PLAINTIFF:

Q.—On the day you made this examination, was not the main flow of the river on the west side?

A.—I did not notice.
30

Q.—In connection with the cost of including these 25 feet from 295 to 320, did you look at these figures which have been given in the exhibits put in as D-100, D-101, and D-102?

A.—No.

Q.—You notice the totals there come to \$3,350,000 in D-100, it being before the addition of interest after construction of \$1,669,205.

A.—No, it is the interest during construction.

Q.—Just the interest during construction is there, but there is no charge for the period during which power is not sold?

A.—No.
40

Q.—Then, as to D-102, it being on the same basis, \$1,340,900, and in D-101, \$340,160.

A.—I am not familiar with these. This is the first time I have seen these schedules.

Q.—Of course, as far as community is concerned, whether all this was concentrated at Chelsea, or whether it was split up by having instead of the 100 feet at Chelsea, 75 feet of Chelsea, or 25

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feet somewhere else, did not affect the quantity of power?

A.—No, but it might affect the sale price. The thing is to get the power as cheap as possible for the community. Obviously it would be more expensive to develop two falls of 50 feet than one of 100.

Q.—Is it your opinion that it would have been more expensive to develop 25 feet than to incur the \$3,350,305 involved in developing the extra 25 feet on the Chelsea site?

10 A.—I cannot tell you without making the estimate, but at first blush I would say it is cheaper to develop the one plant and use the whole head. I am telling you that is an opinion, but without having made an estimate of the two.

Q.—But if you have a million and a half for flooding damages and relocating railways and highways, etc., that would be a substantial item to take into account, would it not?

A.—Yes.

Q.—As a matter of fact, the quantity of power available for the community would be the same?

20 A.—Practically.

Q.—Developable in one head or two heads?

A.—Practically, yes. There might be a little less between the two plants, but practically it would be the same.

Q.—The matter which would have to be considered would be as to whether or not it is more costly doing it on the one site, or doing it on the two sites, taking into account the flooding and other damages between two points?

A.—The operating expenses would come into it. You would have two buildings staffs, having two power houses.

30 Q.—Are they not very, very small?

A.—They are not very big.

Q.—They are a very small element?

A.—The principal element is the fixed charges and the money spent.

(And further deponent saith not.)

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DEPOSITION OF DANIEL HILLMAN, A WITNESS
PRODUCED ON BEHALF OF THE DEFENDANT.

On this tenth day of November, in the year of our Lord one thousand nine hundred and thirty-one, personally came and appeared

DANIEL HILLMAN,

10

of the City of Montreal, Engineer of Construction for the Canadian Pacific Railway, aged fifty-four years, a witness produced on behalf of the defendant, who, being duly sworn, doth depose and say as follows:

EXAMINED BY MR. KER, K.C.,
OF COUNSEL FOR DEFENDANT:

20 Q.—Colonel Hillman, I understand you are on the Engineering Staff of the Canadian Pacific Railway?

A.—Yes.

Q.—Just what is your position there?

A.—I am Engineer of Construction for the Company.

Q.—You are Engineer in charge of construction?

A.—I am Engineer in charge of construction.

Q.—How long have you been with the Canadian Pacific Railway?

A.—Thirty years.

30 Q.—What is the policy of yourself and your Department, in respect of the remedial works necessitated by hydraulic development and flooding of rivers in relation to your railway?

A.—If the work causes a flooding of the right-of-way, before consenting to proceed with this work, we would ask the person or company causing that damage to adjust our grade, that is, raise the railway so that the grade would be at least five feet above the highest water mark expected.

Q.—At least five feet?

A.—Yes.

40 Q.—Do I understand you to say that five feet is the minimum?

A.—Five feet is the minimum.

Q.—Just what is the sub-grade?

A.—The sub-grade is the level before the placing of the ballast and ties.

Q.—Am I right in saying that it is the foundation of the road itself?

A.—The road bed.

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Q.—And after that comes the grading and the rails and ties last?

A.—And after that comes the ballasting.

Q.—Which contains the ties, and on top of that the rails?

A.—On top of that the ties and the rails.

Q.—Would any such work as that which might be required on your line come directly before you?

A.—It would invariably be submitted to me. Pardon me: in respect only of lines between St. John, N.B. and Port Arthur.

Q.—The Gatineau River would be within that?

10 A.—It would be within my jurisdiction.

Q.—Are you familiar with the stretch of the Gatineau River from the point known as the Cascades upwards toward Pêche and around Wakefield?

A.—Yes, Wakefield and Maniwaki.

Q.—Presuming a promoter applied to you asking you what your requirements would be in case he desired to make a development on the Gatineau River between those points to the water level 318, to what would you require him to carry your sub-grade?

20 Mr. St. Laurent: I object to this question unless it is shown that the elevation of water to 318 would in some way impinge on railway property.

The Court reserves the objection.

BY MR. KER:

Q.—Are you aware of the height of the grade along your railway at that point?

30 A.—I have a rough idea of about how it is, but I have no definite knowledge without referring to the profile.

Q.—Is it to your knowledge that the water level up to 318 did require remedial works to your railway?

A.—Yes, the water level up to 318 would undoubtedly flood some portions of our right-of-way.

Q.—And in that case to what would you ask a promoter to carry your sub-grade. To what elevation?

A.—We would ask that the sub-grade be raised to elevation 323.

Q.—That is the minimum.

40 A.—Yes.

Q.—Would you impose upon him any other condition in respect to flooding?

A.—All the embankments affected by the change of water level would have to be protected by rock rip-rap.

Q.—Such embankment as came in touch with that water would have to be protected by rip-rapping of rock, is that right?

A.—Yes.

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Cross-examination

Q.—Bridges, I presume, would have to be raised, if there were any?

A.—Yes, bridges would have to be raised. Culverts would have to be lengthened to take care of the width necessitated by the raising of the embankment.

CROSS-EXAMINED BY MR. ST. LAURENT, K.C.,
OF COUNSEL FOR PLAINTIFF:

10 Q.—Is your evidence intended to mean that above Cascades, between Cascades and Wakefield, there were portions where the raising of water to 318 would flood your railway, or is between Cascades and Chelsea that that happens?

A.—I think in both places.

Q.—Are you sure about the portion above Cascades?

A.—No. I would have to refer to the profile.

Q.—You are not sure about that?

A.—I would have to refer to the profile. If you have a profile I could look into it, but my memory does not serve me in that regard.

20

(Witness is handed the profile).

I am able to answer your question now. The raising of the water level to 318 would flood a portion of our right-of-way, and necessitate some remedial works.

Q.—Above Cascades?

A.—Above Cascades.

Q.—At what point?

A.—At various points, somewhere about 3,500 feet.

30

Q.—At what point?

A.—In what way? Can I describe it in reference to this profile?

Counsel: Yes, if you will.

BY MR. KER:

Q.—First of all, will you produce this profile as D-108?

A.—Yes.

40

BY MR. ST. LAURENT:

Q.—What does this profile represent?

A.—The Maniwaki subdivision of the Canadian Pacific Railway.

BY MR. KER:

Q.—It is a profile of the Maniwaki subdivision?

A.—Of a portion of the subdivision.

BY MR. ST. LAURENT:

Q.—It is a profile of a portion of the subdivision of the Canadian Pacific Railway. Is that as it existed before the Gatineau Power Company's works?

10 A.—As it existed before the Gatineau Power Company's works. It is pretty hard to describe it. I can describe it by a certain line shown on the profile. It indicates where it is below elevation.

Q.—And there are probably some mileage stations marked on the profile?

A.—There are two mileage stations marked.

Q.—Then, perhaps by referring to these mileage stations you can give us the information?

20 A.—The dotted line on the profile indicates the ground level, and wherever that ground level is below elevation 318, at such points the right-of-way of the railway company would be plotted.

BY MR. KER:

Q.—Between 15 and 16 in circles?

A.—Yes. That dotted line there indicates the ground line.

BY MR. ST. LAURENT:

Q.—What is the heavy black line?

30 A.—The heavy black line is at elevation 323. It was put on by Mr. Dibblee, another witness.

Q.—And what is the red line?

A.—The red line is the original grade line before any alterations were made. The dotted line is the ground line.

Q.—The line of the sub-grade before any alterations were made?

A.—Yes.

Q.—Where this heavy black line is under the red line, does that mean that the railway had to be lowered to that level?

A.—No.

Q.—The black line meant the minimum elevation then?

40 A.—The black line is the minimum elevation which would be acceptable to the railway.

Q.—So that wherever that is lower than the existing grade there was nothing to be done?

A.—There would be no change except where the work was necessary, slight changes would be necessary to make the connection.

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RE-EXAMINED BY MR. KER, K.C.,
OF COUNSEL FOR PLAINTIFF:

Q.—That work would be done by the railway?

A.—Yes. At the expense of the promoter.

Q.—You would not permit the promoter to do that work himself?

A.—No. Such work would interfere with the safety of traffic, and we would feel unsafe to allow outsiders to work on the track.

10 Q.—You invariably do that within your own jurisdiction.

A.—Yes.

(And further deponent saith not.)

*In the
Superior Court*

No. 37.
Defendant's
Evidence.
H. M. Dibblee,
Examination
Nov. 10th, 1931.

DEPOSITION OF HARRY MYLES DIBBLEE, A WITNESS
PRODUCED ON BEHALF OF THE DEFENDANT

20

On this tenth day of November, in the year of Our Lord one thousand nine hundred and thirty-one, personally came and appeared

HARRY MYLES DIBBLEE,

of the City of Montreal, Locating Engineer, in the employ of the Canadian Pacific Railway, a witness produced on behalf of the Defendant, who being duly sworn doth depose and say as follows:

30

EXAMINED BY MR. KER, K.C.,
OF COUNSEL FOR DEFENDANT:

Q.—You are a member of the Canadian Pacific Railway staff?

A.—Yes.

Q.—Just what is your position?

A.—Locating engineer.

40 Q.—Just what do your duties in that respect call upon you to do?

A.—To go out and make surveys of new lines for any grade division and what-not, and make an estimate for the cost.

Q.—Where grade divisions are necessary, you certify them and make estimates of what the cost is going to be?

A.—Yes.

Q.—You work under Colonel Hillman?

A.—Yes.

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(continued)

Q.—In Colonel Hillman's branch?

A.—Yes.

Q.—Are you familiar with the stretch of the Gatineau River between Cascades and Wakefield?

A.—Yes.

Q.—How do you come to be familiar with that particularly?

A.—I was on the construction when the grade was replaced there during the construction of the Chelsea works.

10 Q.—You were on that work of construction and the re-location when the Gatineau Power Company was doing its work up there?

A.—Yes.

Q.—Were you there during practically the whole time on that work?

A.—Yes, right from the beginning of it, that is, the railroad part of it.

Q.—Did you have occasion to certify that work before it was done by the Gatineau Power Company?

20 Witness: Just in what way do you mean?

Counsel: Did you have occasion to investigate what would be necessary?

A.—Oh, no, except that we went up there at the request of the Gatineau Power Company.

Q.—But during the time the work was being carried on, you were on that work?

A.—Yes, I was in charge of it.

30 Q.—What was the position you were holding on that work?

A.—Locating engineer, and resident engineer when the construction started.

Q.—I understand you said you were familiar with the stretch between Cascades and Wakefield. You have heard Colonel Hillman's evidence?

A.—Yes.

40 Q.—Are you prepared to give an estimate of what it would cost to carry out the indicated works, presuming the water in the Gatineau was to be raised to 318 feet at the Cascades? Have you made an estimate of what the work necessary on the C.P.R. would cost?

A.—Yes.

Q.—That is, to raise the right-of-way for the sub-grade to what elevation?

A.—323.

Q.—That is, five feet above the same level Colonel Hillman spoke of?

A.—Yes.

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Q.—Does this profile D-108 show the points between which that raising would be necessary?

A.—Yes, from Cascades Station to practically mileage 16 as shown on that profile.

Q.—Is Cascades Station marked on this profile?

A.—Yes.

Q.—The word "Cascades" indicates Cascades Station you refer to?

A.—Yes.

10 Q.—Would you let us know in a general way what this profile actually does show, let us say, beginning from the Cascades portion of it?

Witness: You mean by how much it would require raising and so on?

Counsel: Yes; just explain what the marks on the plan are between those points.

20 A.—The red line as shown here is what is called sub-grade, that is, practically a foot and a half below the base of the railway rail.

Q.—That red line indicates what the original sub-grade was before the Gatineau Power Company came on to the river?

A.—Yes, about a foot and a half below the base of the rail which is in position.

Q.—Does that indicate the top of the sub-grade?

A.—The top of the sub-grade.

30 Q.—And then whenever that red line appears, that is what it means?

A.—That is what it means?

Q.—What does the dark line intersecting and running through that red line at various points indicate?

A.—That would indicate the level of 323.

Q.—To which it would be necessary to raise it?

A.—That would be the new sub-grade.

Q.—By the way, did you prepare this profile yourself?

A.—I may have put on these lines. I have taken it from the print, from the profile.

40 Q.—But those black lines were put on by you from your own investigation of what would be necessary?

A.—Yes, to this elevation.

Q.—Is there anything more than actual grade elevation necessary in that stretch?

A.—You have to grade it; you have to bring in material to build up the sub-grade, to build a new sub-grade.

Q.—Are there any bridges to be made?

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A.—One bridge on Meach Creek. Two or three culverts.

Q.—And some culverts?

A.—Yes.

Q.—Where the right-of-way actually touched on the water, would there be anything else?

A.—After you get the gravel, or whatever it is, you put, then you have to put out a rip-rap to protect this from the wave action of the water.

10 Q.—What is a rip-rap?

A.—That consists of big rocks, embankment rock.

Q.—The purpose of that is to protect it from the force of the wave?

A.—It is so heavy the water won't move it.

Q.—It is to prevent undermining, I suppose?

A.—Yes.

Q.—For a distance of about how far would work be necessary along that section? Just roughly. I don't want to a foot. Half a mile or two miles?

20 A.—Three-quarters of a mile, anyway.

Q.—Would that need readjustment to connect with the other part of the railway?

A.—Yes.

Q.—Have you made an estimate of what that would cost?

A.—I did about two years ago.

Q.—To the 323?

A.—Yes.

Q.—That was not prepared in any way, I take it, for the purpose of this law suit?

30 A.—No.

Q.—Just what was the amount you found would be required to be expended on that work?

A.—\$66,000.

Q.—There has been a statement made here by one of the witnesses of the Plaintiff that all the work that would be necessary to be required to be done in connection with the development of the water power at Cascades would cost \$2,000. What is your opinion as to that?

A.—I am afraid they would not get very much done.

40 Q.—What would the bridge alone cost?

A.—It would cost about \$6,000.

Q.—The bridge alone would cost \$6,000?

A.—Yes.

Q.—What would the ballasting cost alone?

A.—Probably about \$5,000.

Q.—And what would the balance of the \$66,000 be made up of?

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A.—By bringing material, the base and the riprap, and lengthening the culverts.

Q.—I understood Colonel Hillman to say you did not permit that work to be done by others. The railway did it themselves?

A.—Yes.

Q.—And at the cost of the promoter?

A.—Yes.

Q.—In respect of bridges, I suppose you have to keep traffic
10 going?

A.—Yes.

Q.—Does that add at all to the expense?

A.—Yes, very much. You have to raise the bridge and crib it up. You have to crib it up when it is finished, before you can put in the new structure.

Q.—That money has to be paid, I suppose, by the railway as the work goes on?

A.—Oh, yes.

Cross-examination 20

CROSS-EXAMINED BY MR. ST. LAURENT, K.C.,
OF COUNSEL FOR PLAINTIFF:

Q.—Is the bridge you mentioned at this place where I see indicated on the exhibit "Pile trestle"?

A.—Yes, that is it.

Q.—And that profile is prepared to scale?

A.—Yes.

Q.—This is only a part of the profile. I do not see any indication of the scale on it, what is it?

30 A.—It is 400 feet horizontal and 20 feet vertical.

Q.—400 feet to the inch horizontal and 20 feet to the inch vertical?

A.—Yes.

Q.—What would that mean?

A.—Each line there is a one-foot horizontal line.

Q.—The space between two horizontal lines is one foot?

A.—Yes.

Q.—And the space between vertical lines is 100 feet?

A.—Yes.

40

(And further deponent saith not.)

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No. 38.
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C. E. Ralph,
Examination
Nov. 10th, 1931.

DEPOSITION OF CLAUDE E. RALPH, A WITNESS
PRODUCED ON BEHALF OF DEFENDANT.

On this tenth day of November, in the year of our Lord one thousand nine hundred and thirty-one, personally came and appeared

CLAUDE E. RALPH,

10

of the City of Ottawa, Civil Engineer, aged forty-eight years, a witness recalled on behalf of the defendant, who, being duly sworn, doth depose and say as follows:

EXAMINED BY MR. KER, K.C.,
OF COUNSEL FOR DEFENDANT:

Q.—You are a civil engineer?

A.—Yes.

20

Q.—You are a graduate of what University?

A.—McGill University.

Q.—How long have you been practising your profession?

A.—I have been practising for twenty-five years. I have been in responsible charge of construction work over twenty-three years.

Q.—What is generally the nature of the work in which you have been engaged?

A.—From 1907 to 1911 I was Resident Divisional Engineer of railroad construction which embodied concrete work, bridges and culverts, and all things that go into that.

30

From 1911 to 1914, until the war broke out, I was contracting railroad work and bridge work.

From 1914 to 1918 I was assistant engineer, superintendent and acting chief engineer of the Hudson Bay Terminals.

From 1918 to 1920 I was engineer of surveys and borings on the St. Lawrence.

I was one and a half years on the Grand Trunk Arbitration Board as assistant engineer, and I was one year on the Welland Canal, superintending engineer for Peter Lyall & Company.

40

From August, 1925, I have been with the Gatineau Power Company, the first three and a half years in charge of construction of all kinds, and it is all kinds too, and the last two and a half years I have been looking after maintenance work for which the company is responsible, and looking after damage claims compensation.

Q.—You are familiar, then, with the operations of the Gatineau Power Company on the Gatineau River?

A.—I think I am.

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Q.—You say that it is all kinds of works?

A.—Yes, all kinds.

Q.—Did it include the work of relocation of the road?

A.—Well, I was resident engineer for the company on the rail-
road work, representing the company. As a matter of fact, I actually
located it, but I worked on the construction under Mr. Dibblee, who
was resident engineer for the C.P.R. The highway I located and
built myself. I was in actual charge of it.

10 Q.—You were in actual charge of the work of moving the high-
way?

A.—Yes.

Q.—And you were working in collaboration with Mr. Dibblee in
connection with the railway?

A.—In connection with the railway. I did all the senior instru-
ment work on the railway myself, personally.

Q.—Do you know the place known as Meach Creek?

A.—Yes.

20 Q.—Have you had occasion to examine the water conditions in
Meach Creek?

A.—I visited Meach Creek, Meach Lake, Harrington Lake,
Phillips Lake and Cameron Lake.

Mr. Ker: I think those lakes are shown on the map your
Lordship has.

His Lordship: Yes, I see them. The fourth lake mentioned is
higher up.

30 Witness: Above Cameron Lake. Phillips Lake is the last lake
of the southerly branch.

BY MR. KER:

Q.—Could you point out to his Lordship on the plan?

A.—Yes. The four lakes I have mentioned comprise the drain-
age basin of Meach Creek. On September 18th, 1931, there was no
water at all coming out of Meach Lake; possibly a cupful, a trickle.

40 Q.—Coming out of Meach Lake, emptying into what?

A.—Into Meach Creek.

Q.—Meach Lake enters immediately into Meach Creek?

A.—Yes.

Q.—And what enters into Meach Lake?

A.—Harrington Lake.

Q.—And what enters into Harrington Lake?

A.—Phillips Lake.

Q.—So there is a chain of three of them?

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A.—Yes.

Q.—On what date in September do you say?

A.—September 18th.

Q.—What condition did you find as to Meach Creek?

A.—I could describe it better by saying there is a concrete control weir built by the summer residents of Meach Lake district, right at the foot of Meach Lake, and there was no water whatever coming over it on September 18th. In other words, the evaporation was higher than the run-off on that day.

10 Q.—What was the condition in Meach Creek?

A.—Meach Creek, well, there was very little water in that branch. I went down to the confluence. Cameron Lake is the source of another small branch to the north.

Q.—Coming around and entering itself into Meach Creek?

A.—They join together. There was a confluence about a mile above Farm Point where Meach Creek empties into the Gatineau. I found a little more water coming out of Cameron's Lake, possibly half a cubic foot per second.

20 I again visited the same location on October 9th, and found practically the same condition in the Meach Lake, at Meach Lake basin, and a little more water coming from Cameron Lake; as near as I could measure with a float, that is, putting the float to get the speed and cross-sections, about one foot per cubic second.

Q.—Have you any photographs taken by yourself which would perhaps indicate just what you mean?

A.—Yes. That photograph was taken about 100 feet below the confluence of the two branches.

Q.—That was taken below the confluence?

30 A.—Yes.

Q.—And would indicate that all the water possible that would get into the creek was going into it, is that right?

A.—That is the whole flow.

Q.—Will you file that photograph as Exhibit D-109?

A.—Yes.

Q.—You took that picture yourself?

A.—Yes.

Q.—Is that the direct source of what has been referred to here as the Farm Point power?

40 A.—Yes. That is 100 feet below the confluence of the two branches.

Q.—It is about a mile above the power house?

A.—About that.

Q.—Did I understand you to say there was no other entry of water coming in between that and the power house?

A.—No, nothing to speak of.

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Q.—What was the condition of the tributary lakes insofar as their draw-down was concerned?

A.—I don't know that I understand your question.

Q.—Is there control on those lakes?

A.—There is a dam at Meach Lake which was wide open. I believe the dam belongs to either the Wilson estate or A. J. Freeman, I am informed.

Q.—A dam at Meach Lake, and it is wide open?

A.—Yes, all the dams were wide open.

10 Q.—In other words, there was not any water being stored in any of those lakes at that time?

A.—No.

Q.—Do you know what the levels of those lakes were, whether they were completely drawn down or not?

A.—Well, there was none running out of them. There was nothing to hinder it running. There was no flow.

Q.—What is your opinion from the investigation you made along Meach Creek as to the possibility of developing power there this year?

20 A.—Well, there has been no water at all this year.

Q.—Have you a knowledge of the same locality in previous years?

A.—Yes. This was a dry year, of course.

Q.—Could you venture any opinion for a continuous water power capacity there?

A.—It is quite obvious he could not have 200 horsepower continuous this year from the size of the basin and the run-off.

Q.—What sort of power development is it that he has there?

30 A.—I have never made any examination.

Q.—I take it you have been in that locality a good deal in the last number of years?

A.—Yes, I have been on the Gatineau ever since I have worked for the Gatineau Power Company. I have been on the Gatineau certainly three times a week during the last two years, and I lived there the first two years. I lived at Cascades the first fourteen months.

Q.—Have you had occasion to judge of the lighting capabilities of that plant from your residence there?

40 Witness: In what respect?

Counsel: As a resident. The type of service it has been giving?

A.—When I first went onto the railway and highway work, I boarded at Kirk's Ferry, a point four miles below Cascades. We

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worked all day, of course, on our survey work, and every night plotted up our notes. The lights went out every night at ten o'clock for three months, as long as I was there, and for a period of at least two weeks, it may have been longer, we had no lights at all. I bought lamps for my men.

Q.—In what year was that?

A.—That was in January, February and March of 1926.

Q.—That was, of course, long before there was any rise in the water?

10 A.—Oh, yes. We were doing our preliminary work. That was one year before any water came up.

Q.—And have you had any other opportunities of judging of the service? That was at Kirk's Ferry?

A.—That was at Kirk's Ferry. Those are facts I am sure of.

Q.—Of course, Kirk's Ferry derived their electricity from that plant?

A.—Yes, electricity was generated at the Farm Point power house.

20 Q.—From your experience on the river, and the necessity for considerable electric light at the time, what is your idea of the sort of service that was being given by that plant?

A.—It certainly was not very good during the first few months of that year.

Q.—Later, did you have any occasion to notice it?

A.—In the summer, when the days get longer, you do not notice it so much.

Q.—Anyway, it went off at ten o'clock at night during those three months?

30 A.—Yes, it did.

Q.—Can you account for that in any way?

A.—Lack of water to run his power house. I presume he would save what water he could all day, and by ten o'clock it was all gone.

Q.—I understood you to say you were very familiar with the work which has been done in connection with the raising of the railway and the highway?

A.—Yes. I think I am more familiar than anybody else.

Q.—Are you familiar with prices generally paid for land damages in connection with that development on the Gatineau?

40 A.—Yes, I have been dealing in compensation work, defending damage claims in court, buying properties, arbitrating purposes for the last two years, and I have a pretty fair knowledge of what are fair damages, and what one is liable to pay.

Q.—Presuming a power development at the Cascades having a water level of 318 at the dam, would you give us an estimate of what, in your opinion, would be the amount necessary to be expended in respect of railway remedial works?

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A.—The C.P.R.

Q.—You have heard Mr. Dibblee's estimate of that, do you agree with that?

A.—Yes, I could not contradict him.

Q.—Have you made any estimate as to what highway remedial works would cost in the same zone, and under the same conditions?

A.—Yes.

Q.—Would you please state at how much you estimate the highway, let us say, on the west side of the river?

10 A.—For a water elevation of 318, which is the height of the proposed dam to be built by Mr. Cross, I estimate, presupposing that the Quebec Department of Roads would force Mr. Cross to do the same as it forces the Gatineau Power Company to do, that is, build to the same specifications, on the same terms.

Q.—You mean, relatively?

A.—Yes, relatively. The work required would cost \$43,900.

Q.—\$43,900 for highway re-location on which side of the river?

20 A.—West side. There is a bridge at Farm Point to be raised, which evidently was not thought of at all. It was only an elevation of 319, and you could not leave it a foot above the water.

Q.—You are speaking now of the highway bridge and not of the railway bridge which Mr. Dibblee spoke of?

A.—Yes. The highway is just 500 feet from the railway; rip-rapping 800 yards. There are a lot of smaller items. Will I give them all?

Q.—No, those were the general items which you took into consideration?

30 A.—Well, plus maintenance, which is one of the stipulations by which the Government allows us to do that work, maintenance for five years.

Q.—The Government has compelled you to maintain at your own expense for five years?

A.—Well, any work that is altered, but not only raising the road, as it stands to reason the road before the specifications had been first-class highways, not the road as you find it.

Q.—Do I understand you to say then that the Government insisted upon, not only your revising the road to the same width, but to a greater width?

40 A.—In that section the road was raised above Cascades by us, and the width was varying—in some places only 18 feet, some places twenty, some 22 and some twenty-five. Twenty-five feet is wide enough, but the average width, I would say, was around, oh, probably between 20 and 22 feet, and they made us raise it to the standard width, which is the Government standard of twenty-four feet, inside guard fences, which necessitate a foot and a half outside of each guard fence to hold the posts a width of 27 feet, and I presume

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they would enforce the same conditions to any one else wanting the same kind of work, doing the same kind of work.

Q.—What are the prices based on for doing this work?

A.—They are based on the unit prices paid by the Gatineau Company to the contractor who did the work.

Q.—I presume then it is just a matter of estimating the quantities of the work, and the amount of work necessary in order to arrive at an estimate?

10 A.—In this particular work I have already raised the road, this estimate is particularly accurate, I think, because I have the complete section of the whole road. We raised it to three twenty-five and took the water level. We agreed to a water level of 320. Mr. Alex Fraser, Chief Engineer of the Department of Highways at Quebec, and Walter Blue, Manager of the Gatineau Power Company, and myself, agreed that three twenty could be taken as the normal water level, and he asked us to raise it five feet above that, which gives us an elevation of 325. Then, taking the water elevation of 318, which is the height to which Mr. Cross' dam would raise it, and then adding five feet to that, presupposing that Mr. Fraser
20 would enforce the same conditions on to Mr. Cross. Then, taking two feet off of these sections, I have the complete estimate of the work to be done.

Q.—To what elevation would you have to go in respect of the one you went to?

A.—323 instead of 325.

Q.—You consequently reduced these charts that are based on your own work down two feet?

30 A.—Yes. This happens to suit exactly what I had from the work I had already done. I had the complete road.

Q.—Will you file this?

A.—This is a matter of several miles. I am just showing it to you, if you want it, this is the first one.

Q.—Never mind filing it. It is an illustration of how you proceeded?

A.—This is particularly correct.

Q.—Of course when you speak of the development of Mr. Cross you are merely assuming the raising of water to 318. You do not infer there is any development proposed by Mr. Cross?

40 A.—No.

Q.—He owns the land up to that?

A.—I am not assuming anything. I am a construction engineer and am giving these figures just on request, for certain elevations.

Q.—Is there any road work necessary on the east side of the river?

A.—Yes.

Q.—What would the nature of that be?

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A.—On the east side of the river starting at the wooden bridge above Wakefield, there is a road along the bank for about three miles. The lower mile and a quarter of this road would be either flooded or affected by that water elevation of 318 at Cascades, that is the water elevation at Wakefield would be roughly 319, and I have figured that that road would have to be raised to at least 322.

Q.—On the east side?

A.—Yes. This is a municipal road, and I do not think as severe conditions would be imposed as by the Quebec Department of Roads.

10 Q.—In any event, applying what you had to do in the relative way to what would have to be done for a 318 level, what would the result be in the way of expenditure?

A.—I would have to explain that to you.

The actual work on this, for the elevation of water to 318, would be \$11,000. I have charged against the work only \$4,000, because I made an agreement with the Wakefield Council, and they accepted the sum of \$4,000 and built a cut-off back from the river, and closed this section of road, and I presume Mr. Cross will do the same, although the estimate I have here would be \$11,400.

20 Q.—In other words, you had to settle with them?

A.—I presume he could do the same.

Q.—And gave them \$4,000 and let them put the road wherever they pleased?

A.—Yes.

Q.—And although they estimate the work would be \$11,000, according to you?

A.—Yes, over \$11,000.

30 Q.—What about land damage that would be encountered, in your opinion, by a raise to the 318 level?

A.—For a water elevation of 318 on the lower reach of the Cascades, Wakefield section, this would affect the land to a minimum of 320, that is, allowing for capillary action.

Q.—Seepage?

A.—Yes, and also for the protecting of the banks from any elevation from between 314 and 320, and on the upper reach, roughly, from two miles below Wakefield upwards, the land would be affected directly by a water elevation of 319, and capillary action to 321.

I have gone over nearly all these properties item by item.

40 Q.—Just what do you mean by “these properties”?

A.—All the properties affected along the river bank. Some of them are not on the river bank, and a portion of what I thought would be the damages caused, or what could be collected or plus what it would cost, who were there handling it, legal fees, etc., and I have allowed \$100,000.

Q.—Let me understand clearly what that \$100,000 represents.

A.—I think if we had built a dam at Cascades, and held the

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water to 318, at the aforesaid dam, that we would have had to pay at least \$100,000 for damages on that back water, that is, up to as far as the Pêche Rapids.

Q.—I do not know whether you were present when Mr. MacRostie gave his evidence, he estimated those damages at something like \$60,000?

A.—Yes, I heard him.

Q.—What is your opinion of that?

10 A.—For one thing Mr. MacRostie cannot have any idea of what it cost the company, apart from the damages we pay out, and I probably have allowed for some items that he did not allow for, but which I have more detailed knowledge of.

Q.—Have you made any estimate of the same costs for railway, highway and lands, presuming we are going to develop to 316?

A.—Yes.

Q.—What do the items show for railway, presuming the level to be 316?

20 A.—For the railway at 316, that would be two feet less, my estimate is \$43,500.

Q.—And for the highway?

A.—\$32,000.

Q.—And for lands?

A.—\$32,000.

Q.—What was the grand total of your first estimate to 318? I think I overlooked asking you that?

A.—The railway, highway, highway east of river, land damage, \$213,900, that is, including the \$66,000 estimate given by the C.P.R. engineers.

30 Q.—\$213,900?

A.—Yes.

Q.—And the total for the level of 316?

A.—\$127,500.

Q.—I think you said the total was \$213,900 for the highway?

A.—Yes.

Q.—Would you look at Exhibit D-95, which is an estimate made by the witness Simpson, and scheme 3-D, and state whether his estimates of the same thing correspond to yours?

A.—Yes, they do.

40 Q.—There is an extra item of booms?

A.—I don't know anything about that.

Q.—Which you have not included, which brings it to \$223,000. Now, again, Mr. Simpson's scheme 2-B filed as Exhibit D-91. This is for a level of 316. Will you state whether his miscellaneous items correspond with yours, apart from the booms and piers which you have not estimated upon?

A.—Yes, they do.

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Q.—In other words, your figures have been transferred into Mr. Simpson's estimates in both cases?

A.—I gave him figures.

Q.—We have been speaking so far of water levels, assuming a development at Cascades. I want to assume for the moment the actual development at Chelsea, and ask you to consider that. Would you say whether you have made any calculations or investigations as to the difference in cost by raising the Chelsea head at various stages of the river—the difference in cost under the items which you have previously mentioned for the other elevations, namely, railway, highway, lands?

A.—I was asked to prepare an estimate of what these various items would cost for different elevations beginning at a water elevation of 295, then one of a water elevation of 306, and then one at 316, and then to get the total cost of what we had paid to date for the present elevation, which would be around 318 and 319.

Q.—Assume, then, that you stopped your development at the foot of the Canada Cement property, about 295, with the water elevation of 295, what did your investigations show you would have to pay for railway revision?

A.—At elevation 295 there was not very much work, my figures are \$42,240.

Q.—It is almost negligible at 295?

A.—It would be to the Company.

Q.—That elevation made at the bottom of the Canada Cement Company's property, then presuming you take in the 12 feet at the Cement Company's property and stop at the foot of Mr. Cross' property, 11 feet, to 306, without affecting Mr. Cross, what do you pay for railway?

Mr. St. Laurent: I object to the form of this question, inasmuch as anything over 305 affects Mr. Cross. What I am objecting to is the added statement that that does not affect Mr. Cross.

Mr. Ker: It is, as a matter of fact, the average level. Mr. Cross' property is somewhat higher than that.

BY MR. KER:

Q.—Have you made an estimate up to the level 306, but not going higher than that level?

A.—Yes.

Q.—What is your estimate for railway remedial work?

A.—\$341,600.

Q.—This is only the railway you are speaking of now?

A.—Railway.

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Q.—The railway to 306 is \$341,600?

A.—Yes.

Q.—To 316?

A.—My estimate is \$950,150.

Q.—How do you account for the fact that there is so great an increase between the 306 and 316?

10 A.—Because, in my estimate of 306, I use practically the same road bed, and estimate it by raising by train fill. The original location runs along from Kirk's Ferry up, then the major part of the railway runs along a flat along the river, of which the elevation, generally speaking, is between 305 and 310, and this work could be done in a most economical way by raising up this flat, but when one comes to 316, that is another ten feet, the railroad is isolated in a great many places out in the lake, and it necessitates an extra ten feet of train fill, not only about 14 yards to the foot, but about three yards of rip-rap to the foot, which would amount to (I am working this mentally) about \$17 a foot, which, at 5,280 feet to the mile, would be in the neighborhood of \$90,000 a mile, in addition to all other items.

20 Q.—Necessitated by that addition of ten feet?

A.—Yes, plus the necessity in the case of the La Charité station and Kirk's Ferry station of building an embankment leading away from the station, leading to the high ground, an extra, I would say, of three-quarters of a mile of embankment.

30 Q.—Am I correct in saying this, that the same difference in increase of price between 306 and 316 in respect of railway, is purely a geographical necessity, because the railway had to be re-located, and the road also. I don't know whether you understand the form of my question?

A.—I do not think I do.

Q.—Geographically or was necessary, once you went to 316, to do all the works that you actually have done. You had to re-locate the railway; you could not raise it?

40 A.—You could raise it; it could be raised, but once you got over this flat along the river bank on which the road was first located, then you had, by using the same method as in 306, using train filling, just raising the embankment, you had a long high embankment, which not only cost a lot, but had to be protected on both sides by rip-rap, which is one of the most expensive items of railroad construction.

Q.—In any event, it was not a paying proposition?

A.—If it had not cost more than working by re-location, that is, going up to the hills, up higher ground, I would have used the figures. I don't think you would ever have got the C.P.R. to accept it.

Q.—In any event they insisted on the method you had adopted?

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A.—That happened to cost more that way—a matter of cost.

Q.—What is the increase between level 316 and the level 320?

Witness: By 320 I presume you mean the present development?

Counsel: The present development.

A.—It is really not 320. In normal water I would consider it
10 318 or 319. The actual money paid out by the Gatineau Power
Company to date for railroad diversion as given me by the Account-
ants' Branch is \$963,010.

Q.—That is, taking it to 320 level?

A.—That is the work done.

Q.—Would you be good enough to give the same related figures
in so far as highway is concerned?

A.—There would be some work necessitated on the lower end
of the bridge, that is, around Kirk's Ferry with the water raised at
20 295, if one were compelled to follow the same specifications as the
Government has already enforced upon the Gatineau Power Com-
pany, there would be work amounting to my figures of \$28,400.

Q.—\$28,400 would be required to be expended on highway by
taking the water to 295, or to the foot of the Canada Cement prop-
erty?

A.—Yes. Well, that is the elevation.

Q.—At any rate 295?

A.—Yes.

Q.—To what would that sum be increased by taking it to the
level 306 for highway?

A.—My estimate for changing the highway with the water
30 level at 306, amounts to \$185,600.

Q.—Taking it to 316?

A.—My estimate is \$289,160.

Q.—And going to the present development, what is the cost of
the highway reconstruction?

A.—The amount of money paid out to date by the Gatineau
Power Company as given to me by the Accountant's department is
\$296,266.

Q.—In respect of highway?

A.—The present elevation.

Q.—As to the item, lands, what is the estimate of lands to 295?

A.—The estimated cost of land damage to elevation 295 is
40 \$70,630.

Q.—And, to elevation 306?

A.—\$315,520.

Q.—To 316?

A.—\$609,175.

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Q.—And to the present height?

A.—The cost to date is \$704,240.

Q.—Is there any other item of expense involved in this matter other than highway, railway and lands?

A.—Yes. There is the clearing of lands, clearing of bush.

Q.—Just what do you mean by that?

A.—The trees had to be cut down below the flood line.

Q.—All the trees had to be cut down below the flood line?

A.—Well, all the bush had to be cleared.

10 Q.—And what is the estimated cost of that to the 295 level? What was the clearing figure to 295?

A.—\$58,450.

Q.—To 306?

A.—\$79,600.

Q.—And to 316?

A.—\$92,670.

Q.—And to the present, the actual figures clearing cost?

A.—The actual clearing cost, \$96,340.

20 Q.—You spoke of the necessity of clearing the whole flooded area. Am I right in saying that that is included in the Order-in-Council authorizing the Development?

A.—Yes. As a matter of fact, the Government insisted upon it.

Q.—Perhaps you would read paragraph 5 of the Order-in-Council, No. 879 on that point. It is in French. It is Exhibit D-12. I will read it. (It was read in French.) So far as you are aware, has there been any estimate for that taken into consideration by the Plaintiff in his estimate?

A.—I did not hear any. I don't know of any.

30 Q.—Mr. Simpson, one of the Defendant's witnesses, has produced as Exhibit D-102, a statement of the extra cost at the Chelsea development, to include the 11-foot head at the Canada Cement property, namely, from 295 to 306. Would you be good enough to look at the items mentioned in his first set of figures under the heading of "Flooded lands, railway diversion, highway diversion, and clearing," and say whether those correspond with the figures you have given, by deduction of the 295 figures, from the 306 figures?

A.—I can work them out. Yes, my differences are the same.

40 Q.—In other words, the Exhibit D-102 reflects your estimates insofar as these items are concerned?

A.—Yes.

Q.—Referring again to the exhibit produced by Mr. Simpson for the Defendant as D-100, which is the extra cost of raising the water level from 306 to 316, would you examine the items in his first computation under the head of flooded lands, railway, highway and clearing, and state whether the figures there correspond with yours, after the necessary subtractions of figures representing your levels?

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A.—Yes, the figures agree with mine.

Q.—Would you finally examine Exhibit D-101 produced by a witness for the Defendant, which is the extra cost from 316 to 320, and examine the various items of flooded lands, railway and highway, and state whether they agree with your figures under the same circumstances?

A.—Yes, they agree.

Q.—In other words, the figures which you have given here at some length, are actually the figures which Mr. Simpson has used
10 in his computation as to the extra cost of raising this construction to the higher level stage by stage?

A.—Yes. I gave them to Mr. Simpson. I gave those estimates to Mr. Simpson.

Q.—You have based yourself, insofar as the 320 level is concerned, upon the actual costs to the company, and in any other respects, at lower levels, you have computed these costs in respect of railway, highway and lands. Just briefly what system did you adopt in making that relative computation?

A.—For the railroad work I used the ordinary method of pro-
20 jection. We have complete topographical maps of all that country, very complete plans and maps. I projected the lines at different levels on the maps, and took out the quantities and worked them out with the unit prices of the contractors who had already done the work.

Q.—At the same prices?

A.—Yes, at the same prices.

Q.—You merely worked the matter out as you would have worked out the original plan for the Gatineau Power Company?

A.—For the preliminary estimate.

Q.—I mean, it was not a haphazard matter. You actually
30 worked it out in each case, the quantities and various other matters, and prices in a way to arrive at an accurate conclusion. Have you done so?

A.—I worked in the way I worked in the preliminary estimate.

Q.—Your land values, for instance, in cases other than the actual paid indemnity, how did you work them out? Was it worked out on a basis of acreage?

A.—Sometimes. On a basis on what I have learned they would
40 probably get from the company, from experience I have gained in the last two years and a half.

Q.—You are taking into consideration expropriation proceedings?

A.—Everything.

Q.—And arbitrations, and settlements amicably made, and the general run of prices that were being maintained up there?

A.—I might revise that statement, and say I based it on what I

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believe it would cost the company or would cost anybody who is trying to settle these damages. Damage claims arise from very, very small things, I have found out.

Q.—You have found that out?

A.—Yes, sir.

Q.—But they all cost money when we have to defend them?

A.—Well, I consider it has been very expensive to the Gatineau Power Company.

10 Q.—You are familiar with the right of way of the C.P.R. as it crosses through lots 21-C, that is the Cascades property, Mr. Cross' property?

A.—21-C.

Q.—Well, as it crosses through Mr. Cross' property on the west side?

A.—I am very familiar with all that right of way. My office was right there for a year.

20 Q.—Perhaps you would look at the aerial photograph for a moment. This portion of the railway here between the points "X" and "X" included in the square as shown on the aerial plan with the words "Canadian Pacific Railway". You are aware of that, the actual location of the rails on the centre line before any work was done by the Gatineau Power Company on it?

A.—Yes, I traversed all this along here.

Q.—Is the railway between those points at present in the same relative position to the right of way that it was before?

A.—Yes, it is in exactly the same place as it was before.

Q.—Except that it is raised?

30 A.—Except that it is raised. Except possibly for minor adjustments of the section man who is lining from time to time, and would move an inch or two.

Q.—But the centre line now corresponds to what the centre line did before it was raised?

A.—Practically. It has to. There is a heavy rock cut to the west. It could not be moved.

Q.—You mean it could not be shifted?

A.—Not very much. There is a 20-foot rock cut.

Cross-examination

40

CROSS-EXAMINED BY MR. ST. LAURENT, K.C.,
OF COUNSEL FOR PLAINTIFF:

Q.—You say the centre line of the railway at the present time is substantially where it was before it was raised?

A.—Yes.

Q.—When did you first go into that locality?

A.—About Christmas, 1925.

Q.—So, when you say it is in the same place it was before, you

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mean it is in the same place that it was before when you first went there?

A.—I know it could not be moved very far.

Q.—You did not go there till 1925?

A.—No.

Q.—You say there is a rock cut on the west side?

A.—Yes.

10 Q.—It could not very well be moved closer to the wall of the rock cut than it was?

A.—No.

Q.—But the rock cut would not interfere with its being moved out in the other direction?

A.—Well, I should say that it has not been moved very far. I would notice it. I pass there a great deal.

Q.—I am not suggesting its having been moved since March, 1925, but of it having been moved from the original location thirty or forty years ago?

A.—I could not say.

20 Q.—I understand as to these figures you have given, for instance, for railway remedial work, for 295, 306, 316, you made estimates?

A.—Yes.

Q.—And for what Mr. Ker has referred to as the 320, you took the actual expenditure from the accountants?

A.—For the present, yes.

Q.—Will you just look at your figures for the railway work, and see if I have got them correctly: For elevation 295, \$42,240?

A.—Yes.

Q.—For 306, \$341,600?

30 A.—Yes.

Q.—For 316, \$950,110?

A.—Yes.

Q.—And for the 320 at present elevation, \$963,010?

A.—Yes.

10 Q.—The difference between 306 and 316, for the difference of feet there, would be \$608,510.

A.—I presume.

Q.—\$349,000 and \$950,000?

A.—It is 306 and 316 you want?

40 Q.—Yes.

A.—\$609,000, roughly.

Q.—Roughly, \$609,000?

A.—Yes.

Q.—For a difference in elevation of 10 feet?

A.—Yes.

Q.—The ten feet there costs something over \$60,000 for each foot?

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A.—Yes.

Q.—For the next four, between \$950,000 and \$963,000, you have a difference of \$13,000?

Witness: Between what?

Counsel: Between 316 and the present 320?

A.—Yes, \$13,000.

Q.—The foot there only cost about \$3,000?

10 A.—Well, the reason is there was practically no difference in the work required. I don't take this 320—that to me is an arbitrary figure. I figure the present normal working elevation of Cascades was approximately at 317, 318 and 319—318. That 320 figure to me is purely nominal.

Q.—Call it 319, then. That would be 4,000?

A.—I won't even call it 319.

Q.—Well, what will you call it?

A.—318.

Q.—If you call it 318, then it is \$6,500?

20 A.—Oh, no, not at all. You are dividing in direct proportion to these figures.

Q.—I am just dividing it in direct proportion to the contour line to which you come?

A.—That is not correct.

Q.—I am suggesting that it is the way it should be done. I am suggesting to you that if you use that check upon it, for several feet of contour line between 306 and 316, you get something over 10,000, and for several feet of contour line when you get above 316, you drop away down to three or four thousand?

30 A.—They are not comparable that way at all. On those two items I figure that the cost for elevation of 316 is practically the same as it is now. In fact, I am sure it would be.

Q.—For the highway at 306, \$185,600?

A.—Yes.

Q.—And 316, \$289,160?

A.—Yes.

Q.—Roughly, \$105,500 difference?

A.—Yes.

Q.—Several feet of contour line, \$10,000?

A.—Yes.

40 Q.—From the 316 to the 320 a difference of only \$7,000?

A.—Well, the same applies there. I figure to 316. I don't admit the 320. It is somewhere around there at Chelsea. The cost is practically the same, and I am sure it would be practically the same.

Q.—You said that Mr. MacRostie was figuring on \$60,000 for land damage, but had no idea of what it cost the company besides, what they pay out. What is so costly to the company besides what you pay out to the owners of the land?

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A.—Our legal fees. If I said it, I meant he could not have the knowledge that I have.

Q.—But I am asking you what it was that you had in mind when you made that statement that he had no idea what it cost the company in addition to what you pay out to the land owner?

A.—Our engineering expenses, inspection expenses, legal expenses, expert in law, arbitration expenses. If I made that as a dogmatic statement, I did not mean that. I meant that as an expression of my belief.

10 Q.—What do all those extras amount to in percentage?

A.—I have allowed fifteen per cent generally. That is what it usually cost us roughly, 15 per cent. As a matter of fact, I think it is more than that.

Q.—Is that what you used in getting at the \$100,000?

A.—Well, I used it here.

Q.—So without that, it would be something around \$86,000 or \$87,000?

A.—Well, roughly about \$15,000.

20 Q.—You said, when you stated \$100,000, you thought that if you had built a dam at Cascades to elevation 318, your company would have had to pay at least \$100,000?

A.—Yes, that is my opinion.

Q.—Of course, your company would have had to pay damages to Mr. Cross on the Meach Creek property—the Farm Point property?

A.—I allowed for that.

30 Q.—And you did not understand from what Mr. MacRostie was saying in his evidence, that he was allowing anything on Mr. Cross' property, did you?

A.—I do not think he stated.

Q.—Do you know what the normal high water level is at Farm Point under natural conditions?

Witness: That is, before the dam was built?

Counsel: Yes.

40 A.—I know what we have been allowing in trying to settle claims. We have been taking that no damage was effected until the water went above 312.

Q.—Is it to your knowledge that in the flood waters, that used to go between 318 and 320?

A.—Well, there have been maximum flows much higher than that.

Q.—Much higher than 320.

A.—They have been to 323.

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Q.—At Farm Point? Perhaps you are right. I don't know the locality at all, you do. I am asking you?

A.—Of course, the last extreme flood was in 1909, and then the greatest flood before that was over 50 years ago, and I have heard these old settlers talking about it, when the water went six feet over the road. It might have been to 325. I don't know, when you talk about extreme water.

Q.—But as to the average high water of the spring floods at Farm Point, did you ascertain what that was?

10 A.—Oh, I know in a general way.

Q.—Around 318?

A.—I would say a little less than that.

Q.—How much?

A.—Well, I cannot say. I can only say what we use in trying to compensate. Of course, I cannot commit myself. Mr. Scovil gave that evidence correctly.

Q.—You are not in a position to give any first-hand information?

A.—No.

20 Q.—Because you were only there one year before the water was raised by the initial openings?

A.—Yes.

Q.—You were there in the spring of 1926 and in the following spring. The water had raised by artificial works?

A.—Yes, in 1927.

Q.—So you only saw one spring of natural conditions?

A.—Yes, I did.

30 Q.—With respect to this highway work, you were required by the department to build a better and wider road than the one you found there?

A.—Always. We had to conform to specifications regardless of what kind of road we started on.

Q.—With respect to the Meach Lake, you stated there was a dam at the outlet of that lake?

A.—There is a dam on Meach Creek, about a quarter of a mile or half a mile down.

Q.—And that was open when you went there on September 18th and October 9th?

40 A.—Yes.

Q.—Did you notice what was the height of that dam when it is closed?

A.—The height above the foundation, or the height above the water level of Meach Lake?

Q.—How much water can it impound?

A.—I could not say offhand. There has been a concrete weir built by the residents about a quarter of a mile above it, which takes

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away about a third, that had no sluices to it.

Q.—From having been there, you are probably able to make a fairly accurate guess?

A.—Possibly.

Q.—And you can make the same kind of guess as to what the dam which was open on these two occasions could impound when it is closed? Is it a matter of several feet?

A.—I would say two or three feet possibly. That gain is a guess. I did not take any elevation. You cannot compare them. It is down
10 in the creek a quarter of a mile. There is a small pond and then a piece of creek, you cannot see them both at the same time. There is a pond in between.

Q.—But you probably see the depth of the gate when it is open?

A.—Oh, yes, I know. I have an idea in my head of what stop logs could go into it. I know. I measured them, but that does not tell me what I can store in that lake.

Q.—That is, how much?

A.—Twelve feet up to the top.

Q.—So, from the sill to the top of the stop log when they are in
20 there are 12 feet?

A.—Yes.

Q.—Mr. Cross' power plant was not being used to develop electricity this year?

A.—Not that I know of.

Q.—You do not know whether or not these gates have been open for any considerable time?

A.—No. All I know is they were open when I was there.

Q.—Was the visit you made there this year on September 18th
30 the first visit you made?

A.—Yes.

Q.—This has been an exceptionally dry season in that drainage area, has it not?

A.—I would say so.

Q.—In that section, are not the months of January, February and March months when the natural run-off is at its lowest?

A.—Yes, I guess that would be as low as any winter months.

Q.—When you were speaking of these months of January, February and March, when the lights went off about ten o'clock, you
40 then added that, after that, you did not notice it because the days were getting longer, etc., but you are not suggesting that after the 31st of March you do not require artificial lighting up to and after ten o'clock?

A.—No. The reason I noticed it so particularly, in preliminary survey work you have to get your work done at night for the next day, and the lights going out at ten o'clock, well, that invoked a lot of profanity.

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Q.—And it was during that period that you were doing this preliminary survey work, and trying to get your notes plotted into shape over night?

A.—Surely. That is why it is so well impressed upon my mind.

Q.—Then, presumably after the 31st March, under ordinary yearly conditions, the run-off flows better?

A.—Once it started to thaw, we got more water, I presume.

Q.—And the thaws commence about the end of March or beginning of April?

10 A.—I want to correct what I said about the 31st March. I said three months, roughly. I don't know if that is the definite date.

Q.—But in that period of about three months, from Christmas time the thaws usually begin, and presumably he got more water. That is correct, is it not?

A.—I would think so. Yes, that is common sense.

Q.—With respect to that point at which you were located, Kirk's Ferry

A.—I was just located there for the first three and a half months.

20 Q.—The transmission line to that point was washed out, was it not, since the water was raised?

A.—It was flooded. That would be a year afterwards.

Q.—The following spring?

A.—The spring of 1927, yes.

BY MR. ST. LAURENT, K.C.:

Q.—The figures you gave us for the clearing up to 295, and 306, 316 and 320, all include the cost of clearing up to those elevations between Chelsea and Cascades?

30 A.—Some of the higher ones are above Cascades.

Q.—But the figures you gave us are inclusive figures; in them is the cost of clearing up to the various contour lines between Cascades and Chelsea; and with respect to 316 and 320 they also include the cost of clearing up to the proper contour line between Cascades and Wakefield?

A.—Yes.

40 Q.—And the figures you gave us in regard to the railway, the highway and the land damages are of the same order; they are figures which cover not only the cost of doing work from Cascades up to Wakefield, but the cost of doing work from Cascades down to Chelsea—up to the proper contour lines?

A.—Some of the work is below, and some is above. The higher is above.

Q.—Some of the work is below Cascades, and some is above, in all those cases?

A.—Yes.

(And further deponent saith not.)

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DEPOSITION OF JAMES A. STRUMBERT, A WITNESS
EXAMINED ON BEHALF OF THE DEFENDANT.

On this tenth day of November, in the year of our Lord one thousand nine hundred and thirty-one, personally came and appeared

10 JAMES A. STRUMBERT,
of the City of Ottawa, in the Province of Ontario, Land Agent, Gatineau Power Company, aged 48 years, a witness produced and examined on behalf of the defendant, who, being duly sworn, deposes as follows:

EXAMINED BY MR. KER, K.C.,
OF COUNSEL FOR DEFENDANT:

- 20 Q.—What is your occupation?
A.—I am Land Agent for the Gatineau Power Company.
Q.—How long have you occupied that position?
A.—Since the Gatineau Power Company was formed.
Q.—Would that be prior to the raising of the water in the river?
A.—When we started the work at Chelsea, the Canadian International Paper Company was the Company in charge, and I was with them as Land Agent. When the Gatineau Power Company was formed, I continued as Land Agent of the Gatineau Power Company.
- 30 Q.—What experience had you had previous to that?
A.—I have had considerable engineering experience, from 1904 or 1905 until 1911. I was on construction work for the Calgary Power & Transmission Company at Kananaskis, as Assistant Superintendent of Construction. I was Assistant Superintendent of Construction for the Powell River Paper Company, at Powell River. I was contracting in Vancouver for three years. I was also contracting in the Province of Quebec for a year and a half. I put in five years estimating and as superintendent of construction in the City of Montreal, with the Atlas Construction Company and the D. G. Loomis and Sons Construction Company. I was four years Canadian
- 40 Manager of the Austin Manufacturing Company in Canada. They are manufacturers of road machinery and construction machinery.
Q.—What would be the nature of your duties with the Canadian International Paper Company, and with its sister Company afterwards?
A.—When the Chelsea development was commenced I went up with Major Blue and made an estimate of the land damages for that development. After the estimate was made, and the Company de-

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cided to go ahead with the elevation on which they developed, I was put in charge, under Major Blue, of the land surveys and the purchasing of all the property in that area.

Q.—The purchasing of all lands which would necessarily be affected?

A.—Yes.

Q.—Over what period did that work extend?

A.—Practically from the fall of 1925 until 1928, and in some cases a little later.

10 Q.—The fall of 1925 would be about a year and three-quarters before the water was raised?

A.—Yes.

Q.—So, in these circumstances, I take it you would be familiar with the topography of the country before the water was raised?

A.—Yes, I was.

Q.—As a matter of fact, did you personally do most of the purchasing and dealing with the people from whom you had to acquire?

A.—I did practically all of it.

20 Q.—You are familiar with the Farm Point and Meach Creek properties of the plaintiff?

A.—I am.

Q.—Would you mind giving me a general outline of what investigations you made, or how often you went there previous to the raising of the water, and with whom you went?

A.—During the winter of 1925-26 I was on that work practically every day—perhaps not on Meach Creek, but in the vicinity, from Wakefield to Kirk's Ferry.

Q.—Which is about four miles below Cascades?

30 A.—Yes.

We had four parties doing land work all the time, and I was with them looking after the surveys they were making, bringing in the notes to the Ottawa Office, and dealing with the different owners each day I was on the work.

Q.—Do you remember, in a general way, how many individual owners you had to reckon with?

A.—Around two hundred, I think.

Q.—About two hundred proprietors?

A.—Yes.

40 Q.—Did you have occasion particularly to look at the Meach Creek and Farm Point properties of Mr. Cross?

A.—Yes. I was over those properties a number of times, with Mr. Cross and Mr. Gale, and Mr. Sheasley, and other officers. Also, I think, with Mr. Montgomery.

Q.—Mr. Gale is Vice-President and General Manager of the Company?

A.—Yes.

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Q.—Mr. Sheasley occupied that position before Mr. Gale took office?

A.—Yes.

Q.—And Mr. Montgomery is counsel for the defendant in this case?

A.—Yes.

Q.—Can you give us an idea of the dates you were over the property, and what you went there to do in a general way?

10 A.—I may say I kept a memorandum of each time I visited the property. I have a memorandum book which I entered each day showing what work I did and who I visited. From that book I have taken a few extracts, such as:

“ Sunday, February 28th, 1926: Looked over Cross powerhouse and plant with Mr. Sheasley and Mr. Gilmour.”

“ Thursday, March 25th, 1926: Met Mr. Cross, re property, with Major Blue present.”

20 “ Saturday, March 27th, 1926: Saw Mr. Cross and made an appointment for Tuesday for Major Blue.”

“ Sunday, July 18th, 1926: Over Cross' property at Farm Point, with Mr. Cross and Mr. Gale.”

30 “ Tuesday, July 20th, 1926: Over Mr. Cross' property with Mr. Cross and Mr. Gale in the morning, and in conference with Mr. Cross, Mr. Lafleur, Mr. J. B. McRae, Mr. Busfield, Mr. MacRostie and Mr. F. X. Plante; also Mr. Gale and Mr. Montgomery.”

Q.—Those are a few instances you have noted of your having visited the Cross properties or occupied yourself with them?

A.—Yes; they are taken from the book.

Q.—Are those devoted entirely to Meach Creek, or would they be matters connected with the Cascades?

A.—Practically all Meach Creek.

40 Q.—What was the object of those conferences, interviews and attendances?

Mr. St. Laurent: How does my learned friend make this relevant? I had supposed it was simply preliminary, but if my learned friend is going into any question of negotiations, there are none alleged, and I do not know how they would be pertinent to this contestation.

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Mr. Ker: I really do not attach a great deal of importance to it, except I wanted to show the time the agents of the Company had actually put in in connection with inspection and investigation, and otherwise, on the Cross properties, before anything was done to raise the water. In other words, that we did not simply raise the water on him without having parleys or conferences with him.

10 Mr. St. Laurent: Then, I probably should have made my objection earlier. I took this evidence as being simply preliminary, in the nature of qualifying the witness to give an opinion as to values, and I thought perhaps it might be pertinent for that purpose. As it is, I do not believe it to be pertinent.

Mr. Ker: I have no objection to withdrawing the question.

BY MR. KER (continuing):

20 Q.—Those interviews, inspections, and conferences you speak of were in respect to the Cross' properties which are in question in this case?

A.—Yes.

Q.—Consequently, you are familiar with the Meach Creek and Cascades properties which belonged to Mr. Cross?

A.—I am.

Q.—Did you have occasion, in collaboration with Mr. Farley, to estimate the value of the properties at Meach Creek which were intended to be taken by expropriation but which were not so taken?

A.—Yes.

30 Q.—Mr. Farley has produced a plan, Exhibit D-72. Will you please look at it, and will you state whether you recognize it as representing the locus of the Farm Point or Meach Creek properties of the Plaintiff?

A.—Yes, I would say those are the ones affected by the expropriation, that we tried to obtain.

Q.—There are four parcels referred to in that plan. The third parcel should not be there, I understand, because it does not belong to Mr. Cross, or is not mentioned in this case?

A.—There are five parcels.

40 Q.—No. 3, I think, is not in issue here. Taking the other parcels would you be good enough to say, from your own investigations, what area of land appears to have been affected, or damaged, or submerged (or whatever you want to call it) by the waters as they stand at the present time?

A.—According to Exhibit D-72, the land affected to Elevation 321, on Parcel 1, is 16.07 acres.

Q.—The first parcel is rather a large parcel on the right hand side of the plan?

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A.—Yes.

Q.—And the land affected there, at elevation 321, is 16.07 acres?

A.—Yes.

Q.—What is the character of that land? What sort of land is it?

A.—The land is very low. Meach Creek is divided into two branches, and most of that land would be covered by water between the two branches. The other land is low lying land, quite damp in the spring, and it always has been that in the spring.

Q.—Would that condition prevail under natural conditions?

10 A.—Yes.

Q.—Did you have occasion to put a value per acre on that land?

A.—Yes: I valued that land at \$100.00 per acre.

Q.—What is on that parcel in the way of buildings?

A.—There are four workingmen's cottages.

Q.—Would you briefly describe the nature of those cottages?

They are wooden cottages, I suppose?

A.—They are built of wood. There are no foundations under them: there are posts and stones under each corner. The wood is very rough—the roughest kind of lumber you could use in cottages.

20 They were really just workingmen's cottages of the cheapest character.

Q.—I understand you to say four of them in Parcel 1 have been affected?

A.—Yes.

Q.—Are they all buildings of approximately the same character?

A.—Very much the same. One or two are probably a little larger than the others. I have the dimensions of them here.

30 Q.—What value did you place upon them?

A.—I lumped those buildings as being worth \$6,000, which I thought was a very generous offer for the buildings.

Q.—\$6,000 for the four, being an average of \$1,500 each?

A.—Yes.

Q.—I think Mr. MacRostie valued them at \$2,000 each. In any event those are the same buildings to which he referred?

A.—I believe so.

Q.—And, you valued the land at \$100 per acre?

A.—Yes.

40 Q.—Will you tell His Lordship how much that amounts to for Parcel 1?

A.—\$1,607 for the land, and \$6,000 for the buildings.

Q.—A total of \$7,607?

A.—Yes.

Q.—I notice the C.P.R. divides Parcel 1 from Parcel 2?

A.—Yes.

Q.—Parcel 2 comes on the east side of the railway?

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- A.—Yes.
Q.—What is the superficial area of that Parcel?
A.—To elevation 321 there are 3.9 acres.
Q.—Are there any buildings on it?
A.—There is one double house, of the same character as those other houses; on which I place a value of \$2,500.
Q.—You placed a value of \$2,500 for the double house on Parcel 2?
10 A.—Yes.
Q.—At what did you value the land?
A.—\$100 per acre.
Q.—I understand Parcel 2 was bounded on its eastern side by the highway?
A.—Yes.
Q.—And, it still is?
A.—Yes.
Q.—What was the character of the land in Parcel 2 in the natural condition of the river?
20 A.—It was very low. Practically the same as the land in Parcel No. 1.
Q.—What would be the condition of that land in the spring, under natural conditions?
A.—I would say a great part of it would be flooded.
Q.—How many acres did you reckon at level 321?
A.—3.9 acres.
Q.—That would be \$390 for the land?
A.—Yes.
Q.—And, \$2,500 for the buildings?
30 A.—Yes.
Q.—Parcel No. 4 is the part on the left hand side of the plan. It is bounded on the west by the railway, and on the east by the road?
A.—Yes.
Q.—What was the nature of that land before the flooding?
A.—There is a creek running through this property, and there is also a hotel to the south of the parcel which we were expropriating. In the course of the creek it is quite low, but outside of that it is quite good land and could have been utilized for cottage sites—
40 that is, outside of the creek.
Q.—What does the plan indicate as being the area of Parcel 4?
A.—To elevation 321 the area affected would be 1.72 acres.
Q.—That does not correspond with the area you were intending to expropriate?
A.—No; the area we had tried to expropriate was 7.88 acres.
Q.—And, that is what the plan shows?
A.—Yes.

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The area that would be taken under elevation 321, 1.72 acres, would be practically all within the banks of the creek, which would not be as good land as the rest of that property.

Q.—Have you had occasion to see that land since the water has been raised?

A.—I have.

Q.—In your opinion what is the material difference in the value of the remaining portion of that land over the 1.72 acres you speak of?

10 A.—It has not been changed whatever. The creek is there, and the water backs up into the creek from the flooding of the Gatineau, but otherwise the land is practically as good as it ever was.

Q.—In your opinion is it still as available as it ever was for building sites, if necessary?

A.—Yes.

Q.—Would that portion of it be affected to any extent by seepage?

A.—I would not think so: not unless it was very close to the creek.

20 Q.—What would you consider to be the damage done by the water at the present time on Parcel 4?

A.—On the expropriation I made an estimate of the acreage price of \$250 per acre.

Q.—Taking the whole thing?

A.—Yes. I do not think that price should prevail under the conditions of flooding to elevation 321, or taking the land to 321, because it is only the poorer land that is taken up to that elevation.

Q.—What prompted you to put a price of \$250 an acre on it in the expropriation?

30 A.—I thought that possibly he could sell building lots, and some of them were in that district and would probably be worth \$250 per acre.

Q.—Parcel 5 is the very small margin between the road and the river. What superficies did you find there?

A.—It does not appear to have been taken up to 321.

Q.—I suppose it is flooded?

A.—Part of it would be, and part of it would not.

Q.—What allowance would you make as the value of it?

40 A.—I allowed \$250 per acre for Parcel 5, and I found 1.6 acres up to elevation 325.

Q.—That is to elevation 325?

A.—Yes.

I might say that at the present time they have opposite the hotel a small booth where they sell refreshments, soft drinks, cigarettes, and things like that. That has been built since the flooding has taken place.

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- Q.—That is the place where the word “ Hotel ” appears on the plan?
- A.—Yes.
- Q.—That hotel property is not in question in this case?
- A.—No.
- Q.—In any event, your figure of valuation was about \$250 an acre, and the whole thing amounted to about an acre and a half?
- A.—1.6 acres.
- 10 Q.—It was upon the same principle you proceeded, in collaboration with Mr. Farley, to base your estimates for the offers in expropriation?
- A.—Yes.
- Q.—Which are the same offers, I understand, which have been produced here as Defendant's Exhibit D-54?
- A.—Yes.
- Q.—The figures you have given would not, I understand, quite correspond with those figures?
- A.—No, they would not.
- 20 Q.—Because they are for less area?
- A.—Those figures are for less area.
- Q.—It was in respect of the properties you mentioned here the notice Exhibit D-54 was made?
- A.—Yes.
- Q.—Will you state what group they are referred to in that notice?
- A.—Group D.
- Q.—They are the same properties about which you have just been speaking?
- 30 A.—Yes.
- Q.—And in respect to which offers were made in this document Exhibit D-54?
- A.—Yes.
- Q.—You have also examined and reported upon the properties known as the Cascades properties, from the point of view of value?
- A.—I have.
- Q.—In the same offer?
- A.—Yes.
- 40 Y.—Would you be good enough to say what area of Mr. Cross' land is affected on the west side of the river, according to your calculations?
- A.—To elevation 325, on the Cascades, on the west side of the river there are five acres affected; on the east side, in lot 21-B, there was eight-tenths of an acre affected.
- Q.—In other words, to elevation 325 there would be 5.8 acres altogether?
- A.—Yes.

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- Q.—Have you an estimate of what actually has been affected by the water?
A.—No, I have not.
Q.—It would be less than 5.8 acres?
A.—Yes, it would be considerably less than that.
Q.—At what figure did you value the land on the west side at the Cascades?
A.—I valued it at \$250 an acre.
10 Q.—Upon what did you base your estimate of this value? What sort of land is it?
A.—I put it on the same basis as my calculations in regard to Parcel No. 4 on the plan Exhibit D-72, namely, that it was a possible location for cottage sites, and some day it might possibly be developed into a summer colony.
Q.—There were no buildings affected on the west side?
A.—No.
Q.—On what did you base your estimate of value on the triangular portion on the east side?
20 A.—I valued it at \$50 per acre.
Q.—On what did you base that?
A.—I had bought land about a mile south of that property at the same price, so I gave Mr. Cross the benefit of that.
Q.—As a matter of fact, is there any way of access to that property?
A.—No.
Q.—There are no roads anywhere near it?
A.—No.
Q.—To reach it you would have to cross the river?
30 A.—You would have to cross above the rapids, or below the rapids over the property of the Canada Cement Company.
Q.—Was it wooded land, or cleared land?
A.—It was rough wooded land—very rough.
Q.—And you put a value of \$50 an acre on it?
A.—Yes.
Q.—That would be approximately \$50 for this area, which consists of slightly less than one acre?
A.—I allowed him \$40 for that part of it.
- 40 BY THE COURT:
Q.—What do you mean by rough wooded land?
A.—It is rock and bush. It could not possibly be cultivated. It is right on the shore of the river, and the mountain rises right behind it. A great deal of that land in that area is very rocky and very rough.
Q.—What kind of wood is on it?
A.—There is considerable hardwood up in that section; also

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some pine and spruce, but not very much. It is all second growth. It has all been cut over.

Q.—Birch and maple, I suppose?

A.—Birch, maple and oak.

BY MR. KER (continuing):

10 Q.—I take it you are familiar with the location of the C.P.R. right-of-way on the west side of the river at the Cascades?

A.—Yes.

Q.—Can you indicate, in a general way, the relationship between that right-of-way in connection with its proximity to the river, in its course through lot 21-C? What happens when it enters from the south?

A.—The railway fence runs into the Gatineau River.

Q.—When you start in at the south, it strikes lot 21-C. Is it riparian to the river at that point?

A.—No, it is not.

20 Q.—How long does it continue without touching the river?

A.—I would require to have the plan in order to say definitely.

Q.—Would it be 1,000 feet, roughly speaking?

A.—I should judge approximately 1,000 feet.

Q.—What happens then?

A.—Then the railway fence goes into the river.

Q.—Have you a photograph showing that?

A.—Yes, I have a photograph, which was taken on July 31st, 1926, on which I am shown holding the railway fence as it goes into the river.

30 Q.—This photograph was taken in your presence?

A.—Yes.

Q.—Looking at what you refer to as a photograph, it would seem to me there are really two photographs here?

A.—They are joined together.

Q.—Will you file them as Defendant's Exhibit D-110?

A.—Yes.

Q.—I understand you are the person who is photographed standing in the water at the end of the fence?

40 A.—Yes. The C.P.R. original fence goes along behind the trees, and where I am standing is the last strand of wire. I am holding it as it goes into the river along the bank. If the fence was continued it would be continued along in the river.

BY THE COURT:

Q.—That is, going from left to right?

A.—Yes.

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BY MR. KER (continuing):

Q.—In direction, south to north?

A.—Yes.

BY THE COURT:

Q.—Does this photograph give an idea of the woods?

10 A.—That is on the west side. It is not on the east side.

BY MR. KER (continuing):

Q.—Will you point out on the plan Exhibit D-69 the portion which is represented by the photograph you have just filed as Exhibit D-110?

A.—The portion which is represented is marked on the plan Exhibit D-69 as being from "X" in a northerly direction.

Q.—From "X" to where?

20 A.—To "Y".

Cross-examination

CROSS-EXAMINED BY MR. ST. LAURENT, K.C.,
OF COUNSEL FOR PLAINTIFF:

Q.—As a matter of fact, the properties the areas of which you have given have been submerged since the month of March, 1927?

A.—Partly submerged. I do not think up to 321 they have all been submerged. Practically speaking, yes.

Q.—Practically speaking, they have been submerged?

30 A.—Yes.

Q.—Proceeding upwards from Cascades: at Cascades you made your estimate of the shore property alone—you did not include the bed of the river in your calculation?

A.—No. I did not consider it in any consideration on the whole development.

Q.—I am just trying to get the facts. We will afterwards discuss the point as to whether you or the Company should or should not have considered it.

A.—Quite so.

40 Q.—This 5.8 acres was for shore property?

A.—Yes.

Q.—Nothing at all being included for the bed of the river?

A.—Just the area that would be flooded on the surface.

Q.—There has been held over the bed of the river at Cascades from 14 to 6 feet more water than under normal natural conditions?

A.—I would suppose so. I do not know whether there would be that much, but there is some.

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Q.—At the lower end, between 305 or 306 and 318 or 319 or 320; and, at the upper end, between 312 and 318, 319, or 320?

A.—Yes.

Q.—The property over on the east side of the river is not in direct communication with any highway?

A.—No.

Q.—It is just a corner of the lot which runs out in a triangle there?

A.—Yes.

10 Q.—And which is bounded on the two sides by other lots?

A.—Yes.

Q.—Was it to your knowledge that Mr. Cross was operating a power plant at Meach Creek prior to 1926?

A.—Yes.

Q.—And the power developed from that plant was used for lighting Kirk's Ferry, the Cascades, Farm Point, and Wakefield?

A.—Yes.

20 Q.—Is it to your knowledge that since 1930 Mr. Cross has been buying power from the Gatineau Power Company at a cost of some \$260 a month?

Mr. Ker: I object to the question as not arising out of the examination in chief of the witness, and as not being pertinent in any way to my examination in chief.

30 Mr. St. Laurent: Unless I am absolutely mistaken the purpose of this evidence was to prove the amount of damage caused by the flooding of the Farm Point property. The witness mentioned certain elements, and I think it is quite legitimate cross-examination to ask him if there are not other elements which affect that same question of the damage caused by the flooding of the Farm Point property.

His Lordship: I will allow the question, under reserve of Mr. Ker's objection.

A.—Of my personal knowledge I do not know anything about Mr. Cross' contract with the Gatineau Power Company. That is entirely out of my department.

40 Q.—Do you know that, in fact, he has been supplied with power by the Gatineau Company since 1930?

A.—It is mere hearsay as far as I am concerned.

Q.—You were in the employ of the Company at that time?

A.—I am still with the Company, but only as land agent. I do not look after any of the contracts.

Q.—For the purpose of making up your offer you took into account the acreage with respect to Parcel 5, the acreage with respect

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to Parcel 4, the acreage and the double house with respect to Parcel 2, and the acreage and the four cottages with respect to Parcel 1?

A.—Yes.

Q.—You took no other elements into consideration?

A.—Not in the expropriation.

Q.—With respect to Parcels 4 and 5 your valuation was \$250 per acre?

A.—Yes.

10 Q.—That was on the assumption that the land might be utilized for building purposes?

A.—Yes.

Q.—Had you ascertained what prices were paid for building lots along the Gatineau River?

A.—Yes.

Q.—Have there not been prices considerably higher than \$250 an acre for building lots?

20 A.—Up to the time we went on the Gatineau I do not think there were any prices higher than \$250 per acre; in any event, there were none that I could find other than in some very exceptional cases along down by Kirk's Ferry, which was a much shorter distance into town. I may say at that time the road was very, very rough, and I do not think anyone would go by motorcar. The only way you could possibly get there would be by train, and the station at Cascades at that time was practically a mile away from this property. The station at Farm Point was very close to the property, but you would have about 40 minutes on the train. I do not think anyone would pay much more than that price, or had paid anything like it.

30 Q.—There were a number of summer cottages farther up the river, around Wakefield, were there not?

A.—Yes, they were all along the river, at certain particular sites that were adaptable to summer cottages.

Q.—Can you tell me approximately how many summer cottages there were along the river between Cascades and Wakefield?

A.—I should say around twenty.

Q.—Not considerably more than that?

A.—I do not think so; not summer cottages.

Q.—Were all those cottage lots as large as an acre each?

40 A.—No; some would probably be a little more, and some less.

Q.—Most of them were smaller than one-acre lots, were they not? Something on the order of 100 by 150 feet?

A.—A man who is going out for the summer does not want to be too close to other people, and I would not think it would be advisable to buy less than an acre.

Q.—But, as a matter of fact, were not most of those lots up there smaller than an acre?

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A.—No, I think most of them were about an acre. Some would be a little over, and some a little less.

Q.—I am not to understand from your evidence that this double house, the four cottages on Parcel No. 1, and the hotel, constituted the whole of the Farm Point settlement? There was quite a little settlement there, was there not?

A.—At Farm Point, yes. There are quite a number of other laborers' cottages there which were not affected.

10 Q.—There was a sawmill there?

A.—Yes.

Q.—There were also this powerhouse for the development of electricity for lighting those villages? And a post office, and a station?

A.—There still is.

Q.—Two churches?

A.—Only one was in commission, I think, when I went up there.

Q.—Is there not one from which the brick veneer has fallen since?

20 A.—It was falling off when we went up there. It was not owing to our going there that the brick veneer fell off.

Q.—It was not the rising water that washed out the foundation on which this brick veneer rested?

A.—No, I would say not. I do not think any seepage has ever gone near the church. In fact, I do not think any of that property above the drainage land has ever been affected by it. That is my opinion of it.

Q.—Is it to your knowledge that any of this property was used for a piling ground by Mr. Cross in the operation of his mill?

30 A.—Yes, some of it was.

Q.—You did not take into consideration the inconvenience which might result from his having to use ground farther away for piling purposes?

40 A.—I do not think Mr. Cross would have to do that. At the present time he is dumping his sawdust in that area, and sawdust makes an excellent piling ground. That is done wherever there is a sawmill—they fill in a water area, and use it as their piling ground. I do not think it has caused him any inconvenience at all in his piling grounds. He has to dump his sawdust somewhere, to get rid of it, and I think this is just as good a place as any for it.

Q.—Did I understand you to say you had the dimensions of those four cottages?

A.—Yes, I think I have. I have them numbered on a plan of my own.

Q.—Perhaps it is not necessary to give the numbers. You might give us the dimensions without referring to the numbers.

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A.—There is one cottage 24 x 16, with an extension 14 feet, and a shed 24 x 39.

Q.—What is the other dimension of the 14-foot extension?

A.—14 x 18.

Q.—24 x 16, plus 14 x 18, for the cottage, and 24 x 39 for the shed?

A.—Yes.

An "L" shaped building, 27 x 20, with an "L" of 12 feet.

Q.—By how much?

10 A.—The "L" jogs in 12 feet, then there is another 12 feet. One side of the cottage would be 32 feet, by 27, and then this jog of 12 x 12 would be out of it—if I can explain it in that way.

Q.—32 x 27, less 12 x 12?

A.—Yes. That probably is an extension kitchen of 12 x 15.

Then there is one 28 x 33, with a number of jogs in it.

The other is 24 x 18, with a shed 10 x 20.

Q.—They are what are usually referred to as one and a half story cottages?

A.—I have photographs of them.

20 Q.—Perhaps you can tell me from memory?

A.—I think most of them are one and a half stories.

Q.—Do you know if there was any plumbing, or a water supply, in those cottages?

A.—No, I do not know. I should not think there would be: they were in such poor shape.

I have photographs of what I have called house No. 7, house No. 6, house No. 8, and house No. 5.

BY MR. KER:

30 Q.—Will you produce those photographs as one Exhibit to be marked D-111?

A.—Yes.

BY MR ST. LAURENT (continuing):

Q.—Those are photographs made in September, 1931, I think?

A.—Yes.

Q.—Four and a half years after the water was raised?

A.—People are still living in three of the houses.

Q.—When did you first go to that site on the Gatineau?

40 A.—October, 1925.

Q.—In the early part of October, or towards the end of October?

A.—Towards the end of October.

Q.—So, my learned friend was being generous when he said it was about a year and three-quarters before the water was raised?

A.—I thought you meant when did I first go on the work. It was in October, 1925, I first went up to the Gatineau.

Q.—That was when you first visited the locality?

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A.—Yes.

Q.—When did you first go up there for the purpose of doing any work?

A.—I stayed right on.

Q.—The dates you gave us as being those on which you visited the Farm Point property, show, if I am not mistaken, two visits to the property: the others were conferences with other gentlemen in connection with the property?

A.—Those were not the only visits I made. Those were visits
10 I made with officers of the Company and with Mr. Cross. I was up there practically every day. On that section we were doing nearly all our work around Farm Point in February, 1926, and I had charge of the survey work of Mr. Hanna and Mr. Reid, bringing it in, and having the lot lines plotted, and so on; and during the whole winter I think I only missed one day.

Q.—You were also with Mr. Farley when those plans for an attempted expropriation were being prepared?

A.—We figured the areas out in collaboration with each other.

Q.—Is the area of 5 acres the correct area for that part which
20 is shown coloured in red on Exhibit P-19?

A.—That is what we have on the plan.

Q.—And, according to your calculations that was correct?

A.—That was what we figured up.

Q.—It represented what is coloured in red on this plan?

A.—Yes.

Q.—Did you know, or do you know at the present time, what was the elevation of the tailwater at the Meach Creek Power plant?

A.—I remember having got the tailwater. I could possibly look through my notes and find out what it was.

Q.—We know it was 311. I would like you to tell me if you
30 had that information at the time.

A.—No, I am sure it was over 313 that we had.

Q.—Did you take that into consideration at all in assessing the value of the land or the damage caused by raising the water to 319 or 320?

A.—No.

Q.—Was the photograph Exhibit D-110 made before, or after, the railway line was raised?

A.—The railway was raised at that time.

Q.—The railway had been raised at that time?
40

A.—It was being raised at that time. They had not completed it. They were working on it.

Q.—This portion on the photograph shows the raised railway?

A.—Yes.

Q.—There was work still going on at other places? .

A.—Yes.

(And further deponent saith not.)

DEPOSITION OF JOHN R. BINKS, A WITNESS EXAMINED
ON BEHALF OF THE DEFENDANT

*In the
Superior Court*

No. 40.
Defendant's
Evidence.
John R. Binks,
Examination
Nov. 10th, 1931.

On this tenth day of November, in the year of Our Lord one thousand nine hundred and thirty-one, personally came and appeared

JOHN R. BINKS,

10 of the City of Ottawa, in the Province of Ontario, Secretary, Gatineau Power Company, Limited, aged 57 years, a witness produced and examined on behalf of the Defendant, who, being duly sworn, deposes as follows:

EXAMINED BY MR. KER, K.C.,
OF COUNSEL FOR DEFENDANT:

Q.—What is your occupation?

20 A.—I am Secretary of the Gatineau Power Company.

Q.—The Company Defendant in this case?

A.—Yes.

Q.—Did your Company purchase the Ottawa and Hull Power Company?

A.—They did.

Q.—In what year?

A.—In 1928.

Q.—Can you tell me the name of the Company to which the Ottawa and Hull Power Company was successor?

30 A.—The Company before that was the Ottawa and Hull Power and Manufacturing Company.

Q.—Its name was changed to the Ottawa and Hull Power Company, and the Ottawa and Hull Power Company was purchased by you in 1928?

A.—Yes.

Q.—Are you an officer of the Ottawa and Hull Power Company?

Witness: Today?

40 Counsel: Yes.

A.—I think so.

Q.—What is your position? Secretary, or Assistant Secretary?

A.—I know I am Assistant Secretary.

Q.—And as such you have under your care the books of account and other documents of the Ottawa and Hull Power Company?

A.—Yes, sir; what we have.

*In the
Superior Court*

No. 40.
Defendant's
Evidence.
John R. Binks,
Examination
Nov. 10th, 1931.
(continued)

Q.—And of its predecessor, the Ottawa and Hull Power and Manufacturing Company?

A.—Yes.

Q.—Will you tell His Lordship whether the Ottawa and Hull Power and Manufacturing Company had a contract for the sale of power to the Canada Cement Company, and, if so, will you produce a copy of the contract, if you have it?

10 Mr. St. Laurent: How does my learned friend make this relevant to his Pleadings?

Mr. Ker: Do I have to do so?

Mr. St. Laurent: It is usual in law suits to have the evidence conform with the Pleadings?

20 Mr. Ker: My learned friend made considerable evidence through one of his witnesses, Mr. Robertson, that the arrangement between the Gatineau Power Company and the Canada Cement Company were such as to be immensely to the advantage of the Canada Cement Company. I want to show that is not the case. The only way I can show it is by establishing what the Canada Cement Company was paying for power before they entered into the contract with the Gatineau Power Company.

30 I think it is absolutely relevant to the evidence which was made by my learned friend as to the transaction between the Canada Cement Company and the Gatineau Power Company. Mr. Robertson has testified this contract was worth something like \$400,000 or \$500,000, or \$600,000—I really forget how many hundred thousand dollars to the Canada Cement Company, and I wish to disprove that statement.

Mr. St. Laurent: I am afraid my learned friend's recollection of the figures is not very definite.

His Lordship: I will allow the question.

BY MR. KER (continuing):

40 Q.—Will you produce a copy of the power contract between the Ottawa and Hull Power and Manufacturing Company and the Canada Cement Company?

A.—I have a photostatic copy of it.

Q.—Have you the original from which this was taken?

A.—Yes.

Q.—Have you it actually in your possession?

A.—No, I have not it here.

*In the
Superior Court*
No. 40.
Defendant's
Evidence.
John R. Binks,
Examination
Nov. 10th, 1931.
(continued)

Q.—Is the document you now show me an actual photostatic copy of the contract that was signed?

A.—It is an actual photostatic copy.

Mr. Ker: I am instructed the original is in Ottawa. If my learned friend objects to the copy being produced, I suppose we will have to bring the original.

10 Mr. St. Laurent: I have no desire of inconveniencing my learned friend, but I really do not think those photographs make legal evidence of the document itself. If we had the original document we would be in a position to compare it with the copy, and perhaps the copy could be filed in lieu of the original.

Mr. Ker: My learned friend's Exhibit P-1 is a photographic copy of a plan. Of course, I did not make any objection to it on that score.

20 Mr. St. Laurent: It is a print of one of your own plans.

Mr. Scott: And it was proved separately.

His Lordship: Could you have the original and exhibit it to Counsel for the Plaintiff so that it might be compared with the copy, and then the copy might be admitted?

30 Mr. Ker: Yes, your Lordship. It has been my experience that once the originals of those contracts get into Court Records they are exposed to be lost to the Company.

Mr. St. Laurent: I do not want to be understood as insisting that the original should be filed. My point is this is something with which we are not acquainted. If the original is shown to us at any time, we may compare it with the copy, and we will not insist upon the original going into the Record.

Perhaps the original might be shown to us, and this copy be filed now, subject to our seeing the original.

40 BY MR. KER (continuing):

Q.—What is the date of that contract?

A.—January 31st, 1920.

Q.—You say you have the original in your possession?

A.—I have the original in my possession, in Ottawa, yes.

Q.—Will you please see that the original contract is sent to us, in order that it may be communicated to counsel for the plaintiff for verification of this copy, and then returned to you?

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Superior Court
No. 40.
Defendant's
Evidence.
John R. Binks,
Examination
Nov. 10th, 1931.
(continued)

A.—Yes.

Q.—Will you file this photostatic copy as Exhibit D-112?

A.—Yes.

Q.—For what period does it purport to be a contract for the supply of power?

A.—From April 1st, 1920, to April 1st, 1930.

Q.—For ten years?

A.—Yes.

10 Q.—What is the quantity of horsepower mentioned as being supplied?

A.—3,000 horsepower.

Q.—That was, of course, many years before the Gatineau Power Company came on the scene?

A.—Yes.

Q.—That was a contract with the Ottawa and Hull Power and Manufacturing Company?

A.—With the Ottawa and Hull Power and Manufacturing Company, yes.

20 Q.—Was it the contract upon which the Canada Cement Company was working up to April 1st, 1930?

A.—It was.

Q.—What is the price quoted in this contract?

30 Mr. St. Laurent: I object to the question, inasmuch as the document speaks for itself. It speaks in a language which I am afraid we do not understand, but we have to take it as it is. The price is stated to be a standby charge of 50 cents a month, then 2/10ths of a cent if the load factor is 80 to 90. Undoubtedly it is a complicated matter, but the contract speaks for itself.

Mr. Ker: I see my learned friend's difficulty. The standby charge is a standby charge of 50 cents per electrical horsepower per month.

I do not know that it is really vitally necessary to prove the charges. They are mentioned in the contract.

BY MR. KER (continuing):

40 Q.—You say that contract ran to April 1st, 1930?

A.—Yes.

Q.—Will you take communication of Plaintiff's Exhibit P-43, and will you state whether it is a copy of the existing contract between the Gatineau Power Company and the Canada Cement Company?

A.—I suppose it is. It is the same date.

Q.—What is the date?

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No. 40.
Defendant's
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John R. Binks,
Examination
Nov. 10th, 1931.
(continued)

A.—The date is July 10th, 1926.

Q.—Two years before you acquired the Ottawa and Hull Power Company?

A.—Yes.

Q.—So, at the time that contract was made with the Canada Cement Company I take it you were in competition with the Ottawa and Hull Power Company for the contract?

A.—I do not follow you.

10 Q.—You had not acquired the Ottawa and Hull Power Company at the time this contract was made?

A.—No.

Q.—You had no interest in the Ottawa and Hull Power Company at that time?

A.—Not at that time.

Q.—Will you state the amount paid by the Canada Cement Company under the Ottawa and Hull Power Company contract during the entire term thereof from April 1st, 1920, to April 1st, 1930?

20 A.—\$307,121.29.

Q.—That is over a period of ten years?

A.—Yes.

Q.—Which would average approximately \$30,000 a year?

A.—\$30,712.

Q.—Will you state what is the amount the Canada Cement Company is obliged to pay to you per year under your contract of 1926?

A.—\$30,000 a year.

30 Q.—That is, I understand, for delivery of power at the power-house?

A.—Yes.

Q.—Have you another contract, entered into subsequently, covering the cost of delivery of that power at the Canada Cement Company's plant, similarly to the way the Ottawa and Hull Power Company's power was delivered?

A.—Yes, I have an agreement, dated August 20th, 1928, between the Canada Cement Company and the Gatineau Power Company.

Q.—This is a photostatic copy also?

A.—Yes.

40 Q.—Will you produce it as Defendant's Exhibit D-113, subject to the same understanding as with regard to the other photostatic copy?

A.—Yes.

Q.—Will you state just what it represents?

A.—As I understand it, it is an agreement providing for the transmission of the power from Farmers, or Chelsea, or wherever it was coming from, to the Cement Company's plant.

In the
Superior Court

No. 40.
Defendant's
Evidence.
John R. Binks,
Examination
Nov. 10th, 1931.
(continued)

- Q.—In other words, Exhibit P-43 provided for delivery at the powerhouse?
- A.—Yes.
- Q.—And that was later amended by the agreement which you now produce as Exhibit D-113, which added a charge for delivery of the power at the plant of the Canada Cement Company?
- A.—Yes.
- 10 Q.—What charge per month does this agreement make for delivery?
- A.—The agreement states \$387.17.
- Q.—Per month?
- A.—Yes.
- Q.—How much is that per year?
- A.—\$4,646.04.
- Q.—So, to put it on a parity with the Ottawa and Hull Power Company's contract for delivery of power at the Canada Cement Company's plant the Canada Cement Company is paying \$34,646 per year?
- 20 A.—Yes.
- Q.—As against an average of \$30,712 which they paid under their old contract?
- A.—Yes.
- Q.—Are you familiar with the Bryson power site on the Ottawa River?
- A.—I have seen it. I have been there several times.
- Q.—Who is the present owner of that site?
- A.—The Gatineau Power Company.
- Q.—Who owned it previous to the Gatineau Power Company?
- 30 A.—The Ottawa River Power Company.
- Q.—And who owned it before them?
- A.—I suppose the Ottawa and Hull Power and Manufacturing Company owned it previous to that.
- Q.—Do you know who was the original grantee of that power?
- A.—The Honourable George Bryson, I think, was the original owner of the power.
- Q.—Do you know personally to whom he and his associates disposed of it?
- 40 A.—To the Ottawa and Hull Power and Manufacturing Company.
- Q.—What was the price?
- A.—\$140,000.
- Q.—Do you know what is the installation there?
- A.—I do not know definitely. I think it is, roughly, 50,000 horsepower.
- Q.—When did the Honourable George Bryson and his associates sell it?

In the
Superior Court

No. 40,
Defendant's
Evidence.
John R. Binks,
Examination
Nov. 10th, 1931.
(continued)

A.—About 1920.

Q.—It was then undeveloped?

A.—Yes.

Q.—It is now being operated by the Gatineau Power Company?

A.—Yes.

Q.—Do you know what is the horsepower developed?

A.—Roughly 50,000 horsepower, I suppose. I would not be much interested in that part of it.

10 Q.—Where is the Bryson site?

A.—At Bryson Village.

Q.—On the Ottawa River?

A.—On the Ottawa River.

Q.—How many miles west of Ottawa?

A.—Between 50 and 60, I suppose.

Q.—The dam, I understand, is constructed from Bryson across to Grand Calumet Island?

A.—Yes; the island is on the other side of the river.

Q.—How far would that be from the Gatineau River?

20 A.—I could not say.

Cross-examination

CROSS-EXAMINED BY MR. ST. LAURENT, K.C.,
OF COUNSEL FOR PLAINTIFF:

Q.—You spoke of \$307,000 having been paid by the Canada Cement Company over the total period covered by the contract Exhibit D-112. How much of the ten years were they operating?

A.—I do not know how many years they were operating, but they operated from April 1st, 1920, to April 1st, 1930.

30 Q.—Are you saying they were in continuous operation during that time?

A.—According to our records, a charge went out each month for power.

Q.—Under this contract, whether they used the power or not there was a standby charge of 50 cents per horsepower per month. That is to your knowledge, is it not?

A.—Yes.

Q.—There was, in addition, certain metered charges per kilowatt hour for the power used?

40 A.—According to that contract, yes.

Q.—Have you figured what that would amount to per horsepower for continuous horsepower?

A.—I have not.

Q.—When you made this calculation of \$307,121.29, you did not consider how many kilowatt hours they were running?

A.—I took the charges we made to the Cement Company for power supplied to them during that period.

*In the
Superior Court*

No. 40.
Defendant's
Evidence.
John R. Binks,
Cross-examination
Nov. 10th, 1931.
(continued)

Q.—The charges you made, or that were made by your predecessors during the period?

A.—Yes.

Q.—Without considering whether or not they operated the whole of the period?

A.—Yes.

Q.—I suppose you would not care to enter into the calculations this contract Exhibit D-112 calls for?

A.—You had better get an engineer for that.

10 Q.—It is, perhaps, a little beyond your depth and mine?

A.—It is beyond my depth, anyway?

Q.—As a matter of fact, you would not be in a position to say what it works out to per horsepower?

A.—No.

Q.—How did your Company become possessed of this Bryson site?

A.—The Ottawa River Power Company owned it before the Gatineau Power Company.

20 Q.—Did the Gatineau Power Company buy it from the Ottawa River Power Company?

A.—No; the Ottawa and Hull Power Company bought it from the Ottawa River Power Company, and when we bought the Ottawa and Hull Power Company we secured control of the Ottawa River Power Company.

Q.—Through stock ownership?

A.—Through stock ownership in the Ottawa and Hull Power Company.

Q.—Is the Ottawa River Power Company still in existence?

30 A.—No, it is not in existence. We are not using anything at all in connection with the Company.

Q.—You are not using its power?

A.—Yes, but we are not using the Company as a Company.

Q.—Then you must have the whole of the stock?

A.—It was all purchased, yes.

Q.—And you are not keeping separate books for the Ottawa River Power Company?

A.—No, not now.

40 Q.—Do you know how much power is actually produced at the Bryson site?

Witness: Today?

Counsel: Yes.

A.—I could not tell you.

Q.—When you say there are 50,000 horsepower, that is the installed capacity of the machines?

In the
Superior Court

No. 40.
Defendant's
Evidence.
John R. Binks,
Cross-examination
Nov. 10th, 1931.
(continued)

A.—I think the installed capacity is 50,000 horsepower. That is what I have always understood.

Q.—You do not know to what proportion of the installed capacity the flow of the river and the head at that point would develop power?

A.—I could not say.

Q.—Was this 50,000 horsepower to which you refer installed when your Company acquired control, or is it something that was put in since?

10 A.—It was built when we bought it, but I think they increased the installation since we bought it—in fact, we did increase it.

Q.—And it is with the increase it gets up to the 50,000 horsepower?

A.—Yes; I understand it is 50,000 horsepower today.

Q.—Was not the increase the installation of 25,000 additional horsepower machinery?

A.—I think it was around that, but I would not like to say.

20 Q.—So, of the 50,000 horsepower which, according to your information, is at present installed, about one-half existed when you took over the property, and the other half was added since you took it over?

A.—I would not like to say. I do not know. I am not sure what the last installation was.

Q.—You do not know the amount of the last installation?

A.—No.

30 Mr. Ker: There is a question I overlooked in examination-in-chief, in regard to the production of the Deed to the des Os Rapid referred to by Mr. Lefebvre as having been purchased from the Oblate Fathers. Your Lordship will remember we had not the Deed when Mr. Lefebvre was under examination, and I promised I would produce the original or a copy of it. With your Lordship's permission, and with the consent of my learned friend, I will now produce it.

BY MR. KER:

40 Q.—I understand your Company purchased the des Os Rapid on the Gatineau River, in connection with its upstream development above Maniwaki?

A.—Yes.

Q.—Have you the Deed by which the property known as the des Os Rapid was purchased, and, if so, will you please state the date of the Deed, from whom the property was purchased, the price at which it was purchased; and will you produce the Deed as Defendant's Exhibit D-114?

A.—The Deed is dated January 3rd, 1928. It is from the

In the
Superior Court

No. 40.
Defendant's
Evidence.
John R. Binks,
Cross-examination
Nov. 10th, 1931.
(continued)

Reverend Pères Oblats de Marie Immaculée, to the Gatineau Power Company. The price is \$1,500.

I produce the Deed as Exhibit D-114.

Q.—Who was the Notary before whom it was passed?

A.—Louis Bertrand, of Hull: his number 17846.

Q.—The Deed is taken under Bertrand's number 17846, and is dated January 3rd, 1928?

A.—Yes.

Q.—This other document is the resolution attached to it?

10 A.—Yes, the resolution authorizing it?

Q.—And, you will produce the two together as Exhibit D-114?

A.—Yes.

Q.—Was there a correction subsequently made to the description in that Deed, and, if so, before whom was it made?

A.—Yes, there was. It was drawn by Louis Bertrand under his number 20437: dated November 5th, 1931.

Q.—This rectification was made just recently?

A.—Yes.

20 Q.—Have you any idea why this rectification was found necessary? In any event, it just refers to numbers?

A.—It just refers to a change in range.

Q.—Will you produce this rectification as Defendant's Exhibit D-115?

A.—Yes.

BY MR. ST. LAURENT:

30 Q.—Although you signed this Deed Exhibit D-114 as Secretary of the Company, I do not suppose you know anything personally about the property and the description that is in the Deed?

A.—I know the description in the Deed quite well.

Q.—Do you know the property?

A.—I never saw the property.

Q.—You know how it is described, but you do not know what that description would fit in with on the ground?

A.—No, I never saw the property at all.

Q.—And, you do not know anything about the correction that was required?

40 A.—We have gone into it, and we are satisfied with that description and rectification, and we are satisfied they cover the property we intended to buy from the Oblate Fathers.

BY MR. KER:

Q.—Have you a plan of the property?

A.—Yes, I have.

Q.—Does the plan you now show me cover the property?

*In the
Superior Court*

No. 40.
Defendant's
Evidence.
John R. Binks,
Cross-examination
Nov. 10th, 1931.
(continued)

A.—Yes.

Q.—Is this a copy of the plan which is attached to the Deed?

A.—No. It is really the same thing, but there are two plans on the other: there is one plan showing one part, and another showing the other part. This combines them both.

Q.—You have not a copy of the plan that was attached to the Deed?

A.—No, but I could get the Notary to certify the two copies of the plans.

10 Q.—You have not certified copies with you?

A.—No. They are the same as this.

Mr. St. Laurent: In view of the fact that my learned friend will put the plans in for the purpose of making the description in the Deed something that one can understand, I think we had better not go any further until we have them.

Mr. Ker: When we get exact copies certified by Mr. Bertrand of the plans attached to the Deeds, we will attach them to the documents which have been filed.

(And further for the present deponent saith not.)

*In the
Superior Court*

No. 41.
Defendant's
Evidence.
Roy Campbell,
Examination
Nov. 10th, 1931.

DEPOSITION OF ROY CAMPBELL, A WITNESS EXAMINED
ON BEHALF OF THE DEFENDANT

30 On this tenth day of November, in the year of Our Lord one thousand nine hundred and thirty-one, personally came and appeared

ROY CAMPBELL,

of the City and District of Montreal, Secretary, Canadian International Paper Company, aged 41 years, a witness produced and examined on behalf of the Defendant, who, being duly sworn, deposes as follows:

40

EXAMINED BY MR. KER, K.C.,
OF COUNSEL FOR DEFENDANT:

Q.—You are in the employ of the Canadian International Paper Company?

A.—Yes.

Q.—As Secretary?

*In the
Superior Court*

No. 41.
Defendant's
Evidence.
Roy Campbell,
Examination
Nov. 10th, 1931.
(continued)

A.—Yes.

Q.—As such have you custody of various documents connected with their properties?

A.—Yes.

Q.—From whom were the Farmers and Chelsea power sites originally purchased by the Canadian International Paper Company?

10 A.—They were purchased originally from Gilmour & Hughson. There were several intermediate transactions, but finally they were purchased from Gilmour & Hughson.

Q.—That was in connection with the Riordan failure?

A.—Yes.

Q.—Originally Gilmour & Hughson were the owners of those water powers?

A.—Yes, they were, when we first knew them.

Q.—And Gilmour & Hughson sold them to a Company known as the Gatineau Company?

A.—No, they sold them to Isaac Walton Killam.

20 Q.—Have you in your possession a copy of the deed from Gilmour & Hughson to Isaac Walton Killam, which includes, among other properties, the properties at Chelsea and Farmers?

A.—Yes. I have a negative photostat, which I understand is more acceptable to the Court. The date is April 27th, 1920.

Q.—Is it a Deed sous seign privé?

A.—Yes.

Q.—Between Gilmour & Hughson, Limited, and Isaac Walton Killam?

A.—Yes.

30 Q.—What were the properties included in that Deed?

A.—They were all the assets as a going concern of Gilmour & Hughson, Limited, except the cash, the accounts receivable, and the lumber, but including timber limits of about 3,495 miles, the water powers at Chelsea and Farmers, stock in boom companies, and sundry farms.

Q.—What were the main fixed assets?

A.—The main fixed assets were the timber limits, the powers, and the sawmills.

40 Q.—The timber limits, and the powers at Chelsea and Farmers, and the sawmill?

A.—The Hull sawmill.

Q.—How many miles of timber limits were there?

A.—About 3,495 miles.

Q.—What was the total consideration for that sale?

A.—The total consideration for the sale was \$2,500,000 for the main fixed assets, and \$516,777.11 for other book assets.

Q.—In all approximately three million dollars?

In the
Superior Court

No. 41.
Defendant's
Evidence.
Roy Campbell,
Examination
Nov. 10th, 1931.
(continued)

A.—Yes.

Q.—How long have you been with the Canadian International Paper Company and its predecessors?

A.—Since February, 1917.

Q.—Can you express an opinion as to the ordinary value of the timber limits involved in that sale at that time?

A.—I am not an expert, but I would say from \$500 to \$1,000 a mile.

10 Q.—Taking those timber limits in at, say, the mean of \$700 a mile, what would that leave as the price of the Farmers and Chelsea power?

A.—If one takes 3,500 miles of timber at \$750 a mile, as I figure it one gets \$2,525,000.

Q.—So the approximate price of the fixed assets was two and a half million dollars?

A.—Yes.

Q.—Would that indicate that any particular value was attached to those waterpowers in the raw?

20 A.—My opinion is that some value must have been attached to them, but I cannot say as to what that value was.

Q.—In any event, that was an ordinary negotiated sale for those assets?

A.—Yes.

Q.—Do you consider that \$500 or \$700 would properly represent the price of the timber limits that were sold?

A.—Yes.

30 Mr. St. Laurent: Which is it, \$500 or \$700? It makes a substantial difference when you are dealing with 3,500 miles.

BY MR. KER (continuing):

Q.—The price of timber limits is pretty well uniform, is it not?

A.—I would not say that. It depends entirely on location—where the timber is—how accessible it is—and how many miles one gets. There are also a great many other factors. I should say \$750 a mile for limits of that area is a good average price.

40 Q.—You are, in a general way, familiar with the nature of those limits?

A.—Yes.

Q.—Were they reasonably good limits?

A.—They were reasonably good limits.

Q.—And \$750 a mile would be a fair average price for them at that time?

A.—I would say so. Of course, I would prefer to have expert opinion on that.

*In the
Superior Court*

No. 41.
Defendant's
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(continued)

Q.—It might vary \$100 a mile one way or the other?

A.—Yes.

Q.—When the Riordan difficulties arose later on I understand those properties were all put up for public auction?

A.—Those properties were put up for public auction under the Gatineau Company, Limited.

Q.—Have you any idea whether the same, or a lesser, or a greater, price was realized for them at the public auction?

10

A.—No.

Q.—Would you think it was any greater price?

A.—I would not say.

Q.—Will you file, as Defendant's Exhibit D-116, a photostatic copy of the sale from Gilmour & Hughson to Isaac Walton Killam, of which you have been speaking?

A.—Yes.

Cross-examination

CROSS-EXAMINED BY MR. ST. LAURENT, K.C.,
OF COUNSEL FOR PLAINTIFF:

20

Q.—I understand when this sale took place it was at the instance of the bondholders of the Company?

Witness: Which sale?

Counsel: The auction sale.

His Lordship: The Riordan.

30

A.—It was at the instance of the liquidator.

BY MR. ST. LAURENT (continuing):

Q.—Had not the bondholders exercised their rights under their Trust Deed?

A.—They had given notice, and the Committees of the Bondholders had entered into the picture.

40 Q.—And had not the one who ultimately purchased—I believe the Canadian International Paper Company—acquired the bonds before the sale?

A.—No.

Q.—Were you the Secretary of the Company at that time?

A.—Yes.

Q.—Are you quite sure that was not the form the transaction took: acquiring the bonds, and then having the sale made for the purpose of making title?

A.—I would not say categorically yes to that. The arrange-

*In the
Superior Court*

No. 41.
Defendant's
Evidence.
Roy Campbell,
Cross-examination
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ments at that time were very involved. As to whether all those bonds outright, as in the case of an official liquidation, were entered by the Bond Trustee for the purpose of the bondholders, I will not say; but I would be glad to get the information for you if you wish.

Q.—As a matter of fact, the Canadian International Paper Company did become possessed of those properties, including the undeveloped power sites?

A.—Yes.

10 Q.—And those power sites were transferred, were they not, by the Canadian International Company to the Gatineau Power Company?

A.—Yes.

Q.—There was a consideration stipulated at that time?

A.—Yes.

Q.—What was that consideration?

A.—I would have to look at my documents to see. Has the document been produced?

20 Q.—There has been a document produced, showing One Dollar and other considerations; but, in view of the fact that you are testifying here as to the things that would indicate the value of those power sites I am asking you what was the real consideration from the Gatineau Power Company to the Canadian International Paper Company?

A.—I cannot tell you. It is named in the Deed, and that is all I know.

Q.—But it is only mentioned as “ One Dollar and other considerations ”?

A.—That is the extent of my knowledge.

30 Q.—You do not know what was the real consideration?

A.—No more than is in the Deed.

Q.—Could you not find out what the consideration was? You are the Secretary of the Company.

A.—I think you will find it would be a long search of internal bookkeeping to show it. I cannot say what it was.

Q.—Was it not Twenty-four Million Dollars in stock?

A.—I do not know. I know what the Deed says, and that is all.

40 Q.—I quite understand you know what the Deed says, but you also know a Corporation cannot contract without resolutions, and as Secretary of the Company you must know there must be some resolution showing what the real consideration was?

Mr. Ker: I do not know exactly what my learned friend's purpose is, but it seems to me he is going rather far afield. I have not examined the witness with respect to this at all. I simply produced the Deed from Gilmour & Hughson to Isaac Walton Killam in which the power sites in the raw were sold with other properties for a

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certain amount. Then came the Riordan failure, and the International got practically everything, and started the development, then the Canadian International turned over what they had in the way of power to the Gatineau Company, the sister Company. It was merely an associated company transaction between them.

10 Mr. St. Laurent: If that be so, the witness, as Secretary of the Company, will be able to tell us the facts from the Resolutions. My learned friend has produced Mr. Campbell for the purpose of testifying as to the value of those power sites undeveloped, and I submit it is proper and legitimate cross-examination for me to establish that they were purchased at one time for a certain price, and to enquire as to whether they were not sold at another time for another price by his own Company.

Mr. Ker: The Secretary of the Company says he does not know, and as far as he is concerned no one else knows.

20 His Lordship: What would be the real value of the sale?

Mr. Ker: The Canadian International Paper Company and the Gatineau Power Company are sister companies, subsidiaries of the International Paper Company, which is in New York. The International Paper Company causes one Company to convey power properties, in order that Power and Paper may be segregated. I do not see the necessity for any further considerations than that. I do not know how the International Paper Company may have charged up those Power properties in connection with the deal, and I do not think anyone can ever find out. I do believe, however, the consideration stated in that Sale Deed, and other considerations, show what was intended to be an ordinary form which any inter-company transactions would take when there is segregation of one set of properties into one class—Power as against Paper. The same thing will be found in connection with every Company the International purchased; they will sell the Power, or the Paper, for One Dollar and other considerations, to their own sister Company.

40 Mr. St. Laurent: But I am now asking what were the other considerations, and I think the witness can get the information for us and be in a position to tell us at the next sitting of the Court.

BY THE COURT:

Q.—Can you ascertain what was the real consideration?

A.—I am not sure.

Q.—Will you please try to do so, and have it for the next sitting of the Court?

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A.—Yes, your Lordship.

BY MR. ST. LAURENT, K.C. (continuing cross-examination):

10 Q.—At the adjournment of the last sitting we were discussing the real consideration for which the Canadian International Paper Company transferred those Gatineau properties and rights to the Gatineau Power Company. After much discussion, His Lordship asked you the following question:

“ Q.—Can you ascertain what was the real consideration? ”
to which you answered:

“A.—I am not sure ”.

His Lordship then asked you:

20 “ Q.—Will you please try to do so, and have it for the next sitting of the Court ” ?

to which you replied:

“A.—Yes, your Lordship ”.

Did you ascertain what was that real consideration?

A.—No.

30 I have nothing further in my office than my office copy of the agreement, to which is attached the Resolution we spoke of; and my knowledge does not extend beyond that Resolution.

Q.—You are Secretary of the Company?

A.—May I explain? This agreement was in 1926. At that time I am not sure who was Secretary of the Company. The man who was subsequently Secretary, Mr. F. G. Symons, was Assistant Secretary. The Resolution was passed at a Meeting held in the City of New York, and I was not Secretary of the Company at that time.

Q.—You are now Secretary of the Company?

A.—I am now Secretary of the Company, yes.

40 Q.—And, as such, you are the official having custody of the Company's books?

A.—Yes. I have not all the records. I have not the records I have told you.

Q.—I call your attention to Exhibit D-57, filed by the Defendant at page 105 of which it is stated: “ The present sale has been made for and in consideration of the sum of One Dollar and other good and valuable considerations, which the Vendor acknowledges

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to have received", and I ask you, as Secretary of the Company, what are those other good and valuable considerations which the Vendor acknowledges to have received at the time this Deed was passed?

A.—Let me say, first, that I do not know; secondly, my impression is those considerations were nominal as inter-company transactions.

10 Mr. St. Laurent: I think we are entitled to have the actual facts from the proper official of the Company.

His Lordship: But if the witness cannot swear to anything beyond what he has said?

20 Mr. St. Laurent: But, your Lordship, he is the custodian of the books and records of the Company. The Company received a consideration of One Dollar and other good and valuable considerations, and acknowledged receipt thereof. The Company's records must necessarily show what were those other good and valuable considerations. The Company being a Joint Stock Company, a sale of very substantial real estate rights and properties would be a matter which would have to be authorized by the Directors, and they would naturally have to determine at what real price the sale was to be made. The Minute Book of the Company would show what the real consideration was.

30 Witness: I do not think it does. When you say "The real consideration", may I explain? I am not absolutely sure of my ground in this, but my impression is very definitely that the Company was dividing its paper operations and its power operations into two parts, and that those properties were segregated, and that they were segregated for One Dollar and other valuable considerations, and that fact is indicated in the Minutes, and my knowledge does not show there was anything else stated.

BY MR. ST. LAURENT:

40 Q.—You know it was common knowledge, and published in all the Company's prospectuses, that the Gatineau Power Company issued Twenty-Five Million Dollars of preferred stock and Five Hundred Thousand no par value common shares?

Mr. Ker: I object to the form of the question. There is already in the Record a question of the same nature by my learned friend, which I think was withdrawn.

I submit it is not proper to question the witness along the line that it was common knowledge there were Twenty-Five Million

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Dollars of stock issued by some Company in respect to its financing. I do not think it has any bearing whatever on the case. The witness has stated perfectly frankly that he does not know what the consideration was, but he believes it was an associated company matter, conducted by the parent company, with respect to the segregation of power assets generally, not only these, but all over the Province. He has stated he does not know there was any other consideration.

10 I do not think the question is a fair one to put in the Record as a statement of fact by my learned friend. It is not fair for him to say it was common knowledge. I do not think it was common knowledge. If my learned friend desires to know what the common knowledge of the community was with regard to the financing of this Company, I suppose he could produce the prospectuses and the other things that had to do with it.

Twenty-Five Million Dollars of Canadian International Paper Company bonds were only put out last year or the year before.

20 Mr. St. Laurent: In order to avoid discussion, and in order to avoid taking up the time of the Court, I will follow my learned friend's suggestion.

BY MR. ST. LAURENT (continuing):

Q.—I show you the prospectus for the first slice of the First Mortgage Bonds of the Gatineau Power Company, issued with Mr. Graustein's letter of July 21st, 1926, which I will ask you to file as Exhibit P-55?

30 Mr. Ker: I object to the production of this Exhibit. This is a document purporting to have been issued by the National City Company, Limited, Montreal, a Company making an offering to the public of certain bonds of the Gatineau Power Company at a certain price. I submit if there can be anything absolutely irrelevant to this case it is a printed circular issued to the public by the National City Company, which has nothing to do with this case, and which refers to matters which are in no way in issue here.

40 Mr. St. Laurent: I am afraid my learned friend is rather hard to satisfy. His first objection was that I should file the prospectus, and now when I tender it he says my question is not in proper form, that the production of the prospectus would be illegal, and that I should do it in some other way.

This prospectus purports to be a prospectus issued by the National City Company, but it also purports to embody a letter signed by Mr. A. R. Graustein, the President of the Company, to the various banking organizations through which the bonds were issued, and this letter purports to set out exactly the whole situa-

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tion: what the Company is; what its business is; what its capitalization is; what the security for the bonds is; the mortgage restrictions, and so on. This letter purports to be signed by Mr. A. R. Graustein, President.

Mr. Montgomery: But, what has that to do with the price paid for this property? Is there anything in the prospectus referring to the property in question here?

10 Mr. St. Laurent: The capitalization is mentioned as Twenty-five Million Dollars in preferred stock, and Five Hundred Thousand no par value common shares, stated to be owned by the International Paper Company.

Mr. Ker: Not by the Canadian International Paper Company.

20 Mr. St. Laurent: By the parent company.
What I am instructed we should seek to prove is that those securities were issued to the nominee of the Canadian International Paper Company; that nominee being the parent company, the International Paper Company.

30 Mr. Montgomery: I am sure if my friend has examined the prospectus he will see it refers to many other properties besides the Chelsea. It refers to the aggregate of the whole of the Gatineau Power Company's properties. It also refers to the contract executed with the Hydro-electric Commission of Ontario, and to a variety of other things. I do not see my learned friend has made clear any connection between the outstanding common stock, the preferred stock, the debentures, and the gold bonds which are being issued under this prospectus, and the One Dollar consideration and the other considerations (if there were any) besides the One Dollar, paid by the Gatineau Power Company to the Canadian International Paper Company. My learned friend has not in any way demonstrated the relevancy of this prospectus, even granting it is the best evidence of the fact. He has not done anything beyond exhibiting this prospectus, and saying it purports to show the capitalization of
40 the Company (which it does). He has not, however, shown any connection between this capitalization and the price paid by the Gatineau Power Company to the Canadian International Paper Company.

His Lordship: The document he is offering might help the memory of the witness.

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Mr. Montgomery: I may say, my Lord, the bond issue was long after this.

His Lordship: In any event, the witness will say.

Mr. Montgomery: No doubt the prospectus sets forth the capitalization, but that does not throw any light whatever upon the question my learned friend is asking.

10 Mr. St. Laurent: It is July, 1926; and the Deed I ask about is August, 1926.

Mr. Montgomery: That is an additional reason why it throws no light upon it: if the sale was made after the prospectus was issued.

20 Mr. St. Laurent: This was all organized at the same time. Your Lordship will understand I do not want to make statements on the Record rashly. I asked the witness if it was not common knowledge the capitalization was the Twenty-five Million Dollars of preferred stock and the Five Hundred Thousand no par value common stock. My learned friend said if it be common knowledge, that is not the proper way of proving it, and that I should prove it by the prospectus. I have the prospectus, and I show it to the witness for the purpose of asking him in regard to the fact.

His Lordship: I will allow the evidence, under reserve of the objection.

30 Mr. Montgomery: May I draw attention to the fact that at that time the power was very largely developed. It was not a raw power site that was being sold then. Moreover, many other power properties, very largely developed, were included.

His Lordship: The document might help the memory of the witness.

BY MR. ST. LAURENT (continuing):

40 Q.—Was it not common knowledge, and was it not published in all the prospectuses inviting public subscriptions to the undertaking, that the capitalization was Twenty-five Million Dollars of preferred stock and Five Hundred Thousand no par value common shares?

A.—On the assumption that is the published Statement, yes, it must have been common knowledge.

Q.—Is it not a fact that both the Twenty-five Million Dollars of preferred stock and the Five Hundred Thousand no par value

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common shares were the real consideration issued by the Gatineau Power Company for the properties and rights acquired from the Canadian International Paper Company?

A.—No, I would not say so.

I must ask your Lordship's forgiveness if my memory is not quite accurate. I am not absolutely sure as to that issue of Twenty-five Million Dollars preferred.

10 Q.—Just to confirm you as to that, I will show you the prospectus of March 16th, 1931, which I will ask you to file as Exhibit P-56. To your knowledge, is this the last prospectus that was issued?

Mr. Ker: Of course, that is subject to the same objection.

BY MR. ST. LAURENT (continuing):

Q.—You do not know of any issued since the month of March, 1931? As far as you know, this is the last one?

A.—That is the last prospectus.

20 Q.—Does not this prospectus show, at page 3, that the amount of preferred stock issued and then owned by the Canadian Hydro-Electric Corporation was the Twenty-five Million Dollars, and the common stock Two Million Five Hundred Thousand Dollars?

A.—I would say that is the published fact.

Q.—The Canadian Hydro-Electric Corporation, Limited, was a holding subsidiary of the same group, was it not?

A.—Yes. Of the International Power and Paper Company.

Q.—It was the Canadian organization which held the Canadian securities and the power undertakings of that group?

30 A.—Most of them, yes.

Q.—So that would enable you to be more precise about your answer that you are not sure the Twenty-five Million Dollars of preferred stock was really issued. This shows it was?

A.—I am somewhat anxious to be sure of it. I would like to consult my own record on that question.

Q.—We have no objection to your verifying from your own records. When would you be able to do it?

A.—Almost at any time. I could do it by telephone.

40 Q.—If you wish your testimony on this point to be suspended so that you can get more precise information on the subject, I am sure His Lordship will allow you to suspend your testimony to get that further information.

Mr. Ker: If the information was of any value to the case, or if anything could be deduced from it if we had it, there might not be any objection.

Presuming the whole Twenty-five Million Dollars of preferred

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stock was issued, what has that to do with the value of one little piece of a power site in question here? It is only one of innumerable pieces of land and securities referred to in this bond issue. How can it possibly be relevant to this case, or how can it possibly be relevant to the construction of this Deed which is a Deed subsequent to the making of this bond issue?

10 The prospectus which my learned friend has offered in evidence refers to the Kipawa power plant, which was then a large operating power plant. I have no doubt it also refers to the Paugan plant, which was a huge power plant. It also refers to all the lands held in connection with power throughout the Province of Quebec, and, I think, in the Province of New Brunswick as well.

Witness: The Province of Quebec.

Mr. Ker: This is a prospectus with regard to a bond issue, and it sets up the capitalization of a company, which has no reference whatever to this transaction. It was a sister company or associated company transaction, and this transaction is dated, on its face, after
20 the date of the prospectus.

Mr. St. Laurent: Over the holiday my learned friend has apparently forgotten the evidence he made through this witness. He produced a Deed of Sale from Gilmour & Hughson, Limited, of 3,495 miles of limits and all those power sites. He proceeded by oral examination of the witness to try to make it appear that the power sites went in for nothing, and that the price was really applicable to the limits; and this for the purpose of making it appear that those same power sites undeveloped were not counted upon as being things of
30 value. I am now cross-examining the witness upon that, and I am endeavoring to show they were things of such substantial value that over Twenty-five Million Dollars of securities were issued against their transfer from the Canadian International Paper Company to the Gatineau Power Company, Limited.

Mr. Ker: I submit my learned friend is dealing with a totally different thing when he attempts to prove that.

40 This witness proved that in 1920 certain private individuals, Gilmour & Hughson, sold to Isaac Walton Killam certain properties which included those then undeveloped waterpowers. It was not the International Paper Company, and it was not the Gatineau Power Company; it was a private sale, between two people, buying and selling those waterpowers in the open market at that time. That was the intent and purpose of producing that Deed.

If we can show a Deed which includes 3,500 miles of timber limits, together with other physical properties, at a price of Two and a Half Million Dollars, it certainly is relevant in some degree to

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what this particular raw power was worth at that time. My learned friend is now dealing with a Deed ten years subsequently to that, after the power has been partially developed, and which includes other elements which have nothing whatever to do with this property. My learned friend is attempting to make the proof by a prospectus issued by a firm of brokers covering a bond issue on properties of which the ones in question here are probably the smallest.

10 His Lordship: As I see it, Mr. St. Laurent is trying to arrive at the value, in other words, what may be the other consideration beyond the One Dollar. Certainly more than One Dollar was paid for it, and perhaps the Secretary of the Company may help us by telling us what those other considerations were. True it is, he says he does not know now, but there must be some record of it in the office.

20 Mr. Montgomery: Of course, if the consideration were One Dollar, or One Hundred Thousand Dollars, or One Million Dollars, and that price did not suit my learned friend's argument, he would be the first to argue that it was a matter of the right hand dealing with the left. It was two companies, absolutely identical in ownership, exchanging properties—dividing up properties—and they were perfectly at liberty to call the consideration anything they liked, particularly if it was paid in shares, because they were both the buyers and the sellers.

His Lordship: But we do not know what it was.

30 Mr. Montgomery: Even if the consideration were shown, it would be of very little assistance to your Lordship, because it was purely nominal and it was in their own hands to make it as big as they liked or as small as they liked. It was a matter of the same parties dealing one with the other. They were both buyers and sellers, and if they chose to make the consideration One Hundred Thousand Dollars or One Hundred Million Dollars, it was the concern of no one except themselves. There was no independent fixing of the price that would assist your Lordship. It was an inter-corporate transaction in which the outside world was not interested in any way. They continued to hold whatever portion of that stock was
40 issued (if it was paid for in stock) and that stock remained in the Company's treasury. It would simply be a bookkeeping entry.

His Lordship: Of course, that is all supposition.

Mr. Montgomery: My friend's prospectus shows it.

His Lordship: What you state now is a supposition—it might be this, or it might be that.

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Mr. Montgomery: I say whether it was One Hundred Thousand Dollars or One Hundred Million Dollars would not be of any assistance to your Lordship.

His Lordship: Supposing by proper search by a proper official of the Company it was found there was a very high consideration?

10 Mr. Montgomery: It would not assist your Lordship in any way whether the consideration was found to be One Hundred Thousand Dollars or One Hundred Million Dollars. Your Lordship is called upon to fix the value of certain powers.

His Lordship: Supposing the parties dealing did put a consideration?

20 Mr. Montgomery: But the point is there were no parties dealing. It was purely an inter-corporate transaction; it was the right hand selling to the left. It was a company dividing its power properties from the paper properties.

His Lordship: And they knew nothing of the value of what they were interchanging?

Mr. Montgomery: It was entirely in their own hands.

30 His Lordship: Of course, I do not know where your learned adversary will arrive, but he is very likely trying to ascertain that value.

40 Mr. Montgomery: My point is, supposing as a result of my friend's enquiries it is found that the consideration was One Hundred Thousand Dollars, or Twenty-five Million Dollars or One Hundred Million Dollars; of what possible assistance could that be to your Lordship? It would be purely what they chose to call it. As your Lordship well knows, in the issuing of stock one issues such stock as pleases himself against properties of that kind. There were not two minds dealing one with the other and fixing a price which could be of assistance to your Lordship. It was simply a matter of Smith selling to Smith—in other words, just dividing up his property.

Mr. St. Laurent: There is a little more than that to it. It was Smith selling to Smith and to the public. Because the fact of the Twenty-five Million Dollars preferred shares and Five Hundred Thousand no par value common shares was being urged in the pros-

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pectus as a thing behind the bonds. It is stated that those bonds will be followed by \$12,500,000 6% Gold Debentures, Twenty-five Million Dollars preferred stock, and Five Hundred Thousand shares of common stock.

10 Mr. Montgomery: My learned friend is quite overlooking the fact that this prospectus does not link in with the transfer of that property at all, nor does the Twenty-five Million Dollars of preferred shares. Even assuming the deal was all one deal, that prospectus was issued as of a date prior to the sale.

Mr. St. Laurent: It appears on its face that the bonds are offered for delivery "when as and if issued and received by us, subject to approval, on or about August 11th, 1926".

20 Mr. Montgomery: Even assuming the sale was of date subsequent to the prospectus, and the whole thing was one deal—that they were authorizing this Company, and putting out those issues, and so on, your Lordship will bear in mind that even Chelsea was very largely developed at that time, and that the Baskatong storage was at least partially developed. The whole development was still under way, and I do not see how that capitalization could be of any assistance whatever to your Lordship.

BY MR. ST. LAURENT:

30 Q.—We will take it in this way: you can verify by telephone after you have given your evidence, and if you find there is anything incorrect in what has gone in the record you can come back and correct it?

A.—I will come back anyway.

Q.—Exhibit P-55 referred to the issue of \$12,500,000 of 6% Debentures to follow the bonds. Will you file, as Exhibit P-57, the prospectus of July 20th, 1926, dealing with those \$12,500,000 of Gold Debentures?

Mr. Ker: Under the same objection.

40 A.—Yes.

BY MR. ST. LAURENT (continuing):

Q.—There has been some reference to those various bond issues applying to property in New Brunswick.

Mr. Ker: I did make such a statement, I think, but, as I said, I am not quite certain as to its accuracy.

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Mr. St. Laurent: It is accurate. It appears in the prospectus.

BY MR. ST. LAURENT (continuing):

10 Q.—Will you file, as Exhibit P-58, a prospectus covering the letter of Mr. Graustein of October 24th, 1929, for Eleven Million Dollars of the First Mortgage Gold Bonds, the proceeds of which are stated to be for the purpose of financing the New Brunswick power deal?

Mr. Ker: Same objection.

A.—Yes.

BY MR. ST. LAURENT (continuing):

20 Q.—Will you file, as Plaintiff's Exhibit P-59, the prospectus over the letter of Mr. Graustein of September 26th, 1928, for Seven Million Five Hundred Thousand Dollars of Series B Gold Debentures, the proceeds of which were also apparently for this New Brunswick deal?

Mr. Ker: Same objection.

A.—Yes.

BY MR. ST. LAURENT (continuing):

30 Q.—Between P-55 and P-58 there seem to have been issues of two slices of bonds, and I have only the prospectus for one of them. To make it as complete as I can, will you file, as Plaintiff's Exhibit P-60, the prospectus I now show you, being a prospectus over Mr. Graustein's letter of September 14th, 1927?

Mr. Ker: Same objection.

A.—Yes.

40 BY MR. ST. LAURENT (continuing):

Q.—You see in the prospectus Exhibit P-55 the statement that the Twenty-five Million Dollars of preferred shares and the 500,000 common no par value shares are owned by the International Paper Company, except Directors' qualifying shares?

A.—Yes.

Q.—Is it to your knowledge that International Paper Company

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gave any other consideration than causing the transfer of the properties described in Exhibit D-57 for the issue of that stock?

A.—I do not know.

Q.—You do not know of any other consideration?

A.—I do not know what the consideration of the transaction was.

Q.—And as Secretary of the Company you do not care to find out for us and tell us?

10 Witness: Do you wish me to answer that question, your Lordship? I may say I do not like the form of the question. I am entirely at the disposition of this Court, and for counsel to suggest I do not care to do a thing is entirely beside the question.

Q.—I am just asking you if you wish to ascertain what was the real consideration, and give us the information. Is there anything beyond what you did over the holiday you think you could do to put yourself in a position of being able to give us the information.

20 A.—I could look up my records further. I would be pleased to go back and look further.

His Lordship (to the witness): I consider you an honest man, and I would like you to make a loyal search as to this value or consideration we have been speaking of. I would like you to make a bona fide search, and then come back and tell the Court what you know of it. If you cannot, that will settle it.

Witness: Very well, your Lordship.

30 Mr. St. Laurent: In view of the question, and the direction given to the witness by the Court, I beg leave to suspend my further cross-examination until the search asked for has been made.

(And further for the present deponent saith not.)

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DEPOSITION OF PAUL BEIQUE, A WITNESS EXAMINED
ON BEHALF OF THE DEFENDANT.

On this twelfth day of November, in the year of our Lord one thousand nine hundred and thirty-one, personally came and appeared

PAUL BEIQUE,

10

of the City and District of Montreal, Civil Engineer and Quebec Land Surveyor, aged 49 years, a witness produced and examined on behalf of the defendant, who, being duly sworn, deposes as follows:

EXAMINED BY MR. KER, K.C.,
OF COUNSEL FOR DEFENDANT:

20

Q.—You are an engineer by profession?

A.—Yes.

Q.—And you are also a Quebec Land Surveyor?

A.—Yes.

Q.—How long have you been practicing your profession?

A.—Since 1906.

Q.—From what University did you graduate?

A.—The Ecole Polytechnique, Montreal.

Q.—And you have been practicing your profession since?

30

A.—I was connected with a railway company, designing structures, preparing plans for right of way, and so on; and when this railway was constructed I went on the staff of the contractor constructing the railway. After two or three years at that work I started in private practice.

Q.—What railway was this?

A.—A subsidiary of the Delaware & Hudson.

BY MR. ST. LAURENT:

40

Q.—It has nothing to do with the region in question in this case?

A.—No.

BY MR. KER (continuing):

Q.—When did you take up private practice?

A.—In 1909 or 1910.

Q.—And to what have you devoted your time since 1909 or 1910 and the present time?

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A.—I was engaged in surveying work, in municipal work, general construction, buildings, examination of foundations, drainage, expropriation work (which is a kind of a specialty in which I have been actively engaged since 1912). I have also done general appraisals, appraisals for banking interests, and so on.

Q.—Would the expropriation work you speak of have for one of its objects the valuation of properties being taken by expropriation?

A.—Largely. In that connection I may say I was charged with the expropriation of the Montreal Bridge approaches in the City of
10 Montreal—the valuation of all the lands that were subject to go to expropriation. I prepared a comparative analysis the result of which brought about a relocation of the approaches to the bridge at Montreal.

Then I was charged with the purchase of land for the opening of a large thoroughfare on the south shore leading to this bridge. That is a work which will involve probably twenty miles of large roadway. I bought all this property, and I was in sole charge of the work.

Apart from that I purchased all the property from Montreal to
20 the frontier for the Quebec Road Department—the King Edward Highway, and the Montreal and St. John Road—a distance of about fifty miles.

I also made a great many purchases for the Roads Department for adjacent roads.

I am a member of the Advisory Board of Engineers, Metropolitan Commission, Montreal.

I am one of three Commissioners on the Tramways Commission, charged with the application of the contract between the City of Montreal and the Montreal Tramways Company.

30 Q.—I take it the various occupations in which you have been engaged have necessitated a good deal of your work being devoted to the land surveying department of your profession?

A.—Land surveying and valuation of property of all kinds.

I might also say I acted for the purchase of land in connection with the tunnel built by the Canadian Northern in the City of Montreal, and all the lines radiating in the City of Montreal, to Ste. Geneviève, around the mountain, to Longue Pointe, and so on.

Q.—I think you have also done similar work for the Bell Telephone Company?

40 A.—I did some for the Grand Trunk Railway, for the Canadian Pacific Railway, for the Montreal Light, Heat & Power Company, for the Provincial Light, Heat & Power Company, and others.

Q.—You are now in private practice? You are not employed by or in any way connected with the Company Defendant?

A.—Not at all.

Q.—Have you had occasion to make an examination and a

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survey of the properties on the Gatineau River concerned in this case?

A.—Yes. On November 8th, 1926, with my brother Jean Beïque (also a Quebec Land Surveyer), and accompanied by the engineers of the Company, Mr. Ralph and Mr. Strumbert, I made a survey of the front of Mr. Cross' property from one end to the other, stopping at the range line. I was particularly careful, because I had received special instructions to locate the limits of the first rapids. One of the contentions of the Company, if I remember rightly, was
10 that the C.P.R. being the riparian owner along this front rapid, it was not the property of Mr. Cross; so they wanted me to establish the point where the rapids were located.

Q.—In relation to the C.P.R.?

A.—In relation to the C.P.R., and in relation to Mr. Cross' property.

We had Mr. Farley's plan, and we had a copy of the C.P.R. plan. The engineers of the Company assisted us in locating the lines, in order to expedite our work, and they showed us this iron bourn at the range line.

20 I took photographs along the river shore, particularly at the first rapid, to show where it started and where it ended.

I found the Farley plan dependable. I controlled it, and since then I have used it.

On December 10th, 1926, I again went on the spot with Mr. Arthur Surveyer. The Company had asked me to make a valuation of the damage done to Mr. Cross' property, or the damage to be done to Mr. Cross' property, as a result of the elevation of the water level and the flooding of his rapids and the flooding of his land. We
30 made a general reconnaissance of the ground.

Q.—You are speaking of your visit with Mr. Surveyer?

A.—Yes: on December 10th, 1926.

We took several measurements again, in order to satisfy Mr. Surveyer that the general lines of the Farley plan were correct, and we took levels to find the head of water at the first three rapids opposite the Cascades site.

Q.—You knew Mr. Farley had taken certain elevations along there?

40 A.—Yes. Mr. Farley's plan had been communicated to us, together with several plans of the Gatineau and several plans of the C.P.R.

Q.—Did you find Mr. Farley's elevations were correct?

A.—Of course the level was not exactly the same. The flow on November 8th, 1926, was about 11,630 cubic feet. That was given us by the engineers of the Company from readings which were taken. On December 10th I think it was 21,360 cubic feet.

Q.—Did your investigations lead you to the belief and con-

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clusion that the elevations taken by Mr. Farley were correct?

A.—I think Mr. Farley prepared an accurate plan.

Q.—As far as elevations were concerned?

A.—Yes. I had no doubt of that, but as I was to testify on the question I made checks and control in order to satisfy myself that the plan was correct.

I may say I did not go on the easterly side of the river.

Q.—When you are speaking of the correctness of Mr. Farley's plan, do I understand you are speaking at the moment with regard
10 to water elevations?

A.—Yes: and to Exhibit P-19.

Q.—Water elevations as indicated on Exhibit P-19?

A.—Yes.

Q.—How did you proceed after your visit of December 10th? What did you do next?

A.—It was following my suggestion that Mr. Surveyer was retained. At that time I was supposed to give testimony before the Quebec Public Service Commission, and, although I was satisfied
20 with what I had seen, because this property was to be flooded and taken away from sight I considered it was important that my testimony be supported by an independent engineer. I had great confidence in Mr. Surveyer: I had worked with him on several other schemes: and I advised that he be retained by the Company to make a valuation, and especially to study from a hydraulic point of view the value of the site of Mr. Cross and the possibility of developing it economically.

Q.—What conclusion did you personally arrive at with respect to the possibility of its being economically developed?

A.—My first visit, independently of Mr. Surveyer, brought me
30 to the conclusion that this site taken independently (and I do not take it otherwise) was not susceptible of economical and profitable development.

Q.—What did you do after that, in connection with your investigations?

A.—I needed a lot of information for my valuation. I wanted a plan to show the river lines, the lands to be flooded, the high-water mark along the river, the extent of land that was to be flooded, the railways, the boundaries of the property along the river and
40 along the shore. Then I was brought to define really what physical water rights were attached to Mr. Cross' property.

Q.—You mean rights in the bed of the stream?

A.—Yes.

I divided the river bed as shown on a plan I have prepared and which I file as Defendant's Exhibit D-117.

Q.—This plan was prepared as a result of your investigations?

A.—Yes.

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At point "A" on this plan, where the division line between lot 21-C and lot 21-C-1 intersected the high water line, I drew a perpendicular to the midstream line.

At point "B", where the northeasterly limit of the Canadian Pacific right-of-way intersected the high water line, I drew a perpendicular to the midstream line.

You will see on my plan I called the property enclosed between those two perpendiculars and the midstream line, on one side, and the high water mark, the property of Mr. Cross.

10 At point "C", where the northeasterly limit of the right-of-way intersected the high water line I drew a perpendicular to the midstream line—the perpendicular shown on my plan by the line C-C-1—and I called the property enclosed between perpendicular at point "B" and perpendicular at point "C" the property of the Canadian Pacific Railway. Of course, if the contention of the Company is not right regarding the riparian ownership this would go to Mr. Cross.

20 At point "F", where the division line between lots 21-C and 21-D intersects the high water line, I drew a perpendicular to the middle of the river, and I called the property indicated in red on my plan, enclosed between perpendicular at line "C" and perpendicular at line "F", the property of Mr. F. T. Cross.

30 On the east side of the river, where the division line between lots 21-A and 21-B intersects the high water line, I drew a perpendicular to midstream; and at point "E", where the line of division between lots 20-B and 21-B intersects the highwater line, I drew a perpendicular. The property enclosed between those two perpendiculars (shown in red on my plan) I called the property of Mr. F. T. Cross.

The rest of the river bed belongs either to the Gatineau Power Company or to the Canadian Pacific Railway Company, if the contention of the Gatineau Power Company regarding the riparian ownership is correct.

Q.—In other words, you determined the Canadian Pacific right-of-way was riparian between the points "B" and "C"?

40 A.—Yes. The conclusion of this study shows that if the contention of the Gatineau Power Company is correct Mr. Cross would own no part of the first rapid, about three-quarters of the second rapid, and about one-quarter of the third rapid. If the contention of the Gatineau Power Company is not correct regarding this riparian ownership, Mr. Cross would own one-half of the first rapid, three-quarters of the second rapid, and one-quarter of the third rapid, and no portion of the fourth.

BY THE COURT:

Q.—The first rapid is on the left hand side of the plan?

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A.—I will mark them in pencil on the plan: “ First Rapid ”, “ Second Rapids ”, and “ Third Rapids ”.

On Exhibit D-117 the first rapid is enclosed between the two dotted lines running from shore to shore, and is marked “ First Rapid ”. The second rapid is enclosed between the dotted lines extending from shore to shore, and is marked “ Second Rapids ”. The third rapid is enclosed between the dotted lines extending from shore to shore, and is marked “ Third Rapids ”.

10 BY MR. KER (continuing):

Q.—The words “ First Rapid ”, “ Second Rapids ”, and “ Third Rapids ” have now been added in pencil on your plan, and indicate what you have just stated?

A.—Yes.

Q.—How did you determine the middle line of the river?

A.—I determined the middle line of the river—the midstream line—by taking half of the distance between opposite points as marked by high water line on each shore. Of course this middle of the
20 river is not the centre of the stream formed by the water flowing at any stage. As I say, it is the mid-distance between two opposite points on the shore.

Q.—In order to establish that did you, of necessity, have to establish the ordinary water line on the sides?

A.—I had to establish the high water line.

Q.—The ordinary high water line?

A.—I think the high water line is the limit of the river bed, applicable equally to navigable and non-navigable rivers.

Q.—What are the indications of that line?

30 A.—The high water line is mainly determined by the change in vegetation; by the character of the soil; by noting on the shore the place where the action of the water is so common and usual as to leave definite marks of its passage and sojourn; by observing what part of the land is capable of cultivation or occupation, although it might be flooded occasionally but not to such an extent as to destroy its value for agricultural purposes. Observation regarding that should bear on the neighboring and opposite shores; on the level at which trees begin to grow; on the change of slopes on the bank; general marks of erosion; on the gravel deposit; together with the
40 action of the gravel deposit upon artificial works.

I have read from my notes a definition of the high water mark as I have applied it, and as I apply it, and as I have studied it for quite a number of years.

Q.—What were the principles that guided you in apportioning the river bed as you did?

A.—In apportioning the river bed as I have done, I have followed the directions of the Court; and I have followed the results

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of many weeks of study which brought me to exactly the same conclusion as to the mode of division of the river bed as adopted by the Superior Court and the Court of Appeals.

Q.—Of this Province?

A.—Of this Province.

Q.—What particular case have you in mind?

10 A.—I am referring to the case of Restigouche Salmon Club vs. John L. Wyers. The Judgment of the Superior Court was rendered on June 14th, 1916; and this Judgment was confirmed by the Court of Appeals on January 12th, 1917. The Judgment in the Superior Court was rendered by the Honourable Mr. Justice Tessier.

If I might read from the Judgment. . . .

Mr. St. Laurent (interrupting): If it is a reported case, we can read it from the Reports. If it is not a reported case the way to prove it would hardly be by oral testimony of the witness.

20 Mr. Ker: We will have an official copy of the Judgment. I think the original was sent to me.

Mr. St. Laurent: My learned friend is not suggesting he proposes to file the Judgment as evidence? My understanding is it might be cited to the Court as an authority, but it could not be put in as evidence.

30 Mr. Ker: Mr. Beique is just outlining his authority. We will produce the Judgment at the proper time. I just wanted to preserve the continuity of the evidence, and possibly the best way would be to read the Judgment with that object in view.

Witness: You asked me with regard to the principles. Perhaps it would be better if I were to read from the result of my studies in Dupin's *Encyclique du Droit*, in which the principles which govern any system of apportionment of a river bed are enumerated as follows. . . .

40 Mr. St. Laurent (interrupting): I do not think that should be made part of the evidence. My learned friend may, I suppose, have his witness state to what books he referred, but I submit those books should not be made part of the evidence. We have no opportunity of cross-examining Mr. Dupin. The reference may be cited, I suppose, as authority, but I do not think they can be made part of the evidence.

His Lordship: As I understand it, the witness followed the principles enunciated by this author.

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Mr. St. Laurent: That is my understanding, your Lordship. He may also say what is his own personal opinion, and we can cross-examine him upon it.

Witness: But I cannot express it as well as Dupin has expressed it.

BY MR. KER (continuing):

10 Q.—Will you please proceed to state briefly the authorities you examined, and the reasons upon which you based your apportionment?

A.—I made a lengthy study regarding the apportionment of the river bed. I consulted many authors, amongst whom I might mention: Farnham, Daloz, Cyclopedia of Law, Sirey's Jurisprudence de Cour de Cassation, Fuzier-Herman, Bequet, Daviel, and many others.

Q.—Concluding with the Judgment you have just cited?

20 A.—I had concluded my Report when I found out about this Judgment in the Province. I knew something existed, but I did not know where to locate it. Just before turning in my Report I was able to find it, and I cited it in my Report.

Q.—As confirming the conclusions at which you had already arrived?

A.—I came to exactly the same conclusion as did Judge Tessier; and I do not think, after a serious study, we can come to any other conclusion.

30 Q.—In your opinion, what would be the result of attempting to apply any other method of division?

A.—I do not think any other method is admissible. In making my studies I saw a number of methods had been attempted by different authors—more especially the prolongation of lot lines across the river bed. This is invariably discarded by the authors, as you will see by the Judgment of the Quebec Court and the Court of Appeals. The apportionment of the river bed by prolongation of the side line is contrary to the principles which you will find enunciated in Dupin's Encyclique du Droit. You will also find that contiguity of waters would be lost to the riparian owner in some cases.

40 Q.—Just how would that happen?

A.—Because part of the river bed would be quite far out from his property and in front of other property.

You will also find that this system of prolongation of side lines has to be abandoned when lines converge.

Q.—Just what do you mean by that? Have you any illustration or diagram which would indicate it?

A.—Yes, I have.

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Q.—Will you produce, as Exhibit D-118, the sketch you now show me, illustrating the fallacy which would be involved in the prolongation of lot lines?

A.—Yes.

Q.—Would you mind explaining this sketch Exhibit D-118?

A.—You will see on the diagram Exhibit D-118 a portion of the river bed, marked E-N-P, which would find no owner. You will also find that the portion marked Z-W-Y would find no owner. Because the two would be situated on the other side of the midstream line, and according to, I think, Article 425, midstream line is the place where the property of the river bed stops as belonging respectively to one owner on one side of the river and another owner on the other side.

Of course, when you study those things you will find any number of cases in which it is exceedingly hard to apply the mode of division by prolongation of side lines or any other lines marking the boundary of the property, because this mode of division applies to lines running in all directions, whether side lines or end lines. This mode of division of the river bed by prolongation of side lines is contrary to the principle of midstream line, "Medium filum aquae", incorporated in Article 425.

Q.—How was the Township of Hull originally laid out, under the original instructions, with relation to the river?

A.—The Township of Hull is divided in the same way as all other townships. I think the mode of dividing the river bed is no different, or should be no different, in the Township of Hull from any other township.

The general practice has been followed. You will see that on the Township of Hull the side lines, or the end lines, stop at the river shore.

Q.—You are referring now to the cadastral plan?

A.—Yes. And they start anew, of course, in the same direction, on the other side of the river.

Q.—In other words, the cadastral plan does not purport to produce the lot lines through the Gatineau River?

A.—No.

Q.—Or any other river in the County of Hull?

A.—No.

The Crown Lands Department has a plan on file.

Mr. St. Laurent (interrupting)—If any evidence is to be made in regard to a plan on file at the Crown Lands Department, I think it would be better if we had a copy of it.

Witness: I thought it was produced already.

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Mr. St. Laurent: The witness has a plan before him, and I object to any reference or use being made with respect to it. I notice this plan is entitled: "Hull. Reduced from cadastral plan. Scale 40 chains to 1 inch. 1879. Department of Crown Lands, Quebec, July, 1879". We do not know who made it, and it is not certified in any way.

10 Mr. Beique and I both know that there are a great number of sketches, plans and so on kept on the files of the different Departments, where they may or may not have an official character.

BY MR. KER (continuing):

Q.—Without reference to the plan for the moment, I think we were discussing the question of the production of lot lines on the cadastral plan.

Mr. Montgomery: Does my learned friend take objection to the plan simply because it is not certified?

20 Mr. St. Laurent: Not because it is not certified, but because it does not appear to be an official plan of any kind.

Mr. Montgomery: It is reduced from the cadastral plan.

30 Mr. St. Laurent: At that time the cadastral plan was a part of the Records of the Department of Colonization, Mines and Fisheries. It may be that merely for purposes of information somebody went to another Department, copied a part of the cadastral plan, and brought it back to the Department of Lands. That does not make it an official plan.

We have the cadastral plan.

Witness: You will see on the official plan, Exhibit P-14, that the lines are not carried through the river bed but stop at the shore on each side. There is no line drawn across the river bed.

BY MR. ST. LAURENT:

Q.—On the cadastral plan?

40 A.—On Exhibit P-14. I do not think it could be otherwise, because we have to deal here with a river which may be navigable or non-navigable, and I may say the Gatineau has been declared by the Court to be navigable for a stretch and non-navigable for another stretch. You will see the river bed is treated in the same manner in all those portions.

BY MR. KER (continuing):

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Q.—In other words, the plan makes no distinction in respect to production of lot lines between the navigable and the non-navigable portions?

A.—No.

Q.—Leaving open the application of the principle of division of river bed as between riparian properties without any reference whatever to the lot lines?

10 A.—Not only that; the river bed is a particular form of property, which is susceptible of varying. The river bed may be at one place this year, and 20 or 25 years from now it will be at quite a different place, and the limit of the rights of a proprietor on that portion of the river bed may vary accordingly. It is susceptible of modification in extent and in boundary.

Then there is also this feature—in any event, it is my judgment of it, and I am giving it under reserve—that the Courts have decided that the property of the riparian owner extends to midstream line, so this midstream line has to be made, I suppose, at the time of the Judgment and the extent of the property has to be apportioned at that date.

20 Q.—I think you studied this property with a view to valuing the damages which have been caused to it?

A.—Yes, that was one of the main purposes for which I was retained in this case.

Q.—Have you prepared any estimates of valuation?

A.—Yes. I divided my valuation into two parts: first, the lands submerged and rendered useless by the elevation of the water; and, secondly, the value of the water rights, or the rapids, which extended in front of Mr. Cross' property on the Gatineau River and which
30 were submerged some time in March, 1927—in other words, by the elevation of the water those rapids disappeared.

Q.—How did you determine the first element, the land value?

A.—On the east side of the river the area flooded out, as appertaining to the uplands, is .8 of an acre—eight-tenths of an acre—which I estimate at \$75 per acre, but for which I have used the price of \$100 per acre in line with a Judgment of the Quebec Public Service Commission rendered in the expropriation case for the Caves property lying right alongside of the easterly portion submerged.

40 Q.—The defendant in the present case being the party who was expropriating in the Caves case?

A.—The party expropriating was the Gatineau Power Company.

Those flooded areas are not given on the plan Exhibit D-69.

Mr. St. Laurent: I think they appear on the plan Exhibit P-19.

Witness: In any event, those areas were given to me by Mr. Farley. They appear on the plan Exhibit P-19.

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BY MR. KER (continuing):

Q.—What is the area of land submerged between the railway and the river on the west side?

A.—Five acres. This land I estimate at \$250 to \$300.

Q.—Per acre?

A.—Yes. For my estimate I have, however, used the figure of \$400 per acre. This makes a total value of \$2,000.

Q.—Why have you thought fit to use the figure of \$400 per acre?

10 A.—I was not sure that some of this property might not be used for summer sites. Of course, if you look at the plan Exhibit D-69 you will see the stretch is very narrow; it is bordering immediately on the right of way, and in my opinion it is not at all adaptable to this use. It might be, however, that Mr. Cross might be able to find some way of using it for such a purpose. I refer particularly to the point which I will mark "M" on the plan Exhibit D-69, where, according to the contours, there is some land which is a little higher than the rest of the property.

20 For the second element, the value of the rapids, I considered I had to determine the value of a portion of the river bed with water rights with all its real and speculative possibilities—in other words, the value of a small water power site before it had been merged with a group of other neighbouring sites in order to make it capable of profitable development, but taking into account the possible appreciation—not its realization, but the possible appreciation—which might accrue to the property from the fact that it might be purchased by a proprietor on the lower side or a proprietor on the upper side—that is the proprietor of the chute below, or the proprietor of
30 the chute above—and that competition might arise from that fact. What I was to determine was the value of the property with all the advantages which might influence a possible buyer and a reasonable buyer, but before he was assured that the development would take place.

My method is one of comparison, based on the prices freely paid for similar properties situated in the same region, with due allowance for material differences in the amount of head available, division of ownership, concentration of head, and the possibility of developing same independently for a water power proposition. All
40 these considerations would, I think, necessarily influence a buyer or an intending buyer of such a site.

Of course I had to give some weight to all the transactions which took place in the region and which were at all comparable. Although I thought this property was not susceptible of economical development, yet it could not be denied all value; but that the possible purchaser could not consider wisely any value over and above what would be or could be the expropriation price, because any pretension

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of value over and above that figure would be quite a risky venture.

I asked the Company to furnish me with all the sales which had been made in that region, and, after studying them, I may say I attached considerable importance to the Cross-Hull Electric deal for the Paugan Falls.

Q.—You are now speaking of Mr. F. T. Cross, the plaintiff in this action?

A.—Yes.

10 What we are concerned with here is a small site before it has been merged in a group of other neighbouring sites in order to make it capable of profitable development; and we see that in this deal Mr. Cross was engaged in the pursuit of grouping a series of small and bigger sites with the avowed purpose of selling them to the Hull Electric.

Q.—You are speaking of the purchases made by Mr. Cross above Paugan?

A.—For Paugan.

Q.—For the Paugan Falls, for the Hull Electric?

20 A.—Yes.

Q.—Which was subsequently sold by him to the Hull Electric Company?

A.—Yes. As you called it, I think, the Paugan site.

Mr. Cross in this deal operated in the same river—that is, in the Gatineau River—not far from the Cascades site. He had to deal with a large number of owners owning sites, some bigger and some less—that is, higher or lower head than his—some of which carried larger falls, and others smaller falls. He had no right to expropriate. He did not have the assurance that the development would take
30 place. They were not obliged to sell, and he was not obliged to buy.

I think, in view of those considerations, this vendor was operating very much under the same conditions that should apply if we take the direction given in the Lacoste and Cedars Rapids Judgment of the Privy Council. The amount of \$3,333 per foot of head is given in this Deed, and I consider it gives the market value of a complete power site on the Gatineau River, capable of profitable development, as determined by a speculator who had some experience in electrical development, who had already bought some sites in the neighborhood, who had secured options on some sites, and who also was engaged in grouping and amalgamating a certain number of sites to
40 compose a profitable development, and who was to sell it to a concern presumably strong enough to develop it. I attach much importance to the fact that this speculator is the same gentleman who owns the Cascades property.

Q.—That is, the Plaintiff in this case?

A.—Yes.

This unit price, being arrived at, certainly establishes a good

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presumption of value applicable to similar sites on the river.

Q.—In speaking of the \$3,333 per foot of head, you were, I understand, referring to what Mr. Cross himself purchased as necessary for the Paugan Falls development, before he sold it to the Hull Electric?

A.—No; I refer to the price at which he was to sell it to the Hull Electric, after this integration or concentration of sites had taken place.

10 Q.—Perhaps you might amplify a little what he undertook to do?

Mr. St. Laurent: I thought possibly this was just a passing reference, but if it is the intention to have a considered study of the Deed, I think we had better have the Deed.

Mr. Ker: We have the contract under which Mr. Cross purchased this power at \$3,333 a foot. There are a number of contracts back and forth, but we have the contract under which he undertook to deliver this power at that price per foot of head.

20

Mr. St. Laurent: I think the contract should be before us, so that we may know what it is. As my learned friend says, there were some variations, and I believe we should have the contract so that we may follow wherein those variations affect the aspect the witness has in mind.

BY MR. KER:

30 Q.—Before the adjournment, Mr. Beique, you were discussing the valuations which you had made, and your method by which you had proceeded to make an estimate of value of the Cross lands and water rights at the Cascades. Having dealt with the land portion, you were proceeding to state that you had gone along estimating the value to water rights in a certain manner. Perhaps you would continue your testimony from there?

A.—Yes. I said I started from the figure of \$3,333 per foot of head as representing the market value of a site containing at least 100 feet of head, but I thought that before this figure could be used, 40 due allowances had to be made for difference as to conditions.

Q.—If I may interrupt you just for a moment, I think you stated the Company had supplied you with a copy of the contract under which Mr. Cross had undertaken to deliver that power to them. Would you take communication of this document and state whether that is the contract between Cross and the Hull Electric Company in respect to the purchase of the Paugan rights made in 1917, to which reference was made in your testimony?

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A.—Yes, that is the memorandum, an agreement dated 7th September, 1917, between Freeman Thomas Cross and the Hull Electric Company.

Q.—That agreement concerns the property, the concentration now known as Paugan Falls Development?

A.—Yes.

Q.—Would you just refer to the paragraph in that agreement to which you have already made reference with respect to the height of head involved, and to the amount to be paid per extra foot of
10 head, of \$3,333. Perhaps if you would read the paragraph.

Mr. Ker: This is a photographic copy. I do not think my learned friends would have any objection to it.

Mr. St. Laurent: We are not making any special objection to use a photographic copy instead of the original of the agreement. We cannot, however, from memory, vouch for the accuracy of the document, but everything that has been referred to so far is in
20 accord with our client's remembrance as being the facts.

His Lordship: If there is anything to correct, you can correct it.

Mr. Ker: Yes, my Lord.

BY MR. KER:

Q.—Would you file that agreement as Exhibit D-119?

A.—Yes. That is one of the agreements. There are others. I
30 refer to the agreement of the 7th September, 1917, between Freeman Thomas Cross and the Hull Electric Company where it says

Mr. St. Laurent: The witness is referring to another one.

Witness: I have here a stenographic copy that was communicated to me by the Gatineau Power Company, including one agreement dated 7th September, 1917. That is the same one.

At page 2, at the bottom, it says:

40 “ Upon delivery by the Party of the First Part to the Party of the Second Part of the documents and title deeds establishing the ownership of the said water powers, and properties and possession thereof, the Party of the Second Part shall pay unto the Party of the First Part the sum of One hundred thousand dollars (\$100,000) and shall further pay to the Party of the First Part a further sum of Fifty thousand dollars (\$50,000) within one year after the payment of the said sum of One hun-

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dred thousand dollars, a further sum of Fifty thousand dollars (\$50,000) two years after the said date, a further sum of Fifty thousand dollars (\$50,000) three years after said date, a further sum of Fifty thousand dollars (\$50,000) four years after said date, a further sum of Thirty-three thousand three hundred and thirty-three dollars (\$33,333) five years after the said date."

10 If you add all these sums, you get the amount of \$333,333.
Q.—For what amount of head is that stated in the agreement:

A.—“ One hundred (100) feet measured from high water mark at the foot of the said Paugan Falls, and to obtain and deliver free and undisputed title to all the water powers and riparian lands which may be necessary for the said power development so promised to be sold as aforesaid.”

20 Q.—That, I understand you to say, concerns the first 100 feet of head?

A.—Yes.

Q.—What does the agreement go on to say in the next paragraph?

A.—In the second paragraph, page 3, it states:

30 “ And it is agreed and stipulated that the Party of the Second Part shall pay to the Party of the First Part over and above and in addition to the foregoing payments, the sum of Three thousand three hundred and thirty-three (\$3,333) for each additional foot of head over and above the One hundred feet measured from high water mark at the foot of the said Paugan Falls, which can be obtained from the water powers and properties so to be sold by the Party of the First Part to the Party of the Second Part.”

Q.—It is upon that you are basing your evidence respecting this transaction of Paugan Falls?

A.—Yes.

As I told you in my estimate I made due allowances in that basic price for difference of conditions. Here are the allowances which I have made. . . .

40 Q.—Just a moment. I take you are now relating that price to what you consider the value of these Cascades?

A.—Perfectly.

The figure \$3,333, includes, to my mind, presumably, a fair remuneration for the work of the speculator, or, in other words, it includes the cost of integrating or merging a large number of holdings into one complete power site. For this factor I have allowed twenty per cent which brought down my price from \$3,333 to \$2,667.

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Q.—Per foot of head?

A.—Per foot of head.

This figure of \$2,667 includes the value of the flooding damages. As a rule, this represents a considerable sum, so that I have made a reduction of fifteen per cent from the sum of \$2,667 which left me with the sum of \$2,267. This figure of \$2,267 represents the average value of every foot of head in a complete and integrated site before integration, but it seemed to me that certain sites on account of their situation, their possibility of development, whether they com-
10 prise one side of the river, or both sides of the river, command a much higher price than the others, and whether they comprise a much higher head also and a head which would be profitable of economical development.

For instance, in this Paugan deal, it included the Mountain Rapids, which had over 50 feet of head, and evidently had a much higher value than the remaining part of the small sites of irregular shape, which contained only a few feet of head, and were not capable of profitable utilization, if considered independently from one another. So I estimated that for the purposes of arriving at my
20 value applicable to sites which contained from below, six feet of fall or thereabouts, as well as those containing less, the figure had to be reduced materially, and I have taken out one-third of this sum which left me with \$1,510. However, I took another factor into consideration. The agreement had been made in the year 1917, and I thought that the market value of such properties, or that a certain appreciation might have taken place to increase the prices, and probably if this agreement had been made in 1927 or so, it would have probably been done at a greater price, so, to account for this,
30 I have increased the value by fifty per cent, which gave me \$2,265 per foot of head, and I think that this is fair, and it is perfectly applicable to valuing Mr. Cross' site, so that on that basis, if Mr. Cross does not own the Rapids opposite this Canadian Pacific Rail- way riparian property, my estimate would be 2.25 head average, multiplied by \$2,265, which gives me \$5,096.25, to which I have added the value of land flooded, \$2,080 making \$7,176.25, to which I added again a percentage of 10 per cent which gave me less than \$8,000, but I adopted \$8,000 for round figures.

Now, if Mr. Cross owns the Chute opposite the C.P.R. riparian
40 property, my estimate should be corrected as follows: 3.75 feet instead of 2.25, which, at the rate of \$2,265, makes \$7,493.75 to which again should be added the value of land flooded, \$2,080, making \$9,573.75, to which I added a percentage of 10 per cent, representing \$10,531.10, which I put in round figures \$11,000.

After this, I tested these figures with sales of raw water power sites in the region, and from a general list that was sent to me I have extracted from this the highest figure that was paid per foot

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of head. That was for Calumet Rapids deal which was sold for the highest figure per foot of head, namely \$5,000.

The Calumet Rapids has a drop of 4 feet, and therefore, it would be a power on somewhat the same order as Cascades. This represents \$1,250 per foot of head, in the year 1926, the year in which the deal was made, as compared with \$1,510, which I had in my own estimate and which I have used above for the year 1917, and with the price of \$2,265 which I have used for the year 1927.

10 On the basis of the Calumet Rapids deal I made an estimate along the same lines as I have made on the basis given above, and I came to the following figures \$1,250, multiplied by 2.25, gives me \$2,821.50, for water rights, to which I added the value of land flooded, \$2,080 which I had in my first estimate, bringing the price to \$4,892.50. Ten per cent added to that gave me \$5,381 which I rounded off at \$5,400.

20 You see that the figure of \$8,000 which I obtained in my estimate is 47 per cent greater than what the Calumet Rapids sold at—not exactly that. I will make a correction later on. That shows for the basis of 2.25, that is, admitting the contention of the Gatineau Power Company regarding the riparian rights of the C.P.R. is found valid. But if it is rejected, then we have to adopt the average head of 3.75, the estimate should be corrected as follows: \$1,250 at 3.75 will give me \$4,687.50 for water rights, added to \$2,080 for land flooded will bring it to \$6,767.50; 10 per cent again will bring the amount to \$7,444.25 which I rounded off at \$7,450, and the price of \$11,000 which I obtained in my estimate is about 47 per cent greater than this price of \$7,450, but I may say I think I am giving the benefit of the doubt a little more to the Calumet deed because the Calumet deed apparently included some flooding damage, because it included
30 a certain portion of the shore. Anyway these are matters of not much importance, and I have left it at what I have given you.

I may add that these are maximum values, that is, my estimate is the maximum value which I think in the face of expropriation would obtain for the Cross site. I perhaps would have to reduce them somewhat to obtain the true value, but in view of the fact that the Company flooded the land, and that Mr. Cross had to sue the Company in order to get paid, I was not prepared to reduce these figures.

40 Q.—Speaking of the Calumet, have you a copy of the Calumet deed, that is the deed by which the Gatineau Power Company purchased the Calumet Rapids?

A.—Yes. It is a deed dated August 10th, 1926, sale by Arthur Lafontaine to the Gatineau Power Company prepared by Louis Bertrand, Notary.

Q.—And registered?

A.—And registered under the No. 50695.

Q.—That is, a certified copy and a registered copy?

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A.—Yes.

Q.—Will you please produce that deed as Exhibit D-120?

A.—Yes.

Now, I may explain regarding this deal in order to facilitate the lecture of it, that it includes a square which comprises both sides of the river, and starts 200 feet above the top of the chute, and extends 200 feet from the bottom of the chute.

Q.—In other words, it appears to be complete of itself of the entire chute?

10 A.—Yes, it includes the whole Rapids. The Rapids is independent of every other property, whereas Mr. Cross' site is interlocked with other properties.

Q.—Have you given any consideration in your estimate, and the building up of your values, of the precedents that you took, to the transaction between the Gatineau Power Company and the Canada Cement Company?

A.—Oh, yes, I may say I have asked the Gatineau Power Company to furnish me with this deed, and I may also say I studied it for a long time.

20 First of all, I saw in this deed, there was no price mentioned, except the sum of one dollar. The real consideration revealed by the Agreement is a perpetual horsepower sold, a block of power sold at \$10.00 by the Gatineau Power Company to the Canada Cement, and subject to other considerations, so that manifestly this deed was a sale of power, and not a sale of the property.

I tried to devise some means of putting a value on this concession, as well as to the consideration which I thought belonged to this, and which I thought were taken by both companies, but I could not do so. I could not arrive at anything at all satisfactory. There were two points of view and therefore two values, the value received by the Canada Cement Company and the value given away by the Gatineau Power Company. It is quite difficult to say, and I am not prepared to say, what is the value given away by the Gatineau Power Company. It is likely as in all these deals that it was profitable to both.

Q.—Do I understand that in your opinion it offers no measure of comparison of ascertaining the value?

40 A.—Not at all. It does not contain at all the same elements as the Cross deal. The property itself has not the same head. The Canada Cement Company's site is different from the Cascades; it includes both sides of the river. It has a concentrated head.

Q.—Of how much?

A.—If I remember right (I am speaking from memory), there are about ten or eleven feet. I can tell you from the plan. It is about 9.7 but on the west side of the river there is a certain portion that

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should be taken out, because Mr. Cross would own some part of this Rapid.

Q.—That is a concentrated head?

A.—Yes.

Q.—Am I right in stating from this plan, and from your knowledge of the matter, that the property of the Canada Cement Company controls on both sides of the river that entire head?

10 A.—Yes, with the exception, as I have above stated, of the upper portions of the third Rapid extending to midstream, that is, from the west shore to midstream.

I may say there is something I forgot this morning regarding the apportionment of the river. I would have resorted just as well to the prolongation of the side lines, if I had thought that this had been the rights of the parties. I was not committed to any method. The only thing I was expecting was that they would proceed before the Quebec Public Service Commission, and necessarily we would have to define very clearly, and it would pertain to us to define very clearly what was the river bed involved with the property on each side, and therefore we had to take a very definite attitude, but I do
20 not think it matters very much as far as the valuation is concerned. It is surely not an element that would have been taken into very large consideration by a speculator.

Regarding this Canada Cement Company deal, I do not know if I said that the Cascades site and the Canada Cement does not include at all the same element, that is the deal and the valuation, the valuation which I am giving to Mr. Cross' site.

I want to make myself clear on this: what I mean is if the Gatineau Power Company would offer a block of 10,000 horsepower to Mr. Cross it would not at all suit his purposes, and therefore it is
30 an entirely different element.

Q.—You mean one of the elements is, the Canada Cement Company was there ready to use the power?

A.—Yes, and very likely the Gatineau Power Company, which was in full period of development, had a great excess of water power which they could not dispose of for quite a while, and therefore it suited them to put a certain value on what they were giving away, and I cannot very well say what that value was. I have no idea what it was.

40 Q.—Is it possible, in your opinion, or is it possible for anybody to get at the relative value between those two transactions, to co-relate one with the other?

Mr. St. Laurent: I submit that this witness cannot say any more than he has said. He says he cannot do it. He is an engineer, and has given us his qualifications. He cannot co-relate them. He is not in a position to say whether anybody else can.

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Mr. Dessaulles: Surely he can.

Mr. Ker: I presume he may answer that way. He is entitled to express his opinion whether it is possible, in the course of his experience, for anybody to co-relate those things. I think it is a fair question.

(The Court reserves the objection.)

10 BY MR. KER:

Q.—To co-relate the transactions concerning the Canada Cement Company with the valuation of the Cross properties?

A.—I do not think they can. Anyway, I have tried my best, and I looked at that, and I could not do anything with it. I do not think it is at all possible. I think as to the value of what was given away by the Gatineau Power Company, only the Gatineau Power Company could say what it is, and they are the only ones who can estimate rightly what sacrifices, if you choose to call it, they have to meet.

20 Q.—Would you give an expression of opinion as to the method of proceeding to value that property for the site of Mr. Cross by relating it indiscriminately to sales of raw water power all over the province as has been done by plaintiff's witnesses. Do you think that offers any intelligent or sound method of comparison?

A.—I have studied this question for weeks, and I may say I consider it most improper and very fallacious. I think in doing so they are inferring general value from a case or a series of cases of particular value, and which may have characteristic features and conditions, and situations entirely different. I think it is trying to
30 use an instrument of investigation which may be applicable for certain particular purposes, but it has no application at all in the manner in which it was used, and that it is entirely unscientific and that it cannot stand critical examination. The fact is, the moment you place Mr. Cross' site purely as an economical development by itself, you are bound to come to the conclusion that it has none, and this element necessarily reflects, it is the mere element, that reflects value.

I may give you an illustration to show my point of view on this.
40 We sometimes use for valuing lands, or for comparing the prices of land, the value per foot of frontage; we will say, for example, that a lot will have a value of \$100 per foot frontage, meaning a lot 20 feet wide will represent \$2,000, 30 feet wide will represent \$3,000, but I think if we would try to generalize this method of valuation we would come to very fallacious elements. This standard of measure must be used with the greatest discrimination and with the greatest care. It must be understood that it applies to lots which have the

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same depth, or approximately so, which are situated in the same city, in the same district, on the same street, may be on the same side of the street, and certainly on the same section of the street, whether they are corner lots, or whether the soil is good for foundation purposes or not. Foundation may be very expensive on one lot and relatively small on another lot. The district may be sparsely populated or thickly populated, so with the buildings.

10 Then again, a property may be susceptible of bringing ready revenues, and another may not. One may be exploited commercially and another may not. One may be in poor residential quarters; the property may be wanted for a particular purpose, and then, the limits of the property may be irregular and much more expensive to build upon.

20 The property may be of small width, making it necessary to combine with other properties, so I think in view of all these differences if you would start to compare a property and say, well because a lot in New York sold for \$100 per foot of frontage and one in Chicago for \$100 per foot of frontage, and one in Montreal and Toronto for \$100 per foot of frontage, the lot in the small city would be \$100 per foot of frontage, I think that a statement of this kind was a fallacious statement. A statement of this kind will be apparent to everybody, and I think the elements obtained by the horsepower basis as used will produce the same exaggerated results, or somewhat same exaggerated and false results. However, I have given very much attention to that point in particular, and I will never use, and I will never attempt to use this method of horsepower basis, to value water powers.

30 Q.—There is one other question that I perhaps overlooked to ask you. Have you made any investigation as to the ownership of this lot 21-D?

A.—I have checked Mr. Farley's plan. I examined the deeds in connection therewith and regarding this lot 21-D, I saw that on the Book of Reference—I think it is in 1891, this property was subdivided and given in the name of Francis Learmont.

Q.—You say, "this property".

40 A.—Lot 21-D, was subdivided, and there was a correction made on the cadastral plan. These corrections must be asked by the proprietors

Mr. St. Laurent: I object to this statement of the witness. It is very well known that the cadastral plans do not affect titles. I do not think it is proper evidence in a Court of Justice for a witness to come and say there were corrections. It is, presumably, a correction that was asked for by proprietors. My learned friend knows how he can secure the public records dealing with it. I do not think this

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witness is qualified to enlighten us with surmises as to the reasons for its being done.

10 Mr. Ker: I submit, my Lord, the fact seems to be this, this witness states a subdivision was made of lot 21 in 1891, bringing into existence this lot 21-D. I am asking him what investigation he has made and as a part of his reply—I assume this is what he is going to say,—that he takes it for granted that the subdivision bringing into existence this lot 21-D would be then asked for by the then proprietor of that lot. The witness is merely referring in a general preliminary way to the facts upon which he based his investigation. I submit, my Lord, the question is a fair one.

20 Mr. St. Laurent: The register itself does not identify anything as to titles. It merely gives a description of certain pieces of property. My learned friend is asking this witness to construe or interpret the titles that have been put before the Court. If it had something to do with surveying that lot up it would be all right, but as to the construction of the title, that is quite a different matter. The witness states, and we have that by official evidence, that in 1891, 21-A, 21-B and 21-C were cancelled and another division was made, 21-D was put in, and the plan shows that 21-D is added. I do not think anyone can testify that because 21-D was added you must presume the proprietor asked to do it.

30 Mr. Ker: I really believe, with all due respect to my learned friend, that he has rather missed the point as to what this answer really is. Mr. Beique has merely said, basing himself upon the corrections which are now of record on the official plan, that in 1891 this lot 21-D was brought into existence as an official lot of 21, and he has declared as a witness who is an expert in these matters, and as a land surveyor dealing with the cadastral plan, that these corrections and the bringing into existence of such a lot by way of subdivision is usually made at the request of the person who owns the land to be subdivided. He does not give that as evidence of title at all. He is merely illustrating, or bringing up his remarks to arrive at a conclusion with respect to the investigations he has made. I think it is known to everybody that when a lot is brought into
40 existence the person who asked for it, or the person who then appears as the owner, his name is entered on the side of Book of Reference. I do not think that creates title in anybody, but it is merely an incident in Mr. Beique's statement with respect to the investigation.

(The Court reserves the objection.)

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Witness: I will answer this differently.

It is a fact that the Book of Reference shows the proprietor of lot 21-D to be Learmont.

Mr. St. Laurent: I must object to this evidence, because it is not the fact. The Book of Reference shows who is in possession, that is all, not who is the proprietor.

10 Mr. Ker: I think the witness' answer is merely preliminary.

Mr. St. Laurent: What I now object to is the witness' statement as to who is the proprietor. The Book of Reference does not show who the proprietor is. The Book of Reference shows who is in possession.

(The Court reserves the objection.)

20 Witness: In my practice I have always seen, and the cadastral office always demands, that the proprietor will sign the Book of Reference as the actual proprietor, and I know our plans would not be accepted.

BY THE COURT:

Q.—Suppose there are errors?

30 A.—I do not pretend to suggest, as Mr. St. Laurent says, that it will confer title to somebody who has no title. I only take it as a fact, and then, when I look at Mr. Cross' property, I see there is no mention in his title of lot 21-D, therefore the two exclude themselves.

His Lordship: I think you had better leave that for the Court.

Witness: Of course, I am not giving title or taking away title from Mr. Cross. I am obliged to make a plan, and, of course, I must go at it in a reasonable way to make my plan. It may be incorrect. It may be false, but this is my judgment of things.

40 BY MR. KER:

Q.—There is one other question I would like to ask you. At page 127 at the evidence of the witness Farley for the defence, there is a statement by Counsel for Plaintiff as follows:

“ The witness has testified the proper way to indicate the portion of the river that goes with the riparian property. I am

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just following up his plan. The fact is, the Gatineau Power Company purchased from the Canada Cement Company according to the description which extends the line straight across the river, and not in this jig-saw fashion which has been suggested for the purposes of this case."

Would you state whether or not that is an accurate statement of the fact, if you have given any consideration to the deed in question?

10 A.—I think Mr. St. Laurent has been badly informed, that the title does not extend in the river bed, and I think even if it did, it would not give any title to anybody in that fashion. The rights of the parties are what they are independently, that if they would have adopted a bad method of dividing the river, that would not confer any rights unto them. Their rights are what they are, and if the Court has to pronounce so, it is not because it would appear in the deed. I think they would leave it at that.

Cross-examination

20

CROSS-EXAMINED BY MR. ST. LAURENT, K.C.,
OF COUNSEL FOR PLAINTIFF:

Q.—You stated you visited this property, I believe, on the 8th November, 1926, and again on the 10th December, 1926?

A.—Correct.

Q.—And that you had Mr. Farley's plan and that you checked with respect to elevations and that you found it dependable?

A.—Yes.

30 Q.—The plan made at that time is not, I presume, the plan D-69, which purports to have been prepared by Mr. Farley on January 8th, 1930, and corrected on August 15th, 1930?

A.—It was a plan similar to this. I think this plan has been retraced a number of times. Anyway, I have seen different editions of Mr. Farley's plan several times.

Q.—Is it not a fact that what you had at that time was the plan of which P-19 is a copy?

A.—I do not say it is exactly that plan. It was a plan similar to this one and practically similar to that. There are differences on these two plans.

40 Q.—Is it not a fact that there are differences on these two plans, and that it is the plan which was in existence in 1926 that you saw?

A.—Very likely.

Q.—And this one, P-19, has as its date, November 22nd, 1926?

A.—Yes, P-19 is dated November 22nd, 1926.

Q.—Between the two plans, P-19 and D-69, you say there are differences. Is it not a fact that among those differences is precisely the southern point to which Mr. Cross' property would extend?

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A.—On P-19, there is a part coloured red, which extends beyond the part coloured red on D-69.

Q.—On P-19 the part coloured red, and that colour is used to indicate the Cross' property, is made to extend down to the dividing line between lots 20 and 21?

A.—Perfectly.

Q.—While on D-69, of 1930, it is made to stop at. . . .

A.—At line 21-D.

10 Q.—At what is put on that plan as line 21-D?

A.—As what is placed on that plan as the location of lot 21-D.

Q.—And on that plan there is put on as lot 21-D the Flynn property, while to your knowledge in the deeds the Flynn property is described as part of lot 21-C, is that not so?

A.—I believe so, but I may say if you will permit me that all the deeds there, whether the Flynn deed or the Cross deed, are full of inexactitudes, in my judgment, and the best we can say about them is that pretty nearly every description is a very poor description, and we have to make the best we can out of a poor situation. That is one of the difficulties of a land surveyor.

20 Q.—The Flynn description to your knowledge given as extending only up to the railway track, is not the description of what we are calling the Flynn property?

A.—I am not sure I have seen the Flynn description. If I remember right I asked for the Flynn description and they could not procure anything for me.

Q.—We will show it to you. It is D-15.

A.—I want to correct that. I have a few notes about that property. If you want to show me the original C.P.R. plan. . . .

30 Q.—I am talking to you about this deed?

A.—I want to give an explanation about this.

Q.—Well, I am just asking you to look at this deed now, and I am not going to be taken away from my line of examination. Will you look at this deed and read the description and see if the property was not described as sold by Flynn to the Canadian International Paper Company. Is it not described as bounded on the east by the C.P.R. railway?

Mr. Ker: That is self-evident if it is in the deed.

40 Witness: It states in the deed, bounded on the east by the Canadian Pacific Railway Company. Am I not allowed to give an explanation regarding that?

BY MR. ST. LAURENT:

Q.—I am not asking you for anything more. You told me you had not seen this deed, and I now show it to you.

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A.—I have studied this deed, and I think I have quite a little explanation to give on that boundary.

Q.—If you want to give any further explanation I have no objection to your doing so.

A.—If you look at the plan prepared by the C.P.R. as the plan of the right-of-way, you will see that on that plan there is no land opposite that property left between the right-of-way and the river, that even the river impinges in to the right-of-way, and this explains probably why they did not consider there was any land left, they had sold it all.

Q.—Is it your theory that the land, which was there in antediluvian times, has been deposited since that time?

A.—I don't know. I know Mr. Farley showed a tongue of land there, and I took it as being exact.

Q.—You visited the property on the 8th November and 10th December, you saw that tongue of land not only on the plan but did you not see it on the spot?

A.—I saw it. I told you I took Mr. Farley's plan as being exact.

Q.—You filed as Exhibit D-117, a plan showing the method you adopted for apportioning the river bed opposite the properties in question?

A.—Yes.

Q.—That plan seems to have been prepared in February, 1930?

A.—It was remodeled on February 14th, 1930. There were also a few additions of this plan.

Q.—You gave as one of your reasons for making this apportionment, a reference to a decision of the Superior Court, confirmed by the Court of King's Bench, in the case of Restigouche Salmon Club vs. Wyers?

A.—That is right.

Q.—Did that have to do with the Restigouche River?

Mr. Montgomery: Yes, it did.

Witness: If you will allow me to refer to the Judgment. That is the Restigouche River.

BY MR. ST. LAURENT:

Q.—And the Restigouche River, if I am not mistaken, is the river which constitutes at that point the boundary between the Province of Quebec and the Province of New Brunswick, is it not?

A.—I do not know. I have never seen the Restigouche River.

Q.—Do you know whether or not the lands in that locality were lands abutting on the river, and not extending across the river?

A.—I know from the judgment that it is clear that it is an unnavigable stream, and I also know from the Judgment the pre-

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tension of one party was to extend the side lines into the river bed, and that the Court adopted a different point of view. I do not know anything apart from the Judgment. I don't know the spot. I have not seen the Restigouche river.

Q.—I will just repeat my question. Do you know whether or not the land abutted to the river or extended across the river, and contained land on the other side of the river?

A.—I don't know.

10 Q.—Did you, in this extended study you made of that question, study the judgment of the Supreme Court in the case of the Attorney-General for Quebec and the City of Hull and Janet Louise Scott, which had to do with the sale to Philomène Wright, which is filed as an exhibit in this case?

A.—I have never seen this judgment.

Q.—Did you consider the judgment rendered by the Privy Council in the case of McLaren and the Attorney-General for the Province of Quebec which had to do with Paugan Falls on the Gatieneau River?

20 A.—I think that is one which I considered very carefully—the McLaren and the Attorney-General for the Province of Quebec?

Q.—Yes.

A.—I considered it very very carefully.

Q.—It had to do with Paugan Falls on the Gatieneau River?

A.—I don't remember that exactly, but I think so.

Q.—And did you notice that in the report of that case as found in 14 Appeal cases, page 258, it is stated:

30 “ The plots in those townships (meaning Hull and Wakefield) are rectangular so that in the case of river lots the bed of the river is included within the meets and bounds of the land in question without any appeal to the doctrine of *ad medium flum aquæ*.”

A.—The Judgment speaks for itself, I am not going to argue.

Q.—Did you notice that?

A.—If a lot comprises both sides of the river—or it comprises property on the river, it necessarily has to be extended that way, but not by prolongation on side lines, in my judgment.

40 Q.—And according to your system it would make rather a clear rectangular plot, would it not?

A.—It would not make a rectangular plot, but it would comprise exactly the same area, or approximately so.

Q.—Perhaps it is better to say approximately the same area?

A.—Very approximately so. I think that can be proven geometrically quite easily.

Q.—In arriving at this momentous conclusion, did you consider the terms of article 503 of the Civil Code, which refers to the rights

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of the one whose land borders on water and one whose land is crossed by water?

A.—I am not a lawyer.

Q.—But I rather thought you were posing as a judge?

A.—Oh, no, I am not posing as a judge, not at all. I have no pretension to that.

Q.—Will you put on Exhibit D-117 at the summit of this angle a letter that I can refer to in my question:

A.—(The witness indicates with the letter " F ".)

10 Q.—You have placed at the summit of the angle forming the side lines of lot 21-B the letter " F "?

A.—Yes, the northeasterly line.

Q.—If we were to apportion the bed of the river by projecting the side lines, that could be done by projecting the dotted lines D-M over towards the point "A" and by projecting the dotted lines N-E over towards the dotted line that runs down to the intersection of ranges 14 and 15?

A.—That is correct. You are making the description yourself.

20 Q.—Yes, but if that is what has to be done, your plan could even be used for that purpose by merely projecting those lines straight?

A.—There is no doubt.

Q.—And the projection would show just what portion of the red had been cut off, and just what portion of the white had been included?

A.—Necessarily so.

Q.—I understood you to say that the midstream line was not, in this case, the centre of the stream as it flows; is that correct?

30 A.—That is not exactly what I said. I said the midstream line is not determined by the bulk of the flow at any particular point.

Q.—This was another opinion as to the proper way?

A.—Well, it is the middle of the river, it is midway between the two shores.

Q.—So the line you were showing was not intended to show a division of half the water on each side of it, but an equal division of the distance between the high water mark of both shores?

40 A.—Well, it was supposed to show the midstream line. The method of determining the middle of the river for arriving at the mode of division that I followed, that was one of the necessary elements, because with my division of the property I stopped at the midstream line, and that was enough to fix the midstream line.

Q.—The way you fixed it was by taking the distance between high water marks on both shores, and dividing that distance in two?

A.—Perfectly.

Q.—And you yourself stated, I believe, that that was not the centre of the stream as it flows, in this case?

A.—Well, I did not say that.

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Q.—That is the note I have taken down?

A.—I said the middle of the stream was not determined by taking the bulk of the flow at any particular spot, that it was determined in my judgment by dividing in two the distance between the opposite shores.

Q.—Can you tell me in the intersection between lots 21-C, 21-D, 20-C or 20-D what elevation you took as the high water elevation?

A.—The elevation of the water at that point was, on October 15th, 1926, 303.2; on August 6th, 1926, 304.98; on October 30th,
10 1926, 304.64, and on Mr. Farley's plan an elevation of approximately 306.5.

Q.—I am asking you what you took as the high water mark on the shore: What was the elevation of the high water mark on the shore at that point?

A.—About 306.7.

His Lordship: What exhibit is that?

20 Mr. St. Laurent: D-69.

Witness: 306.1, I beg your pardon.

BY MR. ST. LAURENT:

Q.—Did you determine the elevation of the high water mark on the opposite shore?

A.—I did not go on the opposite shore.

30 Q.—In order to place this midstream line as you did place it, did you do that from measurement, or just from scaling the plan?

A.—I did it on the basis of the Farley plan.

Q.—Scaling the Farley plan?

A.—Yes, proceeding from the information contained on the Farley plan.

Q.—Taking that by scale?

A.—Necessarily.

40 Q.—Then, this very interesting deposition you gave us of the high water mark, and the way of determining it on the ground, was rather theoretical than practical as applied here. What you took here was Mr. Farley's plan?

A.—Yes, but I may say I have discussed with Mr. Farley. I have shown him this definition of mine. I asked him if he proceeded that way, and he said yes, and he had shown the high water mark, and I thought it was only proper that I ask him how he defined this high water mark.

Q.—Then this very interesting description you gave us this morning was not the description of the method you used. The

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method you used was to take Mr. Farley's plan and scale between two lines shown on that plan, and run one equi distance between those two lines?

A.—I read the definition to Mr. Farley and he told me he had proceeded that way.

Q.—You called attention this morning to the fact that the cadastral plan of the township of Hull does not project the lines of the land across the Gatineau River?

A.—It does not.

10 Q.—Was it, or was it not, to your knowledge, that the lands in which we are interested here were granted by the Crown prior to the coming into force of the cadastral plan?

A.—Yes, it was to my knowledge.

Q.—Am I to gather from your testimony that if you had been able to make up your mind as to what was the value of the consideration in the Canada Cement and Gatineau Power deal, you would have found that an interesting factor to help you in valuing the Cross property?

20 A.—It would have been a factor I would have considered.

Q.—And the reason you did not consider it was because you were unable to make up your mind as to what was the value of the consideration involved there?

A.—And I do not think anybody else, except the Gatineau Power Company, can value the consideration on their part.

Q.—Of course, what others can or cannot do would not affect your testimony at all?

A.—You are asking my judgment. My judgment is so, and my very considered judgment is so.

30 Q.—Oh, I have no doubt that all you have been saying here you have considered?

A.—You know it was immaterial to me whether the Gatineau Power Company paid \$200,000 or five cents for this property. I am here under oath, and I have to value what I consider is fair, and the best method which I consider is applicable in this case. I am not taking the part of anybody. The fact is the company until last week did not know the value I was to put on that property.

Q.—Has any one been suggesting you are taking part?

A.—No.

40 Q.—I am merely asking you if, in your opinion, the transfer of ownership for the valuable consideration of the Canada Cement property to the Gatineau Power would have been a thing you would have considered it advisable to take into account if you had been able to make up your mind as to what the consideration involved was?

A.—I told you it would be a factor I would take into consideration.

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Q.—In answering my learned friend, Mr. Ker, as to what the head was, you said it was 9.7 feet, not on the west side, a certain portion had to be taken out because of Mr. Cross' rights. What is the other portion which, in your opinion, would have to be taken out of the 9.7 because of Mr. Cross' rights?

A.—Well, on the basis of my plan it may be a quarter of the third Rapid.

10 Q.—On the basis of your plan it would be one-quarter of the third Rapid?

A.—Practically one-quarter of the third Rapid.

Q.—How much is that?

A.—I do not want to say it is exactly, but approximately one-quarter of the third Rapid, the upper portion.

Q.—What is the height of that third Rapid in feet or inches?

A.—The height of this is 2.8 feet difference of head.

Q.—So one-quarter would be about 7/10ths of a foot?

A.—Yes.

20 Q.—So, if it is 9.7, it would bring it, according to your calculation to exactly 9?

A.—Yes.

Q.—Of course, if your method of apportioning the bed of the river were to be taken as the correct method, and the whole of the shore line down to the division line between original lots 21 and 20, were taken as belonging to Mr. Cross, that would mean that your perpendicular line at the point "F" would be moved down about half an inch on the plan?

A.—I had better answer that by saying it would have to be moved by

30 Q.—By the point which you have noted in the form of an arrow with the letter "N"?

A.—To indicate that point on the shore.

Q.—On Exhibit D-117?

A.—Yes.

Q.—And the portion of the upper or third Rapid, was it then involved?

A.—Of the third Rapid.

40 Q.—I understand there is according to your method of apportioning on D-117, and your colouring in pink, about one-quarter of the third Rapid which you attribute to the Cross property?

A.—If this portion of the river shore was attributable to Mr. Cross, it would take approximately half of the third Rapid on the west shore, that is the half of the half.

Q.—It gets back to the quarter then, if it is the half of the half?

A.—There must be five-eighths or something like that. When I said a quarter, I was giving large measure, because it is not a quarter.

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It is difficult to put that into very minute figures. The line as drawn on D-117 in red as affecting the third Rapid is surely not one-quarter. Naturally I took it as approximately one-quarter. At the point " N " it would be perhaps be just a little over five-eighths of the western part.

Q.—From what were plotted on your plan D-117, these dotted lines running across the river, would show the Rapids?

10 A.—As far as the second and the third Rapids are concerned I took points on the shore and they corresponded, that is, I took the points on the shore where the Rapids were commencing and where they were ending, and I confronted that with the Farley plan. They were exactly the same.

Now, as far as the first stretch of Rapid is concerned, may be it is entirely similar to Mr. Farley's plan, but I have my exact note on this as to the location of the top and bottom of the Chute.

Q.—I understood with respect to the stretch between " B " and " C " you made your own measurement?

20 A.—I made my own measurements all through, only Mr. Farley had extended his investigation on both sides of the river, and had not therefore plotted the second and third Rapids, according to Mr. Farley's plan, which was more complete than mine, I am taking, as I say, the Farley plan as being correct.

Q.—But the plan P-19 does not show the Rapids?

A.—I mean the Farley plan D-69.

Q.—But the Farley plan D-69 is a plan of 1930?

A.—D-69 is a plan of 1930.

30 Q.—And the placing of these dotted lines for the first Rapid on D-117, between the letters " B " and " C " was done by reference to notes and measurements made in November and December, was it not?

40 A.—I want it to be perfectly understood and precisely understood on that point, that when we went there with Mr. Surveyer we put in the rod at every beginning and at every end of each rapid, the first, the second and the third, to determine it on the land. Of course, we did not extend our reparation on the easterly side, and therefore in plotting, unless you assumed it, it was not easy to say the direction, whether these Rapids were running at 90 degrees with the shore or 85 or 75 degrees with the shore. We had only the contact between the Rapids and the shore on the west side.

Q.—I suppose the directions of these Rapids vary at times, with the variation in the flow of the stream, do they not?

A.—They vary. They are what they are.

Q.—They assume different shapes according to the quantity of water going through, and the fact of obstacles and friction on that quantity of water?

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A.—They are very irregular, generally very irregular.

Q.—You spoke of there being a possible or probable increase in market values of powers between 1917, and 1926 and 1927?

A.—Yes. I thought the values in 1927 were greater than in 1920, especially in 1917.

Q.—Is it to your knowledge what were the royalties that the Crown was charging on those emphyteutic leases in 1917?

10 A.—I don't remember. I knew what they were at that time, but I cannot recollect. I know that I have seen and have prepared plans for deep water lots for the Cedars Rapids and Montreal Light, Heat and Power Company, I knew at that time what they were, but I do not recollect.

Q.—We have it in testimony, about 25 cents per horsepower, subject to revision, in 1925, yearly periods?

A.—I do not recollect at all.

Q.—Do you know that they are now \$1.00 per horsepower, subject to revision, ten-year periods?

20 A.—I was informed by Mr. Lefebvre that they were 50 cents, but I do not want this to be taken as exact.

Q.—Then you were assuming they were fifty cents, when you put on this 50 per cent increase?

A.—No, I did not take the royalties as being the basis.

Q.—You did not take the increase in royalties into consideration?

A.—No. I thought to the best of my knowledge, by raising it the way I did, I was taking care of that factor.

30 Q.—But you did not give any consideration to what were the actual increases in the royalties on emphyteutic leases made by the Crown between 1917 and 1926 and 1927?

A.—No, I did not take that as a factor.

Q.—You do know, however, that there are quite a large number of important powers that are developed under emphyteutic leases from the Provincial Government?

A.—There must be. As a matter of fact there are.

Q.—There are a large number of important powers?

A.—Yes.

40 Q.—And in the last several years that is the form of title which one can get. They do not make any more outright grants, is that to your knowledge?

A.—Yes, in a general way.

Q.—I understood you to say there was such a possibility of variation and difference between one water power and another, that you would never use this horsepower basis to value water power?

A.—Surely not. Decidedly not.

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Q.—Have you had occasion to make a valuation of many water powers?

A.—Officially, no. We have in our practice any number of things. Sometimes we advise clients, but I cannot remember every instance. You may take it as nothing if you want to.

Q.—This is the first occasion where you have made a serious study of water power values for the purpose of expressing an opinion in court on them, is that what I am to understand?

A.—I would not go to that extent, no.

10 Q.—Just what is the situation then?

A.—Well, I had in my experience to come in contact with values of raw power sites. The first instance I had was the raw power site at Cedars, the Cedars Rapids. My partner at that time, Mr. Charton, was one of the gentlemen retained in that case, and of course, I knew about it.

Q.—You were naturally then interested, and in touch with what went on there?

A.—Yes.

20 Q.—Am I to take it that in forming your opinion here, you have attempted to be guided by what was held in the Cedars Rapids case?

A.—Well, yes and no. I tried to devise a method, the best method applicable, to value this property, and these water rights. As I told you, I have given very much thought to the subject, and I came to the conclusion that this Paugan deal was by far the best method applicable, and the most pertinent, to arrive at that value, because it included very much the same element, and because, by a strange coincidence, Mr. Cross happened to be one of the dealers in that Paugan deal, one of the parties to this deal.

30 Q.—Before I get back to my original question, since you have taken me away from it, you said the Mountain Rapids you considered to be of a head of 50 feet. Have you visited those Rapids?

A.—No, I did not visit them. It took it from the profile of the Gatineau Power Company. My recollection is they are 59 feet, but this can be verified from the profile.

Q.—You yourself are not attempting to say what they are, nor how long a stretch of river would be included in that 59 feet of head?

40 A.—My information is that they are Rapids that are extending for a certain distance. They are not abrupt falls, they are in the form of an incline.

Q.—My information is that there was one rather sheer drop of twenty feet?

A.—There are different drops, then a Rapid and then another drop.

Q.—To come back to my original question: What I wanted to ask you was this: were you attempting to value this as if it were

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property being expropriated, and being guided by the rules which apply in expropriation cases?

A.—Well, naturally, I thought I had made myself perfectly clear on that. I said that the limit the intended purchaser or speculator would have surely to adopt would be necessarily the expropriation value, otherwise he was making a risky venture. I think this is the explanation I gave.

10 Q.—I want to go a little further. I want to know if it means these are the values which you put upon it as being the valuations which would be proper to arrive at in expropriation proceedings?

A.—Well, I think the law when it ruled about the values for expropriations adopted a very equitable way of determining the values.

Q.—But, you see, I am not trying to learn my law from you?

A.—I have to take my direction from the Courts, and from the Code, as feebly as I can apply it, without being a learned lawyer.

20 Q.—But what I am trying to ascertain is what you did in fact. Did you try anything to calculate this valuation in the manner you would have calculated it in expropriation proceedings?

A.—My method of determination was this: What would a speculator give for this property? That was the basis of my determination. And what were the probable factors that he would have to consider? What was the sound line of reasoning that he would have to follow to determine the risk which he would have to take if he wanted to make that purchase?

Q.—If those things were before the Public Service Commission in expropriation proceedings, and you were called as a witness, would your evidence be the same?

30 A.—I think I would value it the same. My method is a compound method, but I would very likely have followed the same mode of reasoning before the Public Service Commission.

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Witness: If you will allow me, in this case of McLaren you were talking, I think, about the Township of Hull. I do not think Pagan is in the Township of Hull.

BY MR. ST. LAURENT:

40 Q.—In the Township of Wakefield?

A.—Yes, I think it is in Denholm and Low townships.

Q.—Did you not remark that in the report of that case, speaking of the townships of Hull and Wakefield, the judgment used the language I cited to you:

“ The plots in those townships are rectangular, so that in the case of river lots, the bed of the river is included within the

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meets and bounds of the land in question without any appeal to the doctrine of *ad medium filum aquae*”

A.—It is a fact.

Q.—So that whether there may have been other properties involved in the case at that point of the decision, they were speaking of the townships of Hull and Wakefield?

A.—The judgment will speak for itself.

10 Q.—You mentioned yesterday a Rapid that you called Calu-
met?

A.—Yes.

Q.—Did you visit that Rapid?

A.—No.

Q.—Do you know where that Rapid is situated?

A.—From the plans of the Gatineau Power Company, yes.

Q.—From those plans where do you take it to be?

20 A.—I have a profile. The description is given by the deed. Part
of lot Nos. 31 in the Third Range and 36 in the Second Range of
the Township of Northfield, and all that part of No. 20 in Range
“C” of the Township of Wright. I have a plan which will show.

Q.—Is this above or below Paugan?

A.—If I remember right, it is above Paugan and upstream.

Q.—Upstream from Paugan?

A.—Yes.

Q.—And how far upstream from Paugan?

A.—Some distance. The properties, the deeds of which I consulted, were mostly above Paugan.

Q.—I am now speaking about Calumet?

30 A.—It is above, upstream, and a certain distance.

Q.—Is it in the section flooded by the Paugan development, or even above that?

A.—I think it is in the section flooded by the Paugan. I don't know. I would have to refer to the profile, because I do not remember.

Q.—Do you know whether it is above or below the mouth of the Desert River?

A.—I looked at that many months ago. I don't remember.

40 Q.—I quite appreciate that, but it may be of some importance
in view of the information we got from Mr. Lefebvre with respect
to the effect on the flow of the Desert River?

A.—It is near Lake Botoni. I have a plan showing the location of it exactly, as to the profile.

Q.—The plan you have must show where the Desert River empties into the Gatineau?

A.—I don't know where the Desert River is.

Q.—So you do not know whether or not this Calumet Rapids

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gets the benefit of the area drained on the Desert River, or whether it only gets the water that comes from the reservoir, and below the reservoir down to it?

A.—No, I may say that this is shown to be 32 miles above Paugan.

Q.—You made no investigation to determine what the flow that could be relied upon at that point would be, at Calumet?

A.—I am under the impression it is somewhat on the same order as the flow at Cascades, only probably a little less, because there, 10 some 32 miles above there could be less rivers and creeks running into the Gatineau.

Q.—You heard Mr. Lefebvre's evidence to the effect that the regulation was made with respect to the flow at Paugan, Chelsea and Farmers?

A.—I did not notice when he said that.

Q.—You do agree, do you not, that in all these regulation schemes, if there is water coming from the drainage basin below the storage dam, the storage dam is used for the purpose of reserving water to be fed out at other times?

A.—Storage dams are used to store water, to distribute it the 20 year round, and according to seasons, and variations in the seasons.

Q.—And something which is in close proximity to the storage dam itself, when the regulation is made for some considerable distance below, may be adversely affected by the conserving of the water. Do you agree with that?

A.—I am not prepared to answer yes or no.

Q.—In any event you did not take that feature into account with respect to your valuation of Calumet, and your comparison of 30 Calumet with Cascades?

A.—No. In my valuation, Calumet Rapids was used the same as other properties were used, just to test the prices paid for small water power sites. I took Calumet particularly because it was the highest price.

Q.—To determine the head at Calumet, you merely took the information from the Company's plan, without any verification of your own?

A.—I took the information contained on the profile of the company.

Q.—And that shows four feet, in what distance? 40

A.—It is about four feet and five-eighths of a mile long. That is over a distance of five-eighths of a mile long.

Q.—Something like 3,500 feet?

A.—About 3,400 feet.

Q.—If that were evenly sloped, what grade would it amount to?

A.—Four feet. Divided by 3,400 feet.

Q.—About twelve-ten thousandths?

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A.—About.

Q.—That would not be even too steep a grade for a canoe to negotiate?

A.—It is a difference in Fall of 4 feet and $\frac{5}{8}$ ths of a mile long.

Q.—I think you already stated, but I want to be sure, you made no personal investigation whatsoever over on the east side of the river, at Cascades?

A.—Not other than looking at it over on the other side.

Re-examination 10

RE-EXAMINED BY MR. KER, K.C.,
OF COUNSEL FOR DEFENDANT:

Q.—I understand this Desert River is well above the Calumet Rapids? The Desert River running into the Gatineau, runs in very considerably above the Calumet Rapids?

A.—I don't know.

Q.—Will you just refer to the plan. This plan does not indicate that?

20 A.—No, but that does not matter. I have considered sales along the Pêche Rapids, which is in close vicinity, and other sales, the Mountain Rapids, the Plum Rapids, the Robert Rapids, the Manitou Rapids, the Bull Rapids, the St. Laurent Rapids, the Des Os Rapids,—I took the highest value from all these sales.

Q.—I understood you to say as a sort of check back, you used that as the highest price?

A.—Yes.

30 Q.—In order to make the record clear on this point, did you look at this plan which is the Quebec Streams Commission official profile, or a copy of it, signed by the Chief Engineer, Mr. Lefebvre, and filed as D-121?

A.—I see on this Exhibit D-121, the river is about twenty-two miles upstream from Calumet Rapids.

Q.—Will you look at the legend at the bottom of this plan D-121, and indicate what it shows. I think you said it was practically a drop of four feet. Will you just say what the Quebec Streams Commission plan shows as being the area within which that fall is concentrated—I think it is about a twentieth of a mile, is it not?

A.—It shows about $\frac{5}{100}$ ths of a mile.

40 Q.—That is $\frac{1}{20}$ th of a mile?

A.—Yes.

Q.—It is perhaps considerably less than 3,400 feet. I am merely drawing attention to that fact because I take it this plans is a general plan of the river. . . .

A.—Well, these plans speak for themselves. I did not prepare them. I took them as they were given to me.

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BY THE COURT:

Q.—When you say “ this plan ” what do you mean?

BY MR. KER:

Q.—Has that plan been produced?

A.—No, I do not think it has been filed.

10 Q.—I take it that the plan to which you were referring when you spoke of 3,400 feet, being a general plan of the river, I understand would be less accurate in its detail than would this profile of the Quebec Streams Commission?

A.—It is pretty difficult for me to answer that question. I don't know. These profiles should both be exact.

Q.—In any event, the profile of the Streams Commission seems to show something different?

20 A.—One shows the horizontal distance as considerably less than the other.

Q.—You were examined as to the geographical effect of prolonging the side lines of the lot only and taking them out at right angles to the middle thread of the river, and you make a valuation basing yourself, I understand, on the prolongation at right angles. Have you made any check to ascertain how that would work out if the lines were prolonged according to the theory of the Plaintiff in this case?

A.—I did.

30 Q.—And what were the results in so far as any difference in value there might be in regard to Cascades property?

A.—If we divided the river bed by prolonging the lot lines across the river bed in the manner that was described to me by Mr. St. Laurent, under my first assumption, that is, the riparian ownership going in that section of the river opposite Mr. Cross' property, going with the Canadian Pacific Railway right-of-way, I would come to an estimate of \$8,890.25, and if Mr. Cross would own the whole stretch opposite his property, that is, in line with my second assumption, the figures would be exactly the same as in my assumption, that is, I would come to an average head of 3.75 feet, which is exactly
40 the head It works out exactly. I get 3.74, which I call 3.75, and I came by the average difference of level in the other mode of division to 3.75, so I take it as being exactly the same, which would account for the second assumption; the value would be \$11,000.

Q.—That is to say, you arrive at substantially the same valuation of prolongation lines as by carrying them to the centre of the river?

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A.—By the second assumption, exactly. I think it is about \$1,000 difference.

Q.—In favour of the Plaintiff?

A.—In favour of Mr. Cross.

Q.—That is, without taking in the C.P.R.?

A.—That is, attributing the property lying in the river bed opposite the C.P.R. property, Mr. Cross would own about one-eighth of the first Chute.

Q.—This is by prolongation of the lines?

10 A.—Well, it would make an average shed of 28/100ths. The second Chute I would attribute seven-eighths to Mr. Cross, which would make an average shed of 2.37. In the third Chute there is nothing that goes to Mr. Cross, so if you add 2.37 to 28 you get 2.65 difference of head, which, working with my co-efficients, will give me in this assumption \$8,890.25.

In the second case I attribute that is all the river bed opposite the C.P.R. property found to belong to Mr. Cross, Mr. Cross would own about five-eighths of the Chute, representing 1.37.

Q.—That is of the first Chute?

20 A.—Yes, of the first Rapid, and the second Chute would remain exactly the same, and the third Chute would remain the same; this would give me 1.37 plus 2.37, that is, 3.74, which I call 3.75.

Q.—And you co-efficients would work it out exactly at the same figure?

30 A.—I do not think dividing the Rapids this way is quite rational, because you push the line on the skew, and the Rapids do not appear to profit anybody, whereas if you adopt a perpendicular to the shore, you keep moving some difference of head all through the Chute to the riparian owner. I think it is a much more rational system. Anyway, it struck me that way the very first time I looked at it.

Q.—Taking it for granted that the Canadian Pacific Railway, being riparian at the point situated, would leave no ownership whatever, I understand, in Mr. Cross in the first Rapid by your system of right angles to the middle thread?

Witness: In my system?

40 Counsel: Yes.

A.—No.

Q.—It leaves no ownership whatever in that Rapid?

A.—No.

Q.—Geographically, that Rapid will become the highest rapid of the four, would it not? It would become the one highest upstream. At least it is the highest?

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A.—You mean a difference of head.

Q.—It is, then, geographically, the highest upstream?

A.—It is the first Rapid upstream.

RE-CROSS-EXAMINED BY MR. ST. LAURENT, K.C.,
OF COUNSEL FOR PLAINTIFF:

10 Q.—May I see this profile that the Company supplied you with,
and from which you took the horizontal length of the Calumet Rap-
ids for the four-foot drop as being five-eighths of a mile?

A.—Well, here is the profile, and the plan is below.

Q.—In view of the fact that that plan has been referred to,
would you file it as an exhibit?

Mr. Ker: I do not know whose plan it is.

20 Mr. Montgomery: We do not know whether it is a plan that
has been scientifically prepared, or whether it is a plan for their own
convenience, or what it was.

Mr. St. Laurent: It purports to be very accurate.

Mr. Montgomery: There has been no enquiry made with re-
ference to it at all, and, of course, Mr. Beique cannot prove it.

30 Witness: Of course, there is a small difference. If you look
at the plan, not the profile, the distance along the Rapids seems to
be shorter than shown on the profile. On the plan, the distance of
the Rapids would represent about one-fifth or one-sixth of a mile.

Mr. St. Laurent: I think it would be better to have the plan
filed.

Mr. Ker: If the witness can identify its accuracy?

Mr. St. Laurent: I understand it was the plan supplied to the
witness for the purpose of enabling him to compare these various
things.

40 Witness: To show me the Calumet, the des Os, and the other
Rapids, as to where they were situated.

Mr. Dessaulles: It is a geographical map.

Mr. St. Laurent: It is a contour line plan.

Mr. Ker: If my learned friend will give us some idea how he
thinks it would assist the Court in the matter

Re-cross-
examination

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Mr. St. Laurent: I may not know it. I will just put one or two other questions, and we will see whether we do know it or not.

BY THE COURT:

Q.—I suppose it shows the geographical position?

A.—The situation of some of the rapids, which I mentioned.

10 Mr. Ker: We have no objection to filing it. The only thing is that it is a plan of a long stretch of the river above Paugan Falls, which has really nothing to do with this stretch of the river, and was merely supplied to Mr. Beique to give him a general idea of the topography of the river at that point, so that he might pick out these Rapids and contrast them with the Cross site.

Mr. St. Laurent: But you just put in one of another territory made up by the Quebec Public Streams Commission.

20 Mr. Ker: I have just put that in as being a more accurate concentration of the head at the Calumet.

Mr. St. Laurent: The plan of the Quebec Streams Commission shows elevations taken at various stations and Calumet comes in between those two stations, so some elevations were taken on the two plans, and Calumet is shown in one.

30 Mr. Ker: The reason I put that profile in was that it shows exactly the point at which Calumet comes in, and it was not shown on that plan.

Mr. St. Laurent: I may perhaps put one or two other questions to the witness, and if we get the information we will not require to have it from the plan.

BY MR. ST. LAURENT:

Q.—Yesterday we were somewhat concerned about the length over which there was this 50-foot head of the Mountain Rapids?

A.—Yes. I said it was a broken chute.

40 Q.—Does the Company's plan that you were supplied with show over what length that 50-foot head comes in?

A.—The profile shows the drop at the Mountain Rapids in the same rough way. It is a relatively small scale. You will see there is a first drop of about 29 feet, a kind of sheer drop, and then there is a kind of Rapid, and then there is a much accentuated drop of another 25 feet or so.

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Q.—Does that same portion appear on the Exhibit D-121?

A.—Oh, no, D-121 does not extend as far as Paugan. It is quite far upstream. It is about 32 miles upstream. It commences about 32 miles upstream.

Q.—So according to that plan which you had, what would be the total length where you would get the 50 feet?

A.—Mountain Rapids, I think. According to this plan Mountain Rapids would really be the prolongation of Paugan Falls. It would be pretty hard to segregate it up from Paugan Falls. It is one
10 element of the Paugan Falls.

Q.—What would be the length shown on this Company's plan from the top to get in the 50 feet you mentioned yesterday?

A.—I think I had better correct this statement. The Mountain Rapids has a drop shown on this profile of 59 feet, extending over a length of approximately 45/100ths of a mile, and then, below this Mountain Rapids, there seems to be Paugan Falls which has a sheer drop. On the face of this plan the relatively smaller drop contained between the two must segregate one from the other. That is the cor-
20 rection I wish to make.

Q.—And the 59 feet would come in about 49/100ths of a mile?

A.—That is right.

Q.—My learned friend asked you what the result of your calculations would be at Cascades, if the side lines were projected across the stream, and you used average head over the stretch of property?

A.—As accurately as I could get them from sectioning these falls in the skew, as you want to do it. It is very hard.

Q.—And that was being done still attributing one-half to each side of the river?

A.—No. That is as contained in the plot of river bed determined
30 by extending the side lines, and the middle line of the lot in the bed of the river, and creating a sort of triangular piece of the river bed, and taking all the Chutes that would be comprised within that area.

Q.—But without taking into account whether there was more water flowing on one side than on the other or not?

A.—No, I did not take that into consideration.

Q.—The elevations for the other side of the river you took from Mr. Farley's plan?

A.—All the elevations I took from Mr. Farley's plan.
40

BY MR. KER:

Q.—I think you said you had checked those elevations with Mr. Farley?

A.—Yes.

BY MR. ST. LAURENT:

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(continued)

Q.—You said you had checked those elevations on the west side of the river?

A.—Yes.

Q.—On the 8th of November and 10th December?

A.—Yes. The difference of head whether on east side or west side would be the same.

10 Mr. Ker: With the exception, my Lord, of the witness, Mr. Campbell, who is investigating the matter which your Lordship referred to, that is the defendant's case. Mr. Campbell has been doing his utmost on this matter, and the reason of the delay is he is in communication with the people in New York who have the books of the Company and who had the whole matter in hand. The comptroller, I understand, is in Washington, but we should have the information during the day, and if not during the day within a very short time, information which would enable Mr. Campbell to give answers to the questions which were asked him. With that exception we declare the case for the defendants closed.

20 Mr. St. Laurent: There is still Mr. Simpson?

Mr. Ker: I think there are some matters that were to be fixed up. Certain witnesses were to produce some exhibits. I think Mr. Simpson was to produce some document Mr. St. Laurent asked for, and perhaps we can collect this up before we finish and get them into the record.

(And further deponent saith not.)

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40

In the
Superior Court

No. 30.
Defendant's
Evidence.
C. N. Simpson,
(Recalled)
Cross-examination
Nov. 13th, 1931.
(continued)

DEPOSITION OF CARROLL N. SIMPSON, A WITNESS
RECALLED FOR FURTHER CROSS-EXAMINATION.

On this thirteenth day of November, in the year of our Lord one thousand nine hundred and thirty-one, personally came and reappeared

CARROLL N. SIMPSON,

10 and he was further cross-examined by Mr. St. Laurent, K.C., of counsel for plaintiff, as follows:

BY MR. ST. LAURENT:

Q.—When you were cross-examined on the 6th November last with respect to your evidence, I asked you certain questions about the elevation of the water on the downstream side of your Paugan power house, and you did not have the data at that time to answer those questions, and it would appear from page 346 of the record
20 that you were to try and get that data. Have you been able to get it?

A.—I have the elevations of the water at the tailrace of the Paugan power site before the Chelsea pond was raised to interfere with it, and before the Paugan power plant was constructed; at 10,000 second feet elevation, it was 324.48; at 20,000 second feet the elevation was 330.00; at 40,000 second feet the elevation is 336.45.

The elevations of the water since the Chelsea Pond has been raised, and since the Paugan power plant has been constructed, does not mean anything to me or to anyone else.

30 Q.—Perhaps they might mean something to me?

A.—I am explaining just why they do not to you or to any one else.

Q.—Perhaps they might to me?

A.—I am just trying to explain why I cannot give you anything. There is a stretch of some fifteen odd miles between Paugan and Wakefield in the river, and our flow out of Paugan varies from hour to hour. There is not sufficient length of time at a constant flow through the Paugan plan to enable the definite and uniform head in the river to obtain for a fixed flow, that is, we can have 5,000 second
40 feet, or so, 8,000 second feet flowing over the Peche rapids, and there will be 10,000 second feet going through the Paugan plant.

Now, I cannot tell what that elevation at Paugan is, whether it refers to the 8,000 second feet going over Peche, or the 10,000 going through Paugan, nor on the reverse, if there are 8,000 going out of Paugan and 10,000 going over the Peche I cannot tell which elevation at Paugan refers to the 8,000 or to the 10,000, so I cannot get that information for you. I cannot supply any figures in that way.

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Defendant's
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C. N. Simpson,
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Nov. 13th, 1931.
(continued)

For the same flow I can give you half a dozen elevations varying by two feet possibly.

Q.—Have you the actual elevation on the downstream face of the power house when there are 10,000 cubic feet second going through the power house?

A.—I have just explained they might vary over two feet, so I cannot give you that.

Q.—You cannot give me that?

10 A.—There is no way that I can or that any person else can give you a definite elevation for the amount flowing out of the Paugan plant since it was constructed, from the fact that we have not a uniform discharge out of the Paugan plant for sufficient length of time that the flow in the river is uniform over that whole stretch.

Q.—So that answer applies to whether it be 8,000 cubic feet going through the wheels at Paugan, and 10,000 or 15,000 or 20,000?

A.—Yes.

20 Q.—The elevation of the water on the downstream face of the power house might not be at all constant for these various flows out of the power house?

A.—That is right.

Q.—And, I suppose, the flows going through the power house are also quite variable flows?

A.—Yes, that is why I cannot get this elevation.

Q.—They depend upon the load that is being put upon the generators at the precise moment?

A.—That is right.

Q.—There is a very considerable area of pondage, is there not, above the Paugan water wheels?

30 A.—Yes, there is a definite pond above Paugan.

Q.—And that pondage can easily take care of the variation put upon these generators by the load?

A.—It does take care of it.

Q.—When the flow is very considerable, as for instance, forty thousand cubic feet second, is it not a fact that the variations in the amount going through the wheels can have very little effect on the elevations?

A.—We cannot put 40,000 cubic feet second through wheels.

40 Q.—But when there are 40,000 cubic feet second going down, some of it goes through the wheels, and some over the spillway, I suppose?

A.—Well, it may not all go over the spillway.

Q.—But, it goes down the river one way or another?

A.—Yes.

Q.—And at that time, whether you were varying a few thousand cubic feet going through wheels or not, would not affect the elevation?

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A.—Well, the elevation is affected for every flow.

Q.—If you get 40,000 cubic feet second going through the river, then the variations in the operation of your power plant would not affect the period during which there might be more or less moving from the power house? I understood you to say that your elevation of water on the downstream side of the power house varies, although the amount going through the wheels may be the same on one day with 10,000 feet going through the wheels, your elevation might be such and such, and another day, with the same quantity going through the wheels it may be substantially different?

A.—That would apply in a case, as I said, of where there may be an hour to hour, or a difference over three or four hours in the outflow, but in the case where we have say 40,000 second feet going out of the pond, I would think that that would continue over a period of ten or twelve hours, as we would not allow 40,000 second feet to go off for a few hours, and then shut it off. We might, but I would not say that that would be a normal operating condition, and if that 40,000 second feet was more or less held constant over a considerable length of time.

Q.—Since the construction of the power house, you have not the elevation of the water on the back side of downstream side of the power house when there is a flow for several hours of 40,000 second feet going down the river?

A.—No.

Q.—All you have are the observations that were made before the natural conditions were interfered with?

A.—Yes.

Re-examination

30

RE-EXAMINED BY MR. KER, K.C.,
OF COUNSEL FOR DEFENDANT:

Q.—That situation, insofar as the tail water at Paugan would also be affected by the level of the Chelsea head pond, would it not?

A.—Yes. As we lower the Chelsea head pond we lower the entire tailrace.

Q.—That is, quite independent of the lag between the two distances?

40

A.—Altogether independent of the lag.

(And further deponent saith not.)

AND ON THIS ELEVENTH DAY OF JANUARY IN THE YEAR of Our Lord, one thousand nine hundred and thirty-two the Court reassembled pursuant to adjournment.

Mr. Ker:—With the permission of the Court I would like to present on behalf of the Defendant a motion to file a supplementary plea in this case, in the nature of a plea of *puis darrien continuance*.
10 We desire to have in the record the fact that since this case has been pending before your Lordship, the Defendant has, itself, provoked an arbitration of the damages which this Plaintiff has suffered before the Quebec Public Service Commission. We have called upon the Quebec Public Service Commission by petition, asking that the damages which we have caused to this Plaintiff's property, be assessed under the statute.

Your Lordship will recollect that in the first instance it was alleged by the Plaintiff that he did seek his recourse before the Quebec Public Service Commission, in damages, and that just before
20 the case was heard, after it had been pending one year before the Quebec Public Service Commission, he desisted and took his action before this Court.

It is the contention of the Defendant that having provoked that arbitration under that Act which provides for the assessment of damages in that way, he would not really have the right unilaterally to desist from it, that the Defendant Company was just as much interested in having the damages assessed there as the Plaintiff. In any event a desistment was filed, costs were paid, and in view of that
30 fact the Defendant now desires itself to provoke an arbitration before that Board under the provisions of the Water Courses Act, Division 2. This motion which I am presenting to your Lordship is to the effect (Counsel reads motion).

The supplementary plea contains just one paragraph.

The action which is before your Lordship is a petitory action. It is not an action in damages for the damages we have caused, but is a straight action asking that we get off the property. We maintain we are not obliged under the existing statute to get off the property, but the sole recourse of the Plaintiff is one in damages under
40 the provisions of the Water Courses Act, that he provoked that arbitration, he desisted from it, and we desire now to prove that we on our part, have made application to the Quebec Public Service Commission to fix those damages, and to be allowed to plead that fact.

Mr. Scott: This motion which my learned friend has just referred to is supported by an affidavit of Mr. Woollcombe, and he deposes to the truth of the facts, not only of the motion, but to the

facts set up in the supplementary plea. The motion as regards the property mentioned is very vague and before speaking in answer to my learned friend's application I apply for permission to cross-examine Mr. Woolcombe on his affidavit. Mr. Woolcombe is present in the Court.

(The Court grants the application.)

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*In the
Superior Court*

No. 44.
Defendant's
Evidence.
E. M. Woolcombe,
(Recalled)
Cross-examination
Jan. 11, 1932.

DEPOSITION OF EDWARD M. WOOLLCOMBE, A WIT-
NESS CALLED FOR CROSS-EXAMINATION ON THE MO-
TION PRESENTED BY COUNSEL FOR DEFENDANT.

10 And on this eleventh day of January, in the year of Our Lord,
one thousand nine hundred and thirty-two, personally came and
reappeared,

EDWARD M. WOOLLCOMBE,

a witness called for cross-examination on motion and affidavit of
said witness.

CROSS-EXAMINED BY MR. W. B. SCOTT, K.C.,
OF COUNSEL FOR PLAINTIFF:

20 Q.—Mr. Woolcombe, you have already been sworn in this case?

A.—Yes.

Q.—And I see you have in your hand the motion about which
we have just been speaking?

A.—Yes.

Q.—Attached to that motion is your affidavit, is it not?

A.—Yes.

30 Q.—In paragraph two of your affidavit you say: “All the facts
alleged in the above motion and the supplementary plea annexed
thereto are true”?

A.—Yes.

Q.—And that affidavit was taken before my learned friend Mr.
T. R. Ker, as Commission?

A.—Yes.

40 Q.—Will you turn to page 1 of your affidavit which states:
“That the Defendant has by petition to the Quebec Public Service
Commission under date 30th December, 1931, prayed for permission
to fix and determine the amount of damage that the Plaintiff may be
entitled to by reason of the flooding of the property of the said
Plaintiff as set out in the present action”; I take it by that, you
are referring to all the property that the Plaintiff, Mr. Cross mentions
in his declaration?

A.—Yes.

Q.—All?

A.—Yes.

Q.—Let us first deal with Cascades. I take it then that you
have asked the Quebec Public Service Commission to assess and fix

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the damages for all the property mentioned in paragraph 1 of Plaintiff's declaration?

Witness: May I see the Plaintiff's declaration?

Counsel: I will hand you my office copy.

Witness: May I also see the petition to the Quebec Public Service Commission?

10

Counsel: I am dealing for the moment with Cascades. Paragraph 1 of the declaration is the paragraph which deals with the description of the Cascades property?

A.—The motion to the Quebec Public Service Commission describes the Cascades properties in paragraph 3-A.

Q.—How does it describe them? You might read it.

20 A.—“ Lot 21-B and portions of lot 21-C in the 15th Range of the County of Hull, which said properties are situate at the place commonly known as Cascades on the Gatineau River.”

Q.—Is that the same as paragraph 1 of Plaintiff's declaration?

A.—It is not exactly the same description.

Q.—Does it include as much property, or less?

A.—There is no mention in paragraph 3-A of lot 21-D.

Q.—Does it mention any water power in the application to the Quebec Public Service Commission?

A.—There is no mention of water power rights in paragraph 1 of the declaration.

30 Q.—There is mention though of the bed of the Gatineau River?

A.—Yes.

Q.—Contained within the boundaries mentioned in paragraph 1?

A.—Yes.

Q.—Is there any mention of the bed of the Gatineau River in the paragraph which you have read?

A.—No.

40 Mr. Ker: If I may be permitted to say, I do not think anybody really has this description. I do not think this description in any way purports to be as exhaustive as the description contained in the declaration. As a matter of fact, I am quite sure my learned friend is aware that the proceedings of the Quebec Public Service Commission are of the most formal kind. In the original petition he referred only to the lot numbers in the same way we are doing here. I do not think it is necessary for my learned friend to go to too much cross-examination to make it clear that the description of the property 3-A is not as exhaustive as the description given in the declara-

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tion because it is not by meets and bounds, but it is a sufficient description to bring this matter before the Quebec Public Service Commission.

Mr. Scott: If I may be permitted to put two more questions to the witness, I would like to do so.

BY MR. SCOTT:

10 Q.—Will you look at Exhibit P-61, which is a plan filed by Mr. Papineau, Quebec Land Surveyor, which is dated November 3rd, 1931, and the properties marked in pink on that plan are the properties with reference to the Cascades, of which Mr. Cross claims to be the owner. Do you see it?

A.—Yes.

20 Q.—There is the Gatineau River, and there is the property shown in pink on each side which Mr. Cross claims to be the owner of, and it also includes the bed of the river. In your new proceedings before the Quebec Public Service Commission, does the description which you have given embrace all the properties shown in pink on plan P-61.

Mr. Ker: Why should it? Here is the last exhibit put in in rebuttal. It has nothing to do with the description of the property in the declaration.

Mr. Scott: I submit the witness should answer the question.

30 His Lordship: I will allow the evidence.

Witness: The property coloured in pink on this plan shows parts of lot 21-B, and part of lot 21-C with certain parts of the river bed coloured. It does not show 21-D.

BY MR. SCOTT:

40 Q.—I am not talking about 21-D for the moment. Do the proceedings before the Quebec Public Service Commission bring into issue all such portions of property and river beds shown coloured pink on this plan P-61?

Mr. Ker: That is a question which is in dispute. My learned friend's plan admittedly shows lot 21-B and part of lot 21-C.

Witness: Paragraph 3-A with the petition to the Quebec Public Service Commission describes only lot 21-B and portions of lot 21-C of the 15th Range.

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BY MR. SCOTT:

Q.—But that is not quite an answer to my question. You are thoroughly familiar with this case. You have been present in Court during the trial. Will you please answer my question, not in technical language, do the proceedings which the Company Defendant have recently taken before the Quebec Public Service Commission bring into issue for adjudication as to damage for fixing compensation all the properties shown coloured pink on this plan P-61, or do they not?

Mr. Ker: That surely is a matter for interpretation as to whether or not there are riparian lands. I do not think this witness is prepared to answer that, and I object to the question. I do not think it is necessary for me to allege ownership in the river bed. I do not think this witness is competent to state anything about it. My learned friend mentions in his declaration something about the bed of the river. I do not know whether that is redundant or not.

Mr. St. Laurent: It is merely cross-examination as to what he has stated in his affidavit. Does he mean, in his affidavit, that there are proceedings with regard to the whole of the property that are being claimed in the Plaintiff's action, or does he mean something else? He is the one who has made the affidavit.

BY THE COURT:

Q.—Can you explain that?

A.—My explanation is exactly what Mr. Ker has just stated as to this description, parts of lots 21-B and 21-C. It does not describe the river bed in detail; what proportion or area or river bed pertains to lots 21-B and 21-C, and to that extent it does not exactly correspond with paragraph 1 of Plaintiff's declaration.

BY MR. SCOTT:

Q.—Since you seem to have difficulty in answering that question, let me simplify it for you by asking you this question: in the proceedings before the Quebec Public Service Commission, do you recognize that Mr. Cross is the owner of that portion of the river bed opposite the C.P.R. right-of-way where the C.P.R. right-of-way impinges on the bank of the river?

A.—No.

Q.—Therefore, I would like to show you your own surveyor's, Mr. Farley's plan, which was filed as Exhibit D-69, on which is coloured in pink the portion of the banks and bed of the Gatineau River, which your surveyors and engineers and others have said is the por-

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tion which belongs to Mr. Cross and no more; will you tell his Lordship whether the portion shown coloured pink on Mr. Farley's plan, D-69, is what you are seeking to have the Quebec Public Service Commission adjudicate upon? It is, is it not?

Mr. Ker: That is purely a question of law.

Mr. Scott: Allow the witness to answer. He is quite anxious.

10 Mr. Ker: I submit this is entirely a question of law.

Mr. Scott: I am asking a question of facts, as to what you are invoking before the Quebec Public Service Commission.

20 Mr. Ker: It is clear that all the Defendant attempts to get by this motion is a statement in the record in this case to the effect that the issues as between Plaintiff and Defendant as to the proceedings which have taken place as to this property are before the Quebec Public Service Commission. All we are asking is to have assessed by the Quebec Public Service Commission all the damages which we could possibly have caused to this Plaintiff by the raising of the water one way or another, which he alleges in his action.

His Lordship: I will allow the question.

BY MR. SCOTT:

Q.—Yes or no?

30 A.—I am going to tell you what I understand by what I testified to in this affidavit.

Q.—In your affidavit you say all the facts are true?

A.—Yes.

Q.—And you say you are dealing with the properties the subject of the present action?

A.—I say the properties described in paragraph 3-A. Our petition to the Quebec Public Service Commission describes the properties we believe Mr. Cross to own.

40 Q.—And the properties you believe Mr. Cross to own are the properties coloured pink on plan D-69, are they not?

A.—Yes.

Q.—In your proceedings before the Quebec Public Service Commission you therefore take the lot lines running on the basis contended for by Mr. Beique and not on the basis contended for by the plaintiff and Mr. Papineau and the other witnesses?

A.—Yes.

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(continued)

Mr. Ker: There is no mention of lot lines.

BY MR. SCOTT:

Q.—In the proceedings before the Quebec Public Service Commission are you accepting Mr. Papineau's lot lines running across the river to where he indicated or are you accepting the boundaries in the manner Mr. Beique attempted to establish?

10 (Same objection.)

(Objection reserved.)

A.—Our proceedings before the Quebec Public Service Commission merely say lot 21-B and 21-C.

Q.—That is not an answer to my question, and you know it is not. Will you please answer the question yes or no?

20 A.—I am saying, Mr. Scott, that our petition describes lots 21-B and 21-C. As I said before, we ask that the Quebec Public Service Commission attest damages on the property that Mr. Cross owns.

Q.—But, in your motion, you say the property of plaintiff as set forth in the action. The property of the plaintiff as set forth in the action shows lot lines as established by Mr. Papineau, and I am asking you, in the proceedings before the Quebec Public Service Commission, are you accepting those lot lines, or are you not? I think his Lordship is entitled to a straight answer to that question. You know perfectly well what I mean.

30 A.—The company's contention is that those lot lines do not prolong across the river bed.

Q.—And that is going to be your contention before the Quebec Public Service Commission, if you get there?

A.—Either we get there or we do not.

Q.—If by any chance you should get there, that would be the company's contention.

A.—I am saying that it is the company's contention at present.

Q.—That is your understanding? Your higher officials might change their policy later on?

A.—Not necessarily.

40 BY MR. ST. LAURENT:

Q.—That is your understanding?

A.—At the present time our contention is, those lot lines do not prolong across the river.

BY MR. SCOTT:

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Q.—What was your reason for leaving out lot 21-D in your new proceedings before the Quebec Public Service Commission?

A.—Because we do not believe Mr. Cross owns lot 21-D.

Q.—Was it your understanding in making this affidavit which supports this motion that the properties mentioned in 3-B and 3-C of the new proceedings before the Quebec Public Service Commission by the Gatineau Power Company included all the properties for which Mr. Cross is claiming ownership by this present action at Meach Creek?

10 A.—Yes.

Q.—You have no reservations as to that?

A.—That is my understanding.

His Lordship: I will take the motion en delibere. Will you insist on having a judgment at once.

Mr. Ker: No, my Lord. We merely want to allege the fact which we have reserved our right to do in our plea.

20 Mr. St. Laurent: We would then ask that we be permitted to put in, under reserve, and to avail only of course in the event that your Lordship does permit the supplementary plea, an answer thereto, and we will file under reserve the petition that was submitted on the one hand by the defendant and the answer we intend to make to that petition, so that the documents will be there and if your Lordship does not grant the motion, they are of no avail, and if your Lordship does grant the motion we shall not have to begin all over again.

30 (And further deponent saith not.)

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(continued)

FURTHER CROSS-EXAMINATION OF ROY CAMPBELL.

And on this eleventh day of January, in the year of our Lord one thousand nine hundred and thirty-two, personally came and re-appeared

ROY CAMPBELL,

10 a witness already examined, now recalled for further cross-examination by Mr. St. Laurent, K.C., of counsel for plaintiff.

BY MR. ST. LAURENT:

Q.—Mr. Campbell, when you were being cross-examined in this case, his Lordship addressed to you the following remark, “ I consider you an honest man, and I would like you to make a loyal search as to this value or consideration we have been speaking of. I would like you to make a bona fide search, and then come back and tell the
20 Court what you know of it. If you cannot, that will settle it ”.

I understand you have made this search you were directed to make by his Lordship, and that you have come back to state the result of your search. Will you please do so.

A.—Your Lordship, I made enquiry of our New York office where the records concerning this were, and I have a letter from that office which I shall read if you wish.

BY MR. SCOTT:

30 Q.—Where are the books of your company?

A.—In New York. The records concerning this transaction is in New York.

Q.—The minute book?

A.—The minute book is here since a few years. At the time of that transaction I was not secretary of the company.

BY MR. ST. LAURENT:

40 Q.—Before reading that letter into the record, will you please show it to us, so we can see whether or not it is pertinent to the investigation you were asked to make?

Mr. Ker: I do not see any objection to that, except that the letter is explanatory to another document which Mr. Campbell might perhaps refer to before the letter is filed. The whole story is there insofar as Mr. Campbell has been able to find, and so far as it exists.

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His Lordship: Do you wish to take communication of it, Mr. St. Laurent?

Mr. St. Laurent: Yes, my Lord. (Witness hands the letter to counsel that he may take communication of same.)

BY MR. ST. LAURENT:

10 Q.—You have shown me a letter addressed to you by Mr. E. B. Norcross, assistant treasurer, to which is annexed a certified copy of a resolution of the Canadian International Paper Company, dated the 19th August, 1926, and I note it is stated the deed you were speaking about is one of three deeds that were dealt with at the same time, and which are stated to apply to quite a large number of properties outside of those referred to in the Deed A, and that the further statement is made that there was no segregation of considerations and that in the opinion of Mr. Norcross no opinion can be made?

20 A.—That is his statement.

Q.—That is the only information you were able to obtain?

A.—That is the only information I was able to obtain.

Q.—You were not able to obtain any information as to how the \$25,000,000 of the capital stock of the Gatineau Power Company was paid up?

A.—I was not asked that question. I was asked, and I undertook to supply, and if I did not previously supply, I did supply the information that that stock was issued, and that is all.

Q.—That that stock was all?

30 A.—Yes. You will remember there was some question in my mind, and at the moment I wanted to be absolutely sure. At the moment you spoke I was not absolutely sure.

Q.—Was not the consideration for the issue, these various deeds?

A.—The whole story as I know it, is contained in the paper which you have. I have no further information than that.

Q.—You have no further information than that?

A.—I have no further information than that.

40 BY MR. SCOTT:

Q.—You have not seen the Minute Book since you were here before either?

A.—What I did was to ask those who knew. I did not know. I have asked and have received the best information I can get, and the best information I can get is the best I can give.

BY MR. ST. LAURENT:

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Q.—And that I summarized in my previous questions to you?

A.—Yes, I think so.

His Lordship: Do you intend to file this letter.

Mr. St. Laurent: I do not ask that it be filed. I summarized it in my question.

Q.—We do not consider this document of any interest to us,
10 but if you wish to have it of record as showing what you did, to comply with the direction of the Court, we will not make any objections to its being filed as Defendant's exhibit.

Mr. Ker: The only interest is to have this witness absolutely frank with the Court. I do not think it is of any consequence at all as we told our learned friend many weeks ago.

His Lordship: The witness has stated he did all he could. He
20 obtained all the information he could, and he has shown it to you in good faith.

BY MR. ST. LAURENT:

Q.—What you have shown me is the resolution of the Canadian International Paper Company accepting the proposal of the International Paper Company?

A.—Yes.

Q.—And the deed which we were talking about is the deed by
30 the Canadian International Paper Company to the Gatineau Power Company?

A.—Yes.

Q.—I understand you stated that the Gatineau Power Company was the nominee of the International Paper Company to take over the properties referred to?

A.—I will say that the transaction was one involving several companies. The question as to that nominee I cannot say.

Q.—Does not the letter giving you the information state that
40 the company designated by the International Paper Company to whom the property is mentioned in the agreement, were transferred to the Gatineau Power Company?

A.—Yes, that is correct.

Q.—Do you know whether or not there was received by the International Paper Company from the Gatineau Power Company any consideration for nominating Gatineau Power Company to receive the properties.

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Mr. Ker: I object to this question as not being pertinent to the matter.

His Lordship: I will allow the question under reserve.

A.—My answer to that is, I do not know.

(And further deponent saith not.)

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