

GC1g16

62,1936

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

41 OF

VOL.

No. 655

9

CANADA
PROVINCE OF
QUEBEC
MONTREAL

Court of King's Bench

(APPEAL SIDE)

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
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 9

PLAINTIFF'S DEPOSITION ON DISCOVERY AND
PLAINTIFF'S EVIDENCE (Supplementary Hearing)

BROWN, MONTGOMERY & McMICHAEL
Attorneys for Appellant

MacDOUGALL, MacFARLANE & BARCLAY
Attorneys for Respondent

INSTITUTE OF ADVANCED
LEGAL STUDIES,
25, RUSSELL SQUARE,
LONDON,
W.C.1.

CANADIAN
LIBRARY
A W

No. 655

CANADA
—
PROVINCE OF
QUEBEC
—
MONTREAL

Court of King's Bench

(APPEAL SIDE)

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.

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 9

PLAINTIFF'S DEPOSITION ON DISCOVERY AND
PLAINTIFF'S EVIDENCE (Supplementary Hearing)

30472

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

PLAINTIFF'S DEPOSITION ON DISCOVERY
(Supplementary Hearing)

*In the
Superior Court*

No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 28th, 1932.

DEPOSITION OF FREEMAN T. CROSS, A WITNESS PRO-
DUCED ON BEHALF OF DEFENDANT ON DISCOVERY.

10

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

FREEMAN T. CROSS,

of Farmers' Point, Lumberman, and the plaintiff in the present cause, aged 53 years, a witness produced on behalf of the defendant on discovery, who, being duly sworn, doth depose and say as follows:

20

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

Q.—You are the plaintiff, Mr. Cross?

A.—Yes.

Q.—What reason have you for believing that the elevation of water to 321.5 as set out in the Act referring to this case will mean the affecting of your properties to the level of 325 as alleged in paragraph 7 of your Supplementary Declaration?

30

A.—Well, to flood the piling ground completely.

Q.—I am not asking you that; I am asking you what reason have you for believing that the elevation of 321.5 will, as you state in paragraph 7 of your Supplementary Declaration, completely destroy the usefulness of your property to the elevation of 325?

A.—The dam at Chelsea

Q.—I do not ask you that. I ask you what reason have you to believe that the water elevation of 321.5 will, as you state in paragraph 7 of your Supplementary Declaration, completely destroy the usefulness of your property to the elevation of 325?

40

A.—The dam at Chelsea, that the water could go up on account of the dam being there and flood the property.

Q.—Granted the water level of 321.5 to which you are presumably to be compensated, what reason have you to believe that you should be compensated, as you claim, for a level of 325, as you state in paragraph 7 of your Declaration?

A.—No reason whatever except the dam at Chelsea, that the water could go up on account of the dam being there.

In the
Superior Court

No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 28th, 1932.
(continued)

Q.—That is your only reason for believing that?

A.—Yes.

Q.—I refer you to paragraph 8 of your Declaration, in which you state that in the year 1912 you owned and operated an electric light business in the villages of Wakefield, Cascades, Kirk's Ferry and Alcove; when did you first start to supply the village of Wakefield with electric light?

A.—In the year 1912 or 1913, somewhere about there.

Q.—In 1912 or 1913?

10 A.—Somewhere thereabouts, to the best of my knowledge. I could not tell you as to the exact year.

Q.—You allege in your Declaration that in the year 1912 you owned and operated the business of supplying electric light in these villages?

A.—Yes.

Q.—Is that the fact or is it not?

A.—To the best of my knowledge the Power was built in 1912, and when I went to Wakefield—I think it was 1912 or 1913.

20 Q.—Does that answer also apply to Cascades?

A.—No, that is later.

Q.—How much later?

A.—1915 or somewhere thereabouts.

Q.—Is it 1915 at Cascades?

A.—Yes.

Q.—And Kirk's Ferry?

A.—1923 or 1924. Then, further down in Kirk's Ferry we built in 1925.

Q.—Kirk's Ferry, 1924?

30 A.—I made two adjustments to Kirk's Ferry.

Q.—When did you begin, as you allege in paragraph 8 of your Declaration, to supply electrical energy to the village of Kirk's Ferry?

A.—About 1924 or 1925 to the best of my knowledge. I have no records. It is only just from memory.

Q.—And when did you begin to supply electrical energy to Alcove?

A.—In 1914 or 1915, somewhere thereabouts. Those are all from memory. I have nothing more to go on.

40 Q.—So your statement in paragraph 8 that you owned and operated the business of supplying the electric light and power to these villages from 1912 is not accurate, and should be qualified by the answers you have just given?

A.—I operated in 1912, but not to all those points.

Q.—You did operate at all those various points as to the dates you have just given?

A.—Yes.

*In the
Superior Court*

No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 28th, 1932.
(continued)

Q.—When did you begin to operate your power supply to the mill at Mileage 12?

A.—I think in 1922 or 1923—now, hold on; I am out on that; 1917 or 1918, I think. I would not be quite sure now.

BY MR. SCOTT:

Q.—In 1917 or 1918?

10 A.—I think somewhere thereabouts. I would not be positive about that.

BY MR. KER:

Q.—When was your distribution system to Kirk's Ferry built?

A.—A short piece from the Ferry, in the village of Kirk's Ferry down to the crossing, was built in 1924 or 1925 at the lower end, a few pole lengths there.

20 Q.—And when was the major part of your distribution system which you allege serves the village of Kirk's Ferry built?

A.—Somewhere about 1918—1917 or 1918.

BY MR. SCOTT:

Q.—1917 or 1918?

A.—There are three sections there to the best of my knowledge. It went down to the mill and then a few years later, I could not say whether it would be four or five years, it went down to the mill, down to the ferry.

30

BY MR. KER:

Q.—The mill to the ferry in 1918.

A.—In 1918.

Q.—How many years after?

A.—I guess it was about three years—two or three years.

Q.—Then what was the next section?

A.—That was the last section.

Q.—You said there were three sections?

40 A.—Oh, well, I have already given you that. That was 1925; 1924 or 1925 was the last.

Q.—That is the third one you speak of?

A.—Yes.

Q.—In that distribution system which you designate as Kirk's Ferry distribution, how many customers did you have in 1924?

A.—I did not keep them just exactly. I have no record of them.

Q.—You have been asked to produce the list of your customers,

*In the
Superior Court*
No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 28th, 1932.
(continued)

the number of your customers during that time. How many customers did you have in your Kirk's Ferry section in 1924? Have you not got your books to show that?

A.—Yes.

Q.—Will you produce them?

BY MR. SCOTT:

Q.—I understand you have a list for 1926 of customers at Kirk's
10 Ferry?

A.—Yes.

BY MR. KER:

Q.—Is this a complete list of all your customers everywhere?

A.—Yes.

Q.—Am I to take it that that list which I will ask you to produce as Exhibit D-122 (on discovery) is a complete list of all your customers on your distribution system in the year 1926?

20 A.—Yes.

Q.—Will you tell me what ones of those names refer to your distribution system at Kirk's Ferry?

A.—I did not prepare this list.

Q.—I cannot help that. Look at it and let us know. It is your business, is it not? I just want you to count them up and tell me the number of customers that you had in 1926 on your distribution system from Cascades to Kirk's Ferry?

30 A.—It is pretty hard for me to get into that here. I don't know where you draw the line between Kirk's Ferry and Cascades for customers. I don't know what cottages you would cut off to put one on to the other.

Q.—You refer in paragraph 9 of your Declaration to your distribution system between Cascades and Kirk's Ferry which was totally destroyed. Now, it is that portion of your system I desire to know how many customers you had?

A.—I could not tell you that even by looking at the list.

Q.—How are we to get that information if you cannot give it to us?

40 A.—Well, it can be got, but not off this list. I cannot pick out a cottage at Kirk's Ferry. One would be away up the hill.

Q.—You are claiming for the total destruction of your business in that section, and I would like to know how many customers you had?

A.—There are only nine on this list, but there is a place, Mount Burnett. Mount Burnett is the same as Kirk's Ferry.

Q.—So long as it is on the Kirk's Ferry distribution system, will you give the names of each of those people?

*In the
Superior Court*
No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 28th, 1932.
(continued)

A.—I do not remember the names of my customers. I cannot remember looking over this. If it is right here, I can count what is in Mount Burnett and what is in Kirk's Ferry. That is all I can do.

Q.—Will you put the letter "K" against the names of those people who, as far as you are aware, were on the Kirk's Ferry distribution system in 1926 according to the list you have produced?

A.—I could not do that. I do not know the names. A lot of them I have never seen, nor never knew their names.

10 Q.—Put the letter "K" against the names that you know of who were served at Kirk's Ferry and Mount Burnett on that portion of your distribution system.

BY MR. SCOTT:

Q.—The ones you remember.

A.—That is all I can do; just the names I am familiar with. There are names here. . . .

BY MR. KER:

20 Q.—I want the names you recognize as being on that list.

Witness: Do you want Kirk's Ferry as well?

Counsel: I want everything that was on your section in Kirk's Ferry.

A.—Mount Burnett.

Q.—Was Mount Burnett served through your Kirk's Ferry line?

30 A.—Yes.

Q.—Well, put it on.

A.—Here is Wakefield marked here, and there are about six or seven here that belong to Kirk's Ferry.

Q.—If you recognize those as Kirk's Ferry, put them on.

A.—Here is a man with five cottages, and I don't know how you would treat that. I am only marking down the names I am familiar with. There are twenty-four names there that I am familiar with to the best of my knowledge.

40 Q.—I see on this exhibit the word "total 308": does that mean the total of all the customers included on the whole list that you produced?

A.—Yes.

Q.—And of those 308, I take your answer to be that as far as you can tell from memory on looking at this list, there are twenty-four of those on the Kirk's Ferry branch?

A.—Those are the names I am familiar with, that is to the best of my knowledge.

*In the
Superior Court*
No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 28th, 1932.
(continued)

Q.—Of those twenty-four customers, have you any idea how many of them were summer customers?

A.—No.

Q.—Would most of them be summer customers?

A.—Yes.

Q.—Most of them would be summer customers?

A.—Well, about fifty fifty—at least, some of them.

Q.—Fifty fifty?

A.—About, fifty fifty.

10 Q.—As to your distribution line to Kirk's Ferry, what was the location of it? What was it built upon?

A.—I got the Great Northwestern Telegraph line there, and I bought that, and then I used their right-of-way going along the highway.

Q.—It was on the highway?

A.—Going along the highway.

Q.—You speak of the poles, do you?

A.—Yes.

20 Q.—How long had they been up?

A.—The lower end was only up in 1924 or 1925.

BY MR. SCOTT:

Q.—The lower end?

A.—The lower end.

BY MR. KER:

30 Q.—I am speaking of the portion between Cascades and Kirk's Ferry. You say you bought those from the Great Northwestern Telegraph Company?

A.—Those old poles were up there. I did not use any of those. I only used two of the old poles, and they replaced them at the Cascades. There were none of those used at that time.

Q.—What were the poles you referred to as having been purchased from the Great Northwestern Telegraph Company?

A.—I took them down; I sawed them off and took them away and used them for props for the others.

40 Q.—You put up other poles?

A.—Yes.

Q.—What kind of poles?

A.—Cedar poles.

Q.—In the same places as the other poles had been?

A.—Pretty much, closer together.

Q.—Was that line in any way located on private property?

A.—No. I kept the highway right down along.

Q.—It was all along the public road?

In the
Superior Court

No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 28th, 1932.
(continued)

A.—Thereabouts. Some places it might vary off the public road on the bank of the river. I could not say whether the poles were off the public road or not. I could not say that, but it was run parallel where the old line ran before.

Q.—And it was in general located on the right-of-way of the highway?

A.—The majority of the poles probably would be on the highway.

Q.—Did you have any consent or authority from the Municipality to place those poles there?

A.—I went to the Council at Chelsea and they said they would only be too glad to see electric light going through that village.

Q.—Did you have any Resolution or otherwise of the Council covering the matter?

A.—No.

Q.—Was the Council the owner of that road at the time?

A.—I could not say.

Q.—Did you make any application to have any approval of the Roads Department, or of the Quebec Public Service Commission for the construction of that line?

Mr. Scott: I object to the foregoing questions as being irrelevant and immaterial to the issues in this case.

(The objection is reserved for decision by the Trial Judge.)

BY MR. KER:

Q.—Under reserve of Mr. Scott's objection, will you now answer the question I put to you?

A.—There was no Resolution passed. I went there personally.

BY MR. SCOTT:

Q.—And obtained their signature?

A.—Yes, and went back. They were only too pleased to see the electric light come down to Chelsea.

BY MR. KER:

Q.—I asked you if you had any authority for the construction of the line emanating from the Department of Roads or from the Quebec Public Service Commission.

(Same objection.)

(Same reserve.)

*In the
Superior Court*

No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 28th, 1932.
(continued)

A.—No, I had no authority.

Q.—When it became imminent that the Power Development at Chelsea would require the submersion of that road, did you receive notice from the Company to that effect?

A.—Not to my knowledge.

Mr. Scott: It is understood that this objection applies to all this line of examination.

10 Witness (continuing): If I had received a letter, it came down to Mr. Lafleur's office.

BY MR. KER:

Q.—Did you, or did you not?

A.—To the best of my knowledge, I do not remember of receiving one.

20 Q.—You therefore do not know anything about having received any letter referred to in paragraph 31 of the Defendant's supplementary plea, dated February 25th, 1927, addressed to your attorneys, copy of which is produced as Exhibit D-121; will you take communication of this Exhibit D-121 filed with Defendant's supplementary plea, being the letter referred of the 25th February, 1927, addressed to Dalton McCarthy, your solicitor, and state whether you ever received that letter or not?

A.—That is the first time I ever laid my eyes on this letter.

Q.—This is the first time you ever saw it?

A.—Yes.

30 Q.—Did you ever know of any such letter having been received?

A.—I never saw a word of that letter until I see it there before me.

Q.—Did you ever know of such a letter having been received?

A.—No.

Q.—Was Mr. Dalton McCarthy your solicitor at that time?

A.—Yes, he was.

Q.—Where were the largest number of your customers indicated on this 1926 list situated? In what section, shall we say, on your distribution system?

40 A.—In Wakefield.

Q.—Approximately, how many would there be?

A.—In the neighbourhood of one hundred, probably.

Q.—That would be 125 approximately, taking into consideration Kirk's Ferry and Wakefield? That would account for 125, as you remember?

A.—Yes.

Q.—Where would the balance of the 308 be located?

In the
Superior Court

No. 53.

Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 28th, 1932.
(continued)

A.—Farm Point, North Wakefield, Rockhurst and Meach Creek Road, and the Hill Head, as they call Alcove.

Q.—How many customers have you on your list at Wakefield now?

Mr. Scott: I object to this question as irrelevant.

(Objection reserved.)

10 A.—I don't know.

BY MR. KER:

Q.—You are speaking from memory when you say 100 at Wakefield?

A.—I said in the neighbourhood of 100.

Q.—Because I find actually 125 on the list as at Wakefield in 1926?

20 A.—Well, all right.

Q.—How many have you still on your list at Wakefield?

A.—I don't know.

Q.—Well, Mr. Cross, you were asked to produce evidence to show that. Where are your books? This list shows approximately 100 customers at Wakefield in 1931?

A.—Yes.

Q.—Will you produce this list as Exhibit D-122 on discovery?

A.—Yes.

30 Q.—Is there any substantial difference between the number of customers you now have in Wakefield and between what you had in 1926?

Mr. Scott: I object to this question as the lists speak for themselves.

(Objection reserved.)

Witness: You mean are there more customers now?

40 BY MR. KER:

Q.—Yes.

A.—There should not be much difference.

Q.—There is not much difference?

A.—There should not be much difference.

Q.—So insofar as the operations of the Gatineau Power Company are concerned, they should not, in the normal event, have affected your customers in Wakefield to any extent. You have not

In the
Superior Court

No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 28th, 1932.
(continued)

lost any customers through the operations of the Gatineau Power Company at Wakefield?

A.—Yes, I have.

Q.—Which ones?

A.—I lost McLaren at Wakefield.

Q.—Why did McLaren leave you?

A.—The dam at Chelsea affected my tailrace. I could not give service.

10 Q.—Do you allege that as being a reason that you lost McLaren?

A.—Yes, absolutely.

Q.—Is it not a fact that the McLaren Company sold its operations out in Wakefield?

A.—They sold it to me. I bought it over, and carried them for years until the Gatineau Power Company put up their dam.

Q.—Who is supplying them with power now?

A.—They are making their own power.

20 Q.—So the fact that the Gatineau Power Company came there is not the reason that you lost them as a customer?

A.—I am just telling you the tailrace at my power house was flooded, and I could not give service.

BY MR. SCOTT:

Q.—So you lost them as customers?

A.—Yes. They came time and again to rectify it.

BY MR. KER:

30 Q.—How much power did they use?

A.—I don't know.

Q.—How much power did you use on your whole line for your distribution system?

A.—I don't know.

Q.—Have you no power house record showing that?

A.—No. I kept no record of my power house and of what power I was using.

40 Q.—At the time you were serving your customers at Wakefield you were also utilizing part of your power at Meach Creek to run your saw mill, were you not?

A.—Not in a dry season.

Q.—Not in a dry season?

A.—No. In the spring of the year we ran our saw mill, but if there comes a real dry season at one time or another, if we were sawing, we would stop our saw mill.

Q.—Did you have plenty of power left for your customers?

In the
Superior Court
No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 28th, 1932.
(continued)

A.—It was about one year in ten we had any extremely dry season.

Q.—How far would you fall short?

A.—Probably we would run up to eleven or twelve o'clock at night for light, and probably would shut down whenever the power got lower, and accumulate for the next evening. That would only happen one year out of ten years, and for a short period of time, perhaps a week or two weeks or three weeks.

10 Q.—Who else did you lose at Wakefield besides McLaren?

A.—I could not just tell you that. McLaren is the only one in my memory just now.

Q.—You cannot state how much power you were selling to McLaren?

A.—No.

Q.—What was McLaren paying a year?

A.—Two or three hundred dollars a year.

Q.—Will you tell me how much he paid you in the year 1926?

20 A.—In just the one year right off from memory, I could not tell you that. I am telling you what he used to pay me, on an average a year.

Q.—Will you refer to your books and tell me how much McLaren paid you in 1926?

A.—I cannot do that from my books.

Q.—Why cannot you?

A.—I kept no books.

Q.—You kept no books?

A.—No.

30 Q.—So that I am to take for granted then, in reference to the notice to produce which was sent to you, you make the declaration that you have kept no books whatever, and are therefore unable to produce any?

A.—All the books I kept, I can produce all that I have with me.

Q.—Will you let me see the books you have referring to your distribution system in any way?

A.—I have no books of the electric light except that one (indicating).

40 Q.—I am asking you whether you have any books to show what you received from your distribution system in the year 1926?

A.—No, I have no books at all.

Q.—Have you any record of any kind, or any return of any kind which would indicate how much you received out of your distribution system in that year?

A.—In 1926, no.

Q.—How did you make up your income tax in that case?

*In the
Superior Court*
No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 28th, 1932.
(continued)

Mr. Scott: I object to this question as irrelevant and immaterial.

(The question is suspended and the objection is reserved for decision by the Trial Judge.)

BY MR. KER:

10 Q.—Referring again to Exhibit D-122 (on discovery), which is the list of customers in 1926, can you tell me out of the 308 customers which you allege to have had then, how many were summer customers, approximately?

A.—Close to a third, I guess—somewhere about a third.

Q.—Approximately a third.

A.—Yes.

BY MR. SCOTT:

20 Q.—That is for the whole system?

A.—That is for the whole system.

BY MR. KER:

Q.—What rates were you charging on your distribution system in 1926?

A.—Seven cents a kilowatt.

Q.—Seven cents a kilowatt hour?

A.—Yes.

Q.—Did you also have a flat rate?

30 A.—With some of the city folk, the small city cottages, \$12.00 a season, but if there was a meter in and they burned over the \$12.00, it was seven cents a kilowatt hour they were to pay for the rest.

Q.—How many people were on a flat rate in 1926?

A.—I could not tell you that?

Q.—You do not know?

A.—No.

Q.—Were all your summer customers on a flat rate basis?

40 A.—They had the meters that if they burned over that they paid the bill at seven cents a kilowatt.

BY MR. SCOTT:

Q.—You mean you charge them \$12.00 flat up to a certain reading?

A.—Yes.

Q.—And after the amount of that reading, they paid seven cents a kilowatt hour for anything above?

*In the
Superior Court*

No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 28th, 1932.
(continued)

A.—Yes.

BY MR. KER:

Q.—Am I to understand that all your customers had meters in 1926?

A.—No, some of them had not meters.

Q.—How many of them had not?

A.—I could not tell you.

10 Q.—Tell me within reason? You ought to know. You were brought before the Quebec Public Service Commission to put in meters. How many meters did you have to put in after the Quebec Public Service Commission ordered you to put in meters?

A.—I think I put in three after the Quebec Public Service Commission ordered me—three months after the Quebec Public Service Commission ordered me to put them in.

Q.—So on the whole system, let us say, out of your 308 customers there were at least 300 who were on meters?

20 A.—We had two hundred and some meters, about 230 meters. My own houses and all my own workmen had no meters.

BY MR. SCOTT:

Q.—They got free light?

A.—Yes.

BY MR. KER:

30 Q.—They are not included in this list?

A.—No.

Q.—Your employees are not included in either of these lists which have been produced?

A.—I would not say that. I think this 308 is made up of everything. I think these 308 includes everything.

BY MR. SCOTT:

40 Q.—Does the 1926 list include employees?

A.—No.

BY MR. KER:

Q.—The 308 included your employees?

A.—It did not include employees. Wait a minute now; 1926 does include employees.

*In the
Superior Court*

No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 28th, 1932.
(continued)

Q.—How many employees are included in that 308? Just go over the list?

A.—I don't know the names of some of my employees. I never knew the names of many of them. I would not know them from Adam.

Q.—How many on the list would represent employees? How many houses were connected up?

A.—About forty.

10 Q.—So of the 308 there are about forty there from which you were getting no revenue?

A.—I was getting a good revenue from my workmen. I was looking after them.

Q.—They were not paying anything in respect of light?

A.—They certainly paid me well. They did not pay me in cash, but they were well looked after.

Q.—Of the 308 names on that list there are at least forty who were not, in the strict sense of the word, customers, paying rates?

20 A.—They did not pay me any cash or on a meter in any shape or form.

BY MR. SCOTT:

Q.—They got a free house?

A.—Yes, they got a free house, free light and free wood and everything under the sun what was going.

BY MR. KER:

30 Q.—In other words, while Mr. McLaren was finding himself short of power you were still giving forty of your employees power for nothing, or as part of their wages or otherwise?

A.—I did not go up to them for anything, no.

Q.—They were not paying you any rates like ordinary customers?

A.—I am telling you they paid me well.

Q.—Not on meters?

A.—Not in money, in other words, if that is the point, they never paid me any money.

40 Q.—So that reduces, let us call it, your regular clients or customers, on your distribution system, who were under meter or under contract or under something else to 308 less 40?

Witness: Reduces them in what way?

Counsel: The number is 308, and the number were not customers in the ordinary sense of the word, they were employees?

In the
Superior Court

No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 28th, 1932.
(continued)

A.—They were my real customers in every shape and form in the electric light and labour and everything else.

Q.—I am not going to fence with you on this point. You know perfectly well what I am asking you. I am asking you if the list of 308 includes your 40 employees there must therefore be deducted from that list the names of those 40 as not being customers who had meters in their houses?

A.—I told you already they had no meters.

10 Q.—Where were those employees located?

A.—At Farm Point.

Q.—In forty houses?

A.—Yes, forty houses.

Q.—You said that in some cases they had a flat rate of \$12.00 and that if they ran over the \$12.00 they paid seven cents a kilowatt hour?

A.—Yes.

Q.—How did you keep track of the amount they owed you from time to time if you kept no books?

20 A.—Those meters were read once a month. I went around and read the meter and brought in their bill. Sometimes I go around myself. Sometimes I send a timekeeper out to collect it and to bring it in. Some of them paid me in money and some paid me in material and work.

Q.—Was any discount given for payment within a certain time?

A.—If their bill was large there was. At least, I mean to say a compromise between the two parties.

Q.—You absolutely kept no books of any of that business?

30 A.—The only books that have been kept is since MacRostie took it over at the time of the Commission. I have no book record, only the monthly reading. Some of those monthly readings I have. I have one in my possession.

Q.—What year?

A.—I think it was 1922.

Q.—Have you got it with you?

A.—I think so.

Q.—Will you let me see that list of monthly readings for 1922?

A.—All I can produce is a monthly statement of accounts covering in part January, 1921, and January, 1922, which I now show you.

40 Q.—You have nothing then after 1921 or 1922 in the form of consumption records?

A.—No, not till 1929 or 1930.

Q.—Why did you stop making these consumption records in 1922?

Mr. Scott: He does not say he stopped. He says, "That is all I can find of my old records."

*In the
Superior Court*

No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 28th, 1932.
(continued)

BY MR. KER:

Q.—When was the last time you had these records between 1922 and 1928 in your possession?

A.—Which records?

Q.—The records of consumption?

A.—Those records were in the lumber accounts taken out of the books by the man who made up those records, and I just happened to run across those in a bunch of scrap.

10 Q.—How do you account for the absence of the balance of those records between 1922 and 1931 showing the consumption on your distribution system?

A.—As soon as they were marked paid—they were never posted.

BY MR. SCOTT:

Q.—As soon as they were marked paid, they were destroyed.

A.—Yes.

20 BY MR. KER:

Q.—What record did you keep as to the amount you earned on that distribution system?

A.—I can explain that. Each year in the lumber business and in the electric light business, there is no white man will keep them apart, in my business. They run them together. They work them together right straight through. Each year I have an auditor who came up and looked over my general statement, stock on hand and stock in the yards, and what cash I had in the bank, and he made
30 that auditor's statement since 1914.

Q.—What is the name of the auditor?

A.—Millen, and any information you want from him he will be pleased to give it to you.

Q.—Did he submit copies of his reports to you?

A.—Yes.

Q.—Where are the copies of those reports?

A.—I could not say whether I can find them for you. I might be able to find a few, or I may not. I could not say, but all the information will be in his office, if he keep records.

40 Q.—Is that Murray Millen?

A.—Murray Millen.

Q.—You testify you have no records which would indicate what your receipts and expenditures were on your distribution system 1922 to 1929 other than what may have been kept recently by Mr. MacRostie?

A.—No, I have nothing.

Q.—When were those records last in your possession?

In the
Superior Court
No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 28th, 1932.
(continued)

A.—That is the record before MacRostie took hold of it?

Q.—Yes.

A.—Well, at that date.

Q.—What date?

A.—I explained to you all the records I had.

Q.—Were they handed over to Mr. MacRostie?

A.—No, I did not hand anything over to Mr. MacRostie.

Q.—Were they destroyed?

A.—I don't understand.

10 Q.—I am speaking of the auditor's account at the moment: what happened in reference to the revenues or receipts on your distribution system between 1922 and 1929?

A.—What happened to these revenues?

Q.—What happened to any statements of revenues or expenditures on your distribution system between 1922 and 1929?

A.—All I had for a record, the best information I could get I gave to Mr. Millen, any records I had in the line of receipts.

20 Q.—Where did you get that information from to give to Mr. Millen?

A.—Wherever I could get it, from the bookkeeper, workmen, and myself.

Q.—And you thought that was an excellent audit of your accounts? Your auditor was willing to accept that sort of statement?

A.—He was up on the ground and took a lot of it himself.

30 Q.—Therefore, I am to take it for granted you can give me no information whatever, nor is there any information in your possession as to the receipts and expenditures on your system yearly, between the years from 1922 to 1929?

A.—No.

Q.—How often did you collect from your customers?

A.—Once a month.

Q.—And who did the meter readings?

A.—A man by the name of Perry.

Q.—As to the customers who were on the flat rate of \$12.00 plus the seven cents a kilowatt hour, what percentage of all your customers were on that rate?

40 A.—I told you the city folks, somewhere in the neighborhood of a third or thereabouts.

Q.—Of that third how many ran over their flat rate and paid on the kilowatt?

A.—There were over fifty per cent of them.

Q.—So that on fifty per cent you got about the flat rate and that was all?

A.—Some of them ran well over.

Q.—How do you know if you have no books?

*In the
Superior Court*
No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 28th, 1932.
(continued)

A.—From memory I know.

Q.—At any rate you have not thought it wise to keep any records of your earnings during those years?

A.—I never did.

Q.—Were there any electric stoves on your system?

A.—Oh, yes.

Q.—In 1926?

A.—Yes.

Q.—How many?

10 A.—I could not say. I don't know how many stoves there were in the kitchen.

Q.—Did you have half a dozen customers on your list with electric stoves?

A.—I think more than that.

Q.—How many more?

A.—I could not tell you that.

Q.—Did you have a dozen?

A.—I am quite sure there were more than that.

Q.—A dozen?

20 A.—Somewhere thereabouts. I could not say whether there would be that or not.

Q.—Have you any record of the cost of operating that distribution system for those years?

A.—The cost was taken care of by one man who got free house and free light. That was all the cost to my electric system, and if there was a storm or a pole broke down, he would charge me fifty cents an hour while out on the main line. There was no charge to me. I had no expense whatever, except that he had a free house and he gathered up the wood around the mill yard.

30 Q.—Have you any idea how much fifty cents an hour would mean in one year?

A.—I know it would not exceed more than \$50.00 a year.

Q.—In other words, he would only be out one hundred hours in all the year?

A.—He can explain that for himself. To the best of my knowledge, he would not be out any more than \$50.00, that is, outside of the rent of the house, which would mean about \$120.00.

Q.—You never made any allowance for depreciation?

40 A.—I have allowed nothing in that way at all. The house included, and all, it would not exceed more than \$200.00.

Q.—I take it for granted, then, that having in view the answers you have given to the previous questions, that the statement made in paragraph 11 of your supplementary declaration, the net profit of your distribution system had for many years been \$8,000.00 annually is merely one based upon guesswork, not upon book statements which you can produce?

*In the
Superior Court*
No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 28th, 1932.
(continued)

A.—Not upon book statements.

Q.—How many customers were there on your lines in 1931?

A.—In the neighbourhood of two hundred.

Mr. Scott: Exhibit D-123 speaks for itself.

BY MR. KER:

10 Q.—There is a total of 190 shown on Exhibit D-123, is that correct?

A.—It must be. It is there.

Q.—Who made up that exhibit?

A.—MacRostie.

Q.—What has Mr. MacRostie to do with the distribution business at the present time?

A.—He is looking after the meter reading and collections, and so on, these last two or three years.

Q.—Is he sending out bills?

20 A.—Yes.

Q.—Who made up Exhibit D-122, that is, the list of 1926?

A.—That list was made up from the names of the people and the customers.

Q.—I am asking you who made it up?

A.—MacRostie.

Q.—Where did he get the information?

A.—He got it from the customers themselves, and from what information he could gather around. I gave it to Mr. MacRostie to make up that complete list.

30 Q.—You gave it to him? Where did you get it? From your memory?

A.—I got it from my customers.

Q.—Those are 1926 customers?

A.—Yes.

Q.—Are all those customers out there yet?

A.—I got their names.

Q.—Where did you get them from?

A.—From themselves.

Q.—In other words, you called on every one of the customers?

40 A.—Every one of them.

Q.—You personally?

A.—Personally.

Q.—In order to make this list?

A.—Absolutely, to make it correctly I did that.

Q.—You called on every person named in that list?

A.—Every person except those you destroyed through Kirk's Ferry; I called on them and got their signatures.

In the
Superior Court

No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 28th, 1932.
(continued)

Q.—Except the ones who destroyed at Kirk's Ferry? What do you mean by that—that the Company destroyed?

A.—They flooded them out. The wires and meters all went under water, transformers and all.

Q.—I am speaking of customers now?

A.—I did not go to these, because I did not know where to find them. They might be in Montreal, Toronto or the Old Country, so far as I know.

10 Q.—How many were there? Is it the whole twenty-three or twenty-four?

A.—To the best of my knowledge, those names I picked out, there may be forty-four for all I know.

Q.—How many in this list of 308 did you actually call on?

A.—I told you all except the one in Kirk's Ferry.

Q.—Except the one in Kirk's Ferry. You ought to know how many people you called on?

A.—I don't know the number. I know they put down their names and I counted one and then they were put down there and made up that complete list, except in Kirk's Ferry.

20 Q.—When did you call on them?

A.—In 1926.

Q.—You did not prepare this list in 1926, did you?

A.—I took it off my record.

Q.—I am asking you who gave the names to Mr. MacRostie to compile that list?

A.—I gave them their own signatures as well.

Q.—When?

30 A.—Not so long ago. He knew I had them in my possession since in 1926. I could give you them in 1926 the same as now.

Q.—Were they written contracts with these people?

A.—I don't say contracts. Just put the questions straight to me. What do you want me to answer?

Q.—I want to know where Mr. MacRostie obtained the information in order to compile this list D-122?

A.—I obtained them from the customers themselves. I handed them to Mr. MacRostie.

Q.—You obtained them from the customers themselves?

A.—Myself.

40 Q.—When?

A.—In 1926.

Q.—And was there a list made in 1926?

A.—Yes.

Q.—When was that list handed to Mr. MacRostie?

A.—He has had it in his possession since 1926. As soon as it was complete I gave it to Mr. MacRostie.

Q.—In 1926?

*In the
Superior Court*

No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 28th, 1932.
(continued)

A.—Yes.

Q.—Mr. MacRostie was attached to your distribution system in 1926?

A.—When the list was handed to me I gave it to Mr. MacRostie. You asked me what I did with the list. That is what I did with it.

Q.—I am afraid I cannot follow what you are driving at. You say this list was prepared recently—this 1926 list?

A.—That paper was.

10 Q.—And that it was taken from lists which you made yourself in 1926?

A.—I did not say I made the list. I said each signature, the user of electric light in other words, the man who was using electric light put down his signature, "I am a user of electric light from F. T. Cross", then that goes on paper. That was made up on other sheets and I gave it to Mr. MacRostie.

Q.—In 1926?

A.—So there would be no mistake about the name of the user of electric light.

20 Q.—When was that done?

A.—In 1926.

Q.—In other words, you made a check of your system in 1926 and gave the result to Mr. MacRostie?

A.—It looks like it.

Q.—This was not compiled from any books of any kind?

A.—No.

Q.—Did Mr. MacRostie enquire from you in any way how each of these customers paid you in 1926?

A.—I don't remember if he enquired into that.

30 Q.—Did you give him any list of the amount they owed you in 1926?

A.—No—give MacRostie a list of what they paid me, yes.

Q.—For what year?

A.—In the year 1926.

Q.—In other words, there should be available from Mr. MacRostie a list of the amounts received by you from your distribution system in 1926?

A.—I don't just catch that.

40 Q.—I say there should be available through Mr. MacRostie a list of the receipts for the distribution system in 1926 prepared at that time?

A.—There is nothing—what was prepared at that time is a list of the customers who paid me for the minimum charged, and the rest ran at an average to make up the amount, if that is what you are alluding to.

Q.—And that should be in Mr. MacRostie's possession?

A.—Yes.

*In the
Superior Court*
No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 28th, 1932.
(continued)

Q.—And when was it prepared?

A.—That list was prepared a year or so ago—about a year ago.

Q.—That is, five years after 1926 you took it upon yourself to remember what each of those customers had given you?

A.—I did not take it on myself to remember. I took it on the person himself to remember.

Q.—Did each person sign for the amount of current used in 1926?

10 A.—You don't get me well. I am telling you there are two lists of my customers.

Q.—What has that got to do with it?

A.—I am just explaining what it has to do with it.

Q.—Then I am right in understanding that in 1926 you made out a list of your customers and had them sign, and in 1931 you made out a list of what those customers had paid you in 1926, is that right?

A.—To the best of their knowledge.

Q.—To the best of whose knowledge?

A.—Their own and my own.

20 Q.—So you saw them again in 1931?

A.—Yes.

Q.—You visited them all again in 1931?

A.—Yes.

Q.—Everyone on this list was visited in 1931?

A.—Oh, no.

Q.—How many did you visit in 1931 to ascertain how much they had paid you in 1926?

A.—I think in the neighbourhood of about fifty to sixty, somewhere thereabouts.

30 Q.—So any statement Mr. MacRostie may have of the amount earned in 1926 on your distribution system is incomplete, insofar as it only represents what fifty people paid out of your whole total?

A.—Well, take the rate at an average of the minimum charge.

Q.—When did you build your power plant at Meach Creek?

A.—About 1912—in the year 1911 or 1912. I started to build in the fall of the year of 1911 probably.

40 Q.—Up to the time that the Gatineau Power Company came on the river with these developments, is it your contention that you were able to develop, and were developing, sufficient power on your Meach Creek plant to take care of all your requirements?

A.—I don't just understand the question.

Q.—The question is as clear as day if you want to answer it. Is it your contention that up to the time the defendant Company came on to the Gatineau River with its development at Chelsea you were able to take care of all your power requirements from your Meach Creek plant?

A.—I don't know what my intentions were.

*In the
Superior Court*

No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 28th, 1932.
(continued)

Q.—I say, is it your contention? I did not say your intention. Do you allege, do you state, is it your opinion; do you testify that?

A.—I don't know my opinion twenty-four hours from one day to another.

BY MR. SCOTT:

Q.—You do not understand what the question is?

A.—I don't understand.

10 Q.—If you don't understand, say so?

A.—I do not understand.

BY MR. KER:

20 Q.—You have had a little time to think over the answer. I asked you, were you or were you not, up to the time the Gatineau Power Company came on to the river able to meet all the requirements of your customers in your business from your Meach Creek plant?

A.—Well, I met them in the way I explained, that one year out of ten they were short of power.

Q.—Your answer then is yes, except when there was not sufficient water?

A.—Due to an extra dry season which would come one year in ten for a matter of about a few weeks, or two months.

Q.—Apart from that you were quite able to carry on?

A.—Yes, and did.

30 Q.—I note in paragraph 8 of your Declaration you say that it was your intention to obtain electricity for this purpose from the Hydro-Electric Development at Cascades. As a matter of fact, there was no hydro-electric development at Cascades?

A.—I don't know—I was going to serve them from some customers from Farm Point. That would be a bigger development.

Q.—That is all right, but as a matter of fact you allege that to be the fact—first of all, there was no hydro-electric development at Cascades?

A.—No—you mean there is no development?

Q.—Yes.

40 A.—No. There was wonderful power there.

Q.—How much power did you expect to develop at Cascades?

A.—I don't know. The engineers figured that out.

Q.—How much power did you intend to develop at Cascades?

A.—To the best of my knowledge, 15,000 horsepower.

Q.—And what is your load on Meach Creek?

A.—About 400 horsepower.

Q.—Have you ever developed 400 horsepower in your life on

*In the
Superior Court*
No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 28th, 1932.
(continued)

Meach Creek? What is the capacity of your generator?

A.—Not at the sawmill—the sawmill and the powerhouse.

Q.—I am not speaking of the sawmill. What is the capacity of your generator at Meach Creek?

A.—You asked me what is developed at Meach Creek. That is a different question to the powerhouse. The powerhouse is only part of Meach Creek.

Q.—I am asking you what is the capacity of your generator?

A.—400.

10 Q.—The capacity of your generator on Meach Creek you say at the powerhouse is 400?

A.—Not at the powerhouse.

Q.—I am asking at the powerhouse?

A.—About 200.

Q.—What is your wheel rated at on that?

A.—I don't know.

Q.—Is it not a fact that it is rated at 150 horsepower?

A.—I don't know.

20 Q.—You do not even know what your wheel is rated at?

A.—No, I do not.

Q.—Do you swear you do not know?

A.—All I do know is, when it was put in they gave me to understand the whole thing would run 200

Q.—I am not asking you what they made you understand, I am asking you what you know?

A.—I am not an engineer and do not know what that wheel would be capable of doing.

30 Q.—I am asking you a practical question. Do you or do you not know the rated horsepower of your wheel at Meach Creek powerhouse?

A.—I don't know.

Q.—You do not know the rated horsepower?

A.—No.

Q.—It is not stated on the generator?

A.—It might be. I am telling you I don't know.

40 Q.—Then, if you were able to supply your various customers before the Company Defendant came on the river, except one year in ten, what did you propose to do with the 15,000 horsepower you developed at Cascades?

A.—The same thing as the Gatineau Power Company did with theirs at Chelsea?

Q.—Where were you going to sell?

A.—The same as they are selling. The first thing, I would have gone to them.

Q.—To whom?

A.—To the Hydro-Electric.

*In the
Superior Court*
No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 28th, 1932.
(continued)

Q.—To the Ontario Hydro-Electric Commission?

A.—Yes.

Q.—For 15,000 horsepower?

A.—Yes.

Q.—At what price?

A.—I don't know.

Q.—Don't you think it important to know what price you should expect to get?

10 A.—In 1926, I don't know what I had in my mind at that time as to what I should get or what a buyer should give me.

Q.—You do not know.

Mr. Scott: I object to this line of questioning as being irrelevant and immaterial in view of the Special Act.

(The objection is reserved for the decision of the Trial Judge.)

BY MR. KER:

20 Q.—I am asking you what you proposed to do with the 15,000 horsepower?

(Same objection.)

(Same reserve.)

30 Q.—I take it, then, that your statement in paragraph 8 of your declaration, that it was your intention to obtain the electricity for the purposes of your distribution system from your development at Cascades, that you would then have abandoned your Meach Creek system?

A.—I explained that once before. For one power house you don't abandon the other as a rule.

Q.—Which one were you going to use the Cascades power for?

A.—I was going to use both.

308 Q.—15,000 horsepower, and the whole thing to supply a load of customers?

A.—Well, it was not likely I would disband the other where it was on lease.

40 Q.—You intended, then, to keep them both going?

A.—I could not say what my intentions were at that time.

Q.—Your intention in your declaration is declared to be that you proposed to replace that power at the hydro-electric development with Cascades; is that correct or not?

A.—That portion.

Q.—What portion?

A.—I don't know what portion it may be.

In the
Superior Court

No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 28th, 1932.
(continued)

Q.—I will read to you paragraph 8 of your declaration :

“ That prior to the damming back of the water by the Defendant, the Plaintiff had for many years, to wit, from the year 1912, owned and operated the business of supplying electric light and power in the villages of Wakefield, Cascades, Kirk's Ferry and Alcove ”.

10 as mentioned in paragraph 20 of your declaration, and that it was your intention to obtain electricity for this purpose from the hydro-electric developments at Cascades, referred to in paragraph 17 of your declaration; is that a fact or is it not?

A.—Well, it is my proposed development, they allowed me to carry on, and the poles at Kirk's Ferry were put across the right-of-way to carry on the power. There were two developments right straight through to the Ontario Hydro-Electric.

20 Q.—I am asking you whether that is a statement of fact, that it was your intention to utilize your hydro-electric development at Cascades to furnish the electricity necessary for the purposes of your distribution system, as alleged in paragraph 8 of your declaration?

A.—In the extension I would make to these lines, it would.

BY MR. KER, K.C.:

Q.—The list Exhibit D-122 on Discovery is, I presume, supposed to represent individual customers?

A.—That is the list of 1926, yes.

30 Q.—In other words, I take it for granted you would not add into that list the names of two persons in the same house who were under the same meter?

A.—Not to my knowledge. It was never done.

Q.—I see here the name of C. E. Baker, and the name of Mrs. Mary A. Baker. Mrs. Mary A. Baker is Mr. Baker's wife, and lives in the same house as he?

A.—Yes.

Q.—How do you account for the two names appearing?

A.—May be there are two Bakers there.

40 Q.—One is C. E. Baker, and the other is Mrs. Mary A. Baker. Mrs. Mary A. Baker is the wife of Mr. C. E. Baker. They both live in the same house, and are supplied through the same electric meter.

A.—It has never been done before, to my knowledge. If this occurred there I do not know anything about it.

Q.—I see also the name of S. H. Cross. Is that Stephen Cross, your brother?

A.—Yes.

Q.—And if his name is shown twice here has he two meters?

A.—Yes.

*In the
Superior Court*

No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 28th, 1932.
(continued)

Q.—Are you sure of that?

A.—Yes.

In regard to Baker, I do not think it was ever done; except it might have come about in this way—there might have been a tenant in that house in that year who came in in the spring and left after a while and then another tenant came in. If it occurred, that is the way it would occur.

Q.—I see the name of C. E. Baker, and the name of Mary A. Baker, Mary A. Baker being Mrs. C. E. Baker.

10

BY MR. SCOTT:

Q.—Do you know that?

A.—I do not know if it is the fact or not. There might be two Bakers.

BY MR. KER (continuing):

Q.—Do you know anything about it?

20

A.—No.

Q.—I see S. H. Cross under his own name, then "I. H. Cross: Shop." Are those two separate places?

A.—There is one on one side of the road, and the other on the other.

Q.—And, are there two meters there?

A.—There are three meters, I think.

Q.—But, it is only one customer?

A.—Yes.

30 Q.—So that where the duplicate names appear, S. H. Cross, and I. H. Cross, Shop, from the point of view of the number of customers it is the same individual?

A.—Yes.

Q.—I also see here W. E. Cross, and Walter C. Cross. Are these the same individual?

A.—No.

Q.—I see H. F. Craft, and H. F. Craft, Manager Club House. Are those the same individual?

A.—Yes. One is Mr. Craft himself, and one is the Club House. He was looking after the Club House.

40

Q.—So, the number of your customers should be reduced from the total of 308, where there is duplication; when you are speaking solely of individual customers?

A.—Taking it by the names, yes.

Q.—Would the same thing apply to "M. F. Dixon and M. F. Dixon; cottage"?

A.—Yes, the same thing applies there.

Q.—It is the same customer?

*In the
Superior Court
No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 28th, 1932.
(continued)*

A.—Two establishments.

Q.—Again you have in Wakefield “ George Foran ” and “ Mrs. C. Foran.” Do you know those people?

A.—Yes.

Q.—Are they not the same people?

A.—I think they have an ice cream parlor which they run across the road, and they have their private house.

Q.—But, it is the same customer?

A.—Yes.

10 Q.—Then I see “ J. E. Gratton ”, and “ J. W. Gratton, office ”.
Are those the same individual?

A.—Yes.

Q.—Again I see “ F. E. Hamilton ”, and “ F. E. Hamilton, garage ”. They are the same person?

A.—The same, yes.

Q.—I also see the Misses Lindsay down three times. They are the same customer. Then I see “ Mrs. Jane Mullin ”, and “ Mrs. Jane Mullin, cottage ”. I suppose those are the same person?

A.—Yes.

20 Q.—And, Mrs. M. Nesbitt, and William G. W. S.?

A.—They are the same.

Q.—Then I see the name of William Warren three times: once without a note, then as a bakeshop, and then as warden. It is the one customer?

A.—Yes, but the buildings were about a mile apart.

Q.—I am only speaking of the actual customers, by number.

A.—Yes.

Q.—“ John Pritchard, house ”, and “ John Pritchard, cottage ”?

30 A.—The same.

Q.—“ David Scott ” and “ David Scott, five cottages ”. Are those five cottages on the same meter?

A.—No: there were no meters on Scott. That was Kirk's Ferry. There were no meters there.

Q.—Can you tell me how much he paid?

A.—No.

Q.—I see the name of T. A. B. Sully twice.

A.—That would be the same.

Q.—R. N. Sully, and C. H. Sully would be the same?

40 A.—The same. There are two Sullys. The old gentleman had a house and a sawmill. T. A. Sully had a planing mill, and his own private house.

Q.—I see the name Finley Stevenson twice. Would that be the same individual?

A.—Yes.

Q.—I see the name R. E. Vaillancourt three times. Would that be the same man?

*In the
Superior Court*
No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 28th, 1932.
(continued)

A.—Yes.

Q.—I see the name S. E. Wilson twice. Would that be the same person?

A.—Yes.

Q.—And, the same applies to Fred Wills?

A.—Yes.

Q.—And, to I. B. York?

A.—Yes.

10 Q.—You estimated there were about twenty-four customers, I think, on your lines on the Kirk's Ferry distribution system. You only estimated it, but I think that was the figure you mentioned and against which you put the letter " K " on this list?

A.—Yes. I did not take in those five cottages marked for Scott. That would be twenty-nine.

BY MR. SCOTT:

20 Q.—Those are the five cottages marked in brackets after the name Scott on the third line of page 8 of Exhibit D-122 on Discovery?

A.—Yes.

BY MR. KER (continuing):

Q.—How many of those twenty-four or twenty-five names against whom you have marked the letter " K "—how many of the properties so served were actually purchased by the Gatineau Power Company?

30 Mr. Scott: I object to the question as irrelevant and immaterial. What became of those properties subsequently has no bearing upon or reference to the issues involved herein, which issues are governed by the Special Act. In order to make the evidence relevant the Defendant would have to establish the properties were acquired by the Gatineau Company before 1926.

BY MR. KER (continuing):

40 Q.—Of the twenty-four or twenty-five customers mentioned as being Kirk's Ferry customers how many did you eventually lose by reason of the fact of their properties being purchased by the Gatineau Power Company?

Mr. Scott: Same objection, in view of the Special Act, and furthermore as being something which the Company defendant has within its own knowledge.

I instruct the witness not to answer the question.

*In the
Superior Court*

No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 28th, 1932.
(continued)

BY MR. KER (continuing):

Q.—You allege that you lost customers on the portion of your distribution line at Kirk's Ferry by reason of the raising of the water through the operations of the Company defendant?

A.—I am completely cut off. The whole transmission line is cut off.

Q.—Do you or do you not allege that you lost customers at Kirk's Ferry by reason of the Company's operations?

10 A.—It was cut completely off at Cascades.

Q.—Do you or do you not allege that you lost customers on the line between Cascades and Kirk's Ferry by reason of the operations of the Company defendant?

A.—I dropped them all—the whole organization.

Q.—You lost customers?

A.—The whole works. The line was cut off, and no more customers could be fed.

20 Q.—Were the customers still available there to be served after the Company's flooding?

Mr. Scott: I make the same objection, and I advise the witness not to answer.

Witness: Your Company is serving them.

(The objections above noted are reserved for the decision of the Trial Judge.)

30 BY MR. KER (continuing):

Q.—You were asked to bring a list of your receipts and expenditures between the years 1920 and 1931. You have stated you have no records whatever between 1922 and 1928, and that from 1928 you have the records of Mr. MacRostie.

40 Mr. Scott: Since the adjournment we have found a book, for the year 1920. It is a book in which the numbers of meters, the voltage, amperage, and so on are entered, and showing the different houses in which they were installed.

BY MR. SCOTT:

Q.—You have the electric meter register for 1920, which is available?

A.—Yes.

Mr. Ker: We do not want this book for the moment.

*In the
Superior Court*

No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 28th, 1932.
(continued)

BY MR. KER (continuing):

Q.—You were asked to bring a list of your receipts and expenditures between the years 1920 and 1931. You have stated you have no records whatever between 1922 and 1928, and that from 1928 you have the records of Mr. MacRostie?

A.—Correct.

10 Q.—Am I to understand you have no records for the years 1920 and 1921?

A.—Not more than what you have seen. That is all I have.

Q.—And I think you said that from 1928 you have a record through Mr. MacRostie's books?

A.—Yes.

Q.—Will you kindly produce that record of revenue and expenditure from 1928 forward?

20 Mr. Scott: I object to the question as irrelevant and immaterial; and, in any event, any such records are in the possession of Mr. Norman B. MacRostie, at Ottawa.

BY MR. KER (continuing):

Q.—Do you state definitely you have no records in your possession showing revenue and expenditure on your distribution system including and after the year 1928?

Mr. Scott: I object to the question as irrelevant, as relating to a date subsequent to 1926.

30 BY MR. KER (continuing):

Q.—Have you any such records in your possession?

Mr. Scott: Same objection.

(The objection is reserved for the decision of the Trial Judge.)

40 A.—I have none, only what Mr. MacRostie has in his possession.

BY MR. KER (continuing):

Q.—At the present time Mr. MacRostie is running your distribution system?

A.—Yes.

Q.—What is his particular capacity in respect to that system? Is he General Manager, or what?

*In the
Superior Court*
No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 28th, 1932.
(continued)

A.—As I stated before, he sends out the bills, and gets the meters read, and pays out any cheques. He is General Manager of the whole system.

Q.—In what name does he send out the bills?

A.—I could not tell you that. Farm Point Electric Light, I think.

Q.—Farm Point Electric Light Company?

A.—No, it is not a company.

Q.—What is it?

10 A.—Farm Point Electric Light.

Q.—But that does not mean anything?

A.—I am telling you it is not a company.

Q.—Is it registered?

A.—No.

Q.—The bills are not sent out in the name of Freeman T. Cross?

A.—To my knowledge, they are sent out in the name of Farm Point Electric Light. I think that is it.

Q.—What is the Farm Point Electric Light?

20 A.—I do not know. It is electrical light.

Q.—Is the name Farm Point Electric Light registered anywhere?

A.—I have already stated it is not registered, that I know of.

Q.—Is what is known by the expression " Farm Point Electric Light " your property?

A.—Yes.

Q.—Entirely belonging to you?

A.—Yes.

30 Q.—What happens to the revenues, if any, over expenditure? Do you get them?

A.—I do not see them.

Q.—What happens to them?

A.—Mr. MacRostie looks after that.

Q.—Are they credited to you?

A.—There is no credit since 1926 in electric light.

Q.—You have made no money in the electric light business since 1926?

A.—No.

Q.—Do you swear that?

40 A.—To my knowledge.

Q.—To your knowledge you have made no money with your electric light business since 1926?

A.—To my knowledge.

Q.—But you ought to know. It belongs to you.

A.—Mr. MacRostie knows. Ask him whether they made money or not.

Q.—You did not receive any reports since 1926?

*In the
Superior Court*

No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 28th, 1932.
(continued)

A.—He claims he is not making money.

Q.—But I am not asking you that. Did you make any money on the Farm Point electric light system since 1926?

A.—No.

Q.—Why did Mr. MacRostie take it over? Why did you hand it over to him to manage in 1926, or 1928, or whenever it was?

A.—In 1928, or 1929, I let him get into it. He had his books there, and he had all the system. He was looking into my affairs, and I said: "All right, handle it from this office"—and he put a girl in for that purpose.

10 Q.—And 1928 was the first time he interested himself in the system?

A.—Yes.

Q.—He had never been interested in it before?

A.—He has been checking up on the system since he has been with me, in 1926.

Q.—And you never made any money on the system since 1926?

A.—That is what he tells me.

20 Q.—But he only took it on in 1928?

A.—I could not say that. Mr. MacRostie only commenced from the time he took on the books.

Q.—Do you or do you not know whether you made any money on the system since 1926?

A.—No living man can take the electric light business from my lumber business.

Q.—Did you make any money with your electric light system in 1926?

30 Mr. Scott: I object to this line of questioning the witness in regard to anything that occurred after the flooding or the approval of the plans of the Defendant Company.

Witness: I have already said I do not know.

BY MR. KER (continuing):

Q.—Did you make any money in the year 1925?

40 A.—I do not know. When you speak of the electric system, I do not know.

Q.—Did you make any money in 1924?

A.—I do not know.

Q.—When did you begin to purchase power from the Defendant Company?

A.—About three years ago.

Q.—In what year?

A.—I do not remember.

In the
Superior Court

No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 28th, 1932.
(continued)

Q.—Was it in the year 1929?

A.—I do not know.

Q.—You allege that owing to the raising of the water referred to in paragraph 25 of your declaration your power plant at Farm Point was put out of commission, which necessitated your purchasing power from the Defendant. Do you know when you began to purchase supplementary power from the Defendant?

A.—I do not know the exact date, and I do not even know the year.

10 Q.—In paragraph 12 of your supplementary declaration you state that before the damming up of the water, you had, from the year 1903, owned and carried on a lumber business, with its chief mill at Farm Point. When did you begin to operate the Farm Point lumber mill?

A.—At that date: 1903. To the best of my knowledge, 1903 or 1904.

Q.—When did you begin to operate the Meach Creek power plant? 1912, I think you said.

A.—Yes.

20 Q.—So for nine years you were operating your lumber business without any power from Meach Creek?

A.—No.

Q.—You operated your saw mill industry from 1903 to 1912 without any reference to the power which you subsequently derived in 1912 from your power plant on Meach Creek?

A.—My lumber business is all run from power.

Q.—But it had nothing to do with electric power?

A.—Not at that time.

30 Q.—Nor at any time?

A.—No.

Q.—Electric power generated at your Meach Creek power house has nothing whatsoever to do with your lumber business, and is in no way utilized for your lumber business?

A.—I cannot say that. They are sawing lumber with it.

Q.—Between 1903 and 1912 were you in any way dependent upon electric power generated in your Farm Point power house to run your lumber business?

A.—There was no power house there in 1903.

40 Q.—Not until 1912?

A.—In 1912 there was.

Q.—Previous to the opening of your power house, you were operating your Farm Point lumber mill?

A.—Just at Farm Point only. Right on that one mill site.

Q.—How were you operating it at Farm Point?

A.—By water power.

Q.—Running down through Meach Creek?

In the
Superior Court

No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 28th, 1932.
(continued)

A.—Yes.

Q.—And you continued to do that after 1912, so far as that mill was concerned?

A.—Yes, at that one spot.

Q.—And, so far as that mill is concerned, you could continue to do it at the present time, I suppose?

A.—No.

Q.—Why not?

A.—There is no place to pile one cord of slabs, or lumber.

10 You are speaking about running a mill. You cannot run a mill without having some place for its outlet. Of course, you can run machinery.

Q.—Is there anything that prevents you physically from running your Farm Point saw mill at the present time?

A.—There is nothing to prevent the machinery from going around. It can go around twenty-four hours a day.

Q.—In exactly the same way as it did before the Company Defendant came on the river?

20 A.—The mill of itself—the machinery.

Q.—Are you still operating that mill at Farm Point?

A.—I have not this last while back.

Q.—How long?

A.—A year or so.

Q.—When did you stop operating it?

A.—About a year and a half ago.

Q.—In 1930 or 1931?

A.—Somewhere thereabouts.

Q.—Was it in 1930 or in 1931?

30 A.—In the spring of 1930.

Q.—So, after the water was raised, on March 12th, 1927, you still operated your saw mill at Farm Point?

A.—Under all sorts of difficulties.

Q.—Did you operate it or did you not?

A.—Yes.

Q.—Why did you discontinue its operation in 1930?

A.—It was getting impossible to do anything. The ground was soft around there, and you could hardly move around. As a matter of fact, one lumber pile fell over entirely.

40 Q.—Do I understand your answer to refer to the fact of your piling ground being unsatisfactory?

A.—The biggest part of it.

Q.—Then perhaps you will say it was because of the unsatisfactory condition of your piling ground?

Mr. Scott: The witness said it was because of the increasingly unsatisfactory condition.

In the
Superior Court

No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 28th, 1932.
(continued)

Witness: It got impossible to carry on any longer.

BY MR. KER (continuing):

Q.—You do not know the level to which the water has been kept since then, or the highest level at which it has been kept?

A.—No.

Q.—What area of your piling ground has been affected by this
10 water?

A.—Every bit of it has been affected.

Q.—I am speaking only of your piling ground.

Witness: To what level?

Counsel: Up to the present time.

A.—Up to the present time, the biggest part.

Q.—How much of the whole area of the piling ground?

A.—I could not say. You would have to get the engineers to tell
20 you that.

Q.—You say you discontinued the operation of your lumber mill at Farm Point in 1930, and you say you did it because of the unsatisfactory condition of your piling ground. How much of your piling ground was then affected by the water?

A.—The level goes up and down. It varied about seven or eight feet this summer.

Q.—What was the area that was affected by any level to which the water came before you closed your mill?

30 Witness: You mean the highest point to which the International put the water?

Counsel: The highest point at which they kept it.

A.—They never keep it up.

Q.—Do you know the highest point to which it has been?

A.—It runs along to 319, or 320, or somewhere thereabouts.

Q.—Do you know that?

A.—That is what I do know.

40 Q.—Do you know if it ever went up to 319 before you stopped your operations?

A.—To my knowledge it went over 319.

Q.—How do you know?

A.—By the bench mark on the power house floor.

Q.—You know it by that?

A.—Yes.

Q.—To your knowledge how long did it stay there?

*In the
Superior Court*

No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 28th, 1932.
(continued)

A.—Mr. MacRostie has all those levels and figures.

Q.—You do not know?

A.—No.

Q.—Do you tell me you cannot give me a rough or approximate estimate of the area of your piling ground as originally made?

A.—No.

If I knew the level, I would have a rough idea.

Q.—I mean before the Company defendant came on the river
at all.

A.—I had the whole total then.

Q.—How much was it?

Witness: Before the Company came?

Counsel: Yes.

A.—It would probably run around 30 or 40 acres. I do not know how many acres it would be.

Q.—Would it be 10?

A.—Somewhere thereabouts. I do not know. I have not any idea.

The lumber business is a peculiar business, and it depends on what you are shipping out. If the lumber business is good we go in heavy with contracts. It is not required to be shipped out until it is thoroughly dry. If you take out four million feet you could pile it over 50 acres, or 100 acres. The farther apart you pile it the quicker it dries. You see the space you have, and you set your mill for the highest cut you are going to take out, and if the worst comes to the worst you can dry your lumber in that space.

We never had enough space in Farm Point.

Q.—What space did you have?

A.—Somewhere around 20 or 25 acres.

Q.—Of piling ground?

A.—Which we did pile on. I might only pile on it once in five years. If you call it piling ground, then it would be 20 or 25 acres.

Q.—How much of that would be affected by the raising of the water to elevation 318?

A.—None at all. It never came out of the banks of Meach Creek. That is to my knowledge, of course. The Engineer has been over the ground. Speaking of the levels at Farm Point it never came out of the banks of Meach Creek, coming up to the mill, at 318.

Q.—Out of what banks?

A.—The straight banks of Meach Creek. It is straight up, and then it goes out level. That is the condition at Farm Point.

Q.—In other words, at elevation 318 the water will not flood any of your piling ground?

*In the
Superior Court*

No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 28th, 1932.
(continued)

- 10 A.—I would have no trouble. There is none of my piling ground affected at 318, that I have piled lumber on. At 318 I was in no way affected with what I used as my piling ground.
- Q.—In other words, there was no land that you were using as a piling ground which was affected by the 318 level?
- A.—That I was using as a piling ground, no.
- Q.—Or that you wanted to use as a piling ground?
- A.—I did not want to.
- Q.—You never had occasion to use it?
- A.—No.
- Q.—Therefore, I take it, it was the raising of the water between levels 318 and 321.5 that is causing the alleged destruction of your piling ground?
- A.—Yes. After you go over the banks it goes out perfectly level.
- BY MR. SCOTT:
- 20 Q.—You are now speaking of the banks of Meach Creek?
- A.—Yes. Over the banks, it is level. Six inches will overflow it, or take it off.
- BY MR. KER (continuing):
- 30 Q.—Was any of your piling ground filled in before the Gatineau Power Company came on the river?
- A.—Not the piling ground.
- Q.—Was any of the land which you used as a piling ground previous to the time the Gatineau Power Company came on the river land which had been filled in for that purpose?
- A.—It was never filled in for that purpose—no land around Farm Point.
- Q.—Was it ever filled in?
- A.—Sometimes we would run the sawdust out by water, and it levelled up between the stones; but it was never filled in for a piling ground.
- Q.—Was it filled in for the railway spur?
- A.—We cut a deep filling through the siding for the railroad. That is the siding coming through.
- 40 Q.—The railway was built on a fill over the piling ground?
- A.—I did not build it for the piling ground. There was no piling ground there until the railroad was built.
- Q.—When you brought the railway in you had to fill for the spur?
- A.—I put in a track, and put in the ballast, and got the rails in under the C.P.R. instructions.
- Q.—If none of your land was affected at elevation 318, how

In the
Superior Court

No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 28th, 1932.
(continued)

many acres do you maintain have been affected at 321.5?

A.—Speaking of the piling ground, it is all affected.

Q.—How many acres of piling ground are affected?

A.—I do not know.

Q.—Why do you not know?

A.—Mr. MacRostie will give you those figures.

Q.—Then how do you know there is going to be any considerable effect, if you do not know the acreage affected?

10 A.—The piling ground is all affected.

Q.—Then you do know it is all affected?

A.—Yes. But, whether the acreage is 15, or 20, or 25, or 30, or what it is, I do not know. I know it is 15 or 20, anyway; and probably more.

Q.—And it is all affected?

A.—It is all affected, yes.

Q.—And it is all rendered useless to you as a piling ground?

A.—As far as I am concerned, it is all useless.

Q.—You do not know the levels of your piling ground, do you?

20 A.—No.

Q.—Is your railway spur affected when the water is at elevation 321.5, which is in question here?

A.—It is badly affected. The water goes clean over the top of the rails. To my knowledge it is over the top of the rails. There are eight inches or so of water on the rails, and it was not quite up to the power house floor, and the power house floor is 321 something.

Q.—How do you know that?

A.—If you go to the power house, and there is no water on the floor, and there are eight inches of water over the rails.

30 Q.—Have you seen eight inches of water on the rails?

A.—To my knowledge.

Q.—When would that be?

A.—About 1927, or 1928, or somewhere thereabouts.

Q.—At what time of the year was it?

A.—The second year after the water came up.

Q.—At what time of the year?

A.—It kept there practically all summer.

Q.—8 inches of water for the whole summer?

40 A.—I would not say 8 inches all the time. Somewhere about 8 inches.

Q.—How long did that condition last?

A.—Practically all summer it was over the ballast of the track.

Q.—Has it ever been over since?

A.—Occasionally it has been over since. One summer it submerged the ballast of the track all summer.

Q.—What summer was that?

A.—I have just told you.

*In the
Superior Court*
No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 28th, 1932.
(continued)

Q.—Has it ever been over since?

A.—I have not seen it.

Q.—And you do not know exactly in what year that happened?

A.—No.

Q.—Or the months?

A.—I think it was the second year after the water came up.

Q.—And you do not know the length of time it was so submerged?

A.—No.

10 Q.—Was it ever submerged before the water was raised?

A.—No.

Q.—Do you swear that?

A.—Yes, I can swear that. I have been at Farm Point since 1903.

Q.—At any time before the operations of the Company Defendant began was the water ever up on your power house floor?

A.—No.

Q.—At no time?

20 A.—At no time in the whole twelve months of every year since I have been at Farm Point.

Q.—How close was it to the floor?

A.—I took it from the highest record of the oldest people living when I built the power house—the old times of the floods, when they had to get out in boats in front of the Farm Point Hotel. That was a very low spot. I got the oldest man in the place to tell me how high it was, and I put my power house floor one foot higher than he told me. Before the Gatineau Power Company went there I never saw the water within a foot of that power house floor—and that was the highest—and that would be only one year in ten or 30 fifteen years. I saw it once probably within a foot.

Q.—In other words, before the Gatineau Power Company came on the scene at all there were times—perhaps rare—when the water came within a foot of your power house floor?

A.—It might have come close to a foot.

I took the oldest records of the oldest man I could find, and got the highest point ever known on the Gatineau. I did that when I went there in 1903. Then I put the power house a foot higher than that.

40 Q.—Did you take the level to find out what that highest point was?

A.—Absolutely. I would not be able to put it a foot higher without a level.

Q.—What was the highest level the oldest inhabitant gave you?

A.—When I got there, of course, there were no elevations from sea level. I used the information I had.

Q.—And what was the level at which you put your power house?

In the
Superior Court

No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 28th, 1932.
(continued)

A.—A foot higher than the information I gathered.

Q.—Do you know the present level of the power house floor?

A.—Yes, 321 something.

Q.—And that is a foot higher than the water ever came?

A.—Yes.

Q.—Do you conceive of any particular difficulty in raising the
C.P.R. spur line to allow for the raising of the water to 321.5?

A.—I do not know anything about that.

10 Q.—Do you conceive of any particular difficulty in filling in the
piling ground in order to bring it to a proper level to allow for the
raising of the water to 321.5?

A.—I would not undertake to do it. There is not lumber enough
on the Gatineau to make it worth while.

Q.—Do you think it is possible to do it?

A.—No.

Q.—Why not?

20 A.—There is not lumber enough in that country, or any other
country, to allow a small mill to put up a piling ground to that ex-
tent. There is no bottom there.

Q.—And never has been?

A.—There was a bottom when it was dry, but when it is wet
there is no bottom.

Q.—Then it is not an ideal piling ground?

A.—If it was dry it would be a lovely piling ground.

Q.—You say it would not be affected with the water in Meach
Creek at elevation 318?

A.—Not my piling ground. It had a good hard surface on the
top.

30 Q.—You say above level 318 your piling ground is not affected?

A.—318 does not affect my piling ground.

Q.—Either by seepage or otherwise?

A.—No.

Q.—Still, it is low land—a bottomless sort of land?

A.—It is a low land.

Q.—What difficulty do you foresee in the way of being able to
fill in that piling ground to such a level that it would not be affected
at 321.5?

40 A.—I would not want to get an engineer on the ground to at-
tempt it. To my knowledge, he could not do it and he could not
guarantee a piling ground.

Q.—The fact that you do not think it would be possible is the
only reason you have for believing it could not be done?

A.—I do not think it would be possible.

Q.—You never tried to find out from engineers whether it would
be possible?

A.—Yes.

In the
Superior Court

No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 28th, 1932.
(continued)

Q.—From whom?

Mr. Scott: I object to this as asking for the names of Plaintiff's witnesses.

BY MR. KER (continuing):

Q.—You have informed yourself that it is not an engineering possibility?

10 A.—Yes.

Q.—I suppose the nature of the remainder of the piling ground is the same as that upon which the spur line is built? It is all part of the same land?

A.—According as it goes up. It is practically the same.

Q.—If they could fill in for the purpose of bringing in the spur line, why could they not fill in for the purpose of raising the level of the piling ground?

A.—The engineers can answer that.

20 Q.—Of your personal knowledge you do not know of any reason why the piling ground could not be filled in?

A.—I would not undertake to do it.

Q.—Neither would I. But do you know, of your own personal knowledge, any reason why the piling ground should not be filled in?

A.—I know it could never be filled in with the water over it, as it has been, up to elevation 321.5.

Q.—But, the water is not over it at elevation 318?

A.—It could not be filled in even as it has been for the last three or four years. That is my knowledge.

30 Q.—Why not?

A.—I do not know.

Q.—Then, you have no reason, other than your own opinion, for thinking it is not possible? Your reason is based on your opinion and nothing else?

A.—It is backed up by the engineers.

Q.—You have been informed, or you have informed yourself, that it is not an engineering possibility to fill in the piling ground?

A.—I have been told that.

40 Q.—The next mill to which you refer is the branch mill at Alcove, seven and one-half miles up the river from Farm Point. When did you begin to operate that mill?

A.—It was running in war time, in 1914, and before that, I think. I would not be sure. I know we were going strong when the war stopped. When the Armistice was signed we were busy making roads.

Q.—Are you or are you not able to say when you began to operate the mill at Alcove?

In the
Superior Court
No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 28th, 1932.
(continued)

A.—Sometime in the neighborhood of 1915 to 1918.

Q.—You began the operation?

A.—Of the electric sawmill, yes.

Q.—When did you cease operation?

A.—Around 1924, or 1925, I think. I would not be sure of the exact time, but it was some time around then.

Q.—Were you operating that mill in 1926?

10 Witness: You mean at Alcove?

Counsel: Yes.

A.—We had the machinery for the one mill for the two points. In 1926 that machinery was at mileage 12. When we got done with the cut at one of those points—we took 12 months at one spot, and then 12 months at another. We brought the same machinery backward and forward. The buildings remained over from one year to the other—the camps, and everything, equipped for the two mill sites. In other words, we had the two mill sites.

20 Q.—You say you began operating this Alcove mill in about 1915 to 1918?

A.—Yes.

Q.—And, you ceased operating it in 1924?

12. A.—Yes. In 1924 or 1925 the machinery went down to mileage

Q.—Between 1915 to 1918 and 1924 or 1925 the machinery had remained at Alcove?

A.—No. The machinery remained at mileage 12 in 1926.

30 Q.—I asked you whether the machinery was continuously at Alcove from 1915 to 1918 down to 1924?

A.—No.

Q.—Where was it?

A.—It went backward and forward. Twelve months and one place, and twelve months at another.

Q.—Between 1918 and 1924 it was brought down each year to mileage 12, and moved back each year to Alcove?

A.—No.

40 We went to the bush, and took out the cut. We brought the mill to where the cut came out that winter. We took out enough to run it in the winter months, and we took out enough stuff to keep it going until July or August. When we got done with that cut we just moved it to the other side, where we had taken out the logs the year before. That mill would run the twelve months straight through some years. Then some years we would take out a little cut at both places. The machinery went backward and forward.

Q.—When did you begin to operate any sawmill business at mileage 12?

In the
Superior Court

No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 28th, 1932.
(continued)

- A.—I think it was in the year from 1920 to 1922, or somewhere thereabouts. Perhaps somewhere around 1922.
- Q.—So the Alcove mill remained at Alcove up to 1922?
- A.—Yes.
- Q.—And, from 1922 to 1924 or 1925. . . .
- A.—(Interrupting): It was moved backward and forward.
- Q.—How many times was it moved?
- A.—Generally about once a year.
- Q.—How many times was it moved between 1922 and 1924?
- 10 A.—I could not tell you how many times.
- Q.—Did you move it to mileage 12 in the year 1923?
- A.—No. I do not think so. I think it was at Wakefield in 1923.
- Q.—Did you have it at mileage 12 in 1922?
- A.—I could not tell you that.
- Q.—How did you start cutting at mileage 12 in 1922 unless you were using the Alcove mill?
- A.—I cannot follow you there.
- Q.—You said that as far as you were aware you began your sawmill operations at mileage 12 in 1922?
- 20 A.—1920 to 1922.
- Q.—What were you operating with?
- A.—With the same machinery that would be at Alcove.
- Q.—When you began operating at mileage 12 (in whatever year it may have been) it was with the same machinery that was at Alcove?
- A.—Yes.
- Q.—How long did you keep it there?
- A.—About a year at a time. It would depend on the cut.
- 30 Q.—Then you took it back to Alcove?
- A.—Yes.
- Q.—How long did you keep it there?
- A.—Probably ten or twelve months. Perhaps thirteen months. Or, perhaps it might have been two years at one place for all I know.
- Q.—As I understand you, the last time you operated at Alcove was in 1924 or 1925?
- A.—It may have been in 1924. I do not know. If I operated in 1924, I would be down at Kirk's Ferry in 1925.
- Q.—And, you would be at mileage 12 as soon as you stopped operating at Alcove?
- 40 A.—A year later. In twelve months I would make a move.
- Q.—Can you tell me the last year you operated that mill at Alcove?
- A.—I cannot tell you exactly.
- Q.—Was it 1924?
- A.—I cannot tell you that.
- Q.—The mill certainly was not there in 1926, was it?

*In the
Superior Court*
No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 28th, 1932.
(continued)

A.—No.

Q.—After it was taken to mileage 12 and remained there it was never taken back to Alcove?

A.—No. It was never taken back.

Q.—Where is it now?

A.—It is burned.

Q.—Where did it burn?

A.—In the mill at Farm Point.

10 BY MR. SCOTT:

Q.—When was the fire at Farm Point?

A.—1926 or 1927, I think.

Here is what happened: the machinery at mileage 12 would have gone down in the bottom of the river, the same as the transformers; and to salvage the machinery I took it up and stored it in the bottom of the mill at Farm Point.

Q.—Was it flooded at mileage 12?

A.—Yes.

20

BY MR. KER (continuing):

Q.—When did you do that?

A.—The fall of the flooding.

Q.—Before the flooding?

A.—Just before the flooding.

Q.—It was a portable mill?

A.—Yes.

30 Q.—And you carried it away before the flooding ever took place?

A.—Yes.

Q.—How do you know it would have gone down to the bottom of the river, or that the river would have come over it?

A.—The plans you served on me.

Q.—How do you know the mill would have gone under the water?

A.—I know no more than the plans served on me. The site the mill was on.

40 Q.—Have you a copy of the plan that was served on you?

A.—Yes.

Q.—In any event, you took the machinery and stored it in your mill at Farm Point?

A.—Yes.

Q.—And the mill at Farm Point was burned in 1928?

A.—Yes.

Q.—That was a year after the water was raised?

In the
Superior Court
No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 28th, 1932.
(continued)

A.—The same year the water was raised. The same summer the water was raised.

Q.—And that machinery was destroyed?

A.—Completely burned.

Q.—You do not allege any fault on the part of the Gatineau Power Company in regard to that fire?

Mr. Scott: I object to the question as irrelevant, illegal, and not in issue.

10

BY MR. KER (continuing):

Q.—The Gatineau Power Company had nothing to do with the destruction of that machinery?

A.—I had the machinery, but it never was under the mill at Farm Point until after the flooding was taking place. I never stored my machinery there—two mills in the one site: one mill sawing above, and the other stored below

20

Q.—Your mill at Farm Point was destroyed in 1928?

A.—1928, I think. The first year after the flooding.

Q.—And at that time the machinery for the portable mill which you had brought from mileage 12 before the water was raised was stored in the mill at Farm Point, which was burned?

A.—That is correct.

Q.—In what part of the year 1926 did you move that mill?

A.—There is a little more to it than I told you. They were putting this railroad through, and I had a job to get my cut through. The men were blasting away there, and before the siding got out I brought my steam mill in along with the electric mill. I was hustling to get out my stuff, loading as quickly as I could, and shipping as quickly as I could. The engine came in and brought out one car with 3,000 feet of lumber, and I was hustling to get everything done. When that was done I took away my machinery.

30

Q.—What time of the year would that be?

A.—Late in the fall.

Q.—Can you tell me when?

A.—Some time about November.

Q.—October or November?

40

A.—The ground was frozen. It was late in the fall. The ground was frozen when they dismantled the siding.

Q.—And you never operated at that point after that?

A.—No.

Q.—From where were you deriving the power to operate that mill?

A.—Farm Point. Of course, there was also the steam mill I brought in.

In the
Superior Court

No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 28th, 1932.
(continued)

Q.—Your electric mill was operated from your electric power at Farm Point?

A.—Yes.

Q.—So you did not require any current for your mill at Alcove while you were operating the mill at mileage 12?

A.—Not at the two points together.

Q.—You did not require any current at mileage 12 when you were operating your portable mill at Alcove?

A.—No.

10 Q.—About when did you buy the mileage 12 property?

A.—Somewhere around 1917 or 1918, I think.

Q.—How much did you pay for it?

A.—I could hardly tell you that. I think about \$500.00.

BY MR. SCOTT:

Q.—For the site?

A.—Yes.

20 Mr. Chisholm: The date of the Deed is January 22nd, 1917, and the price is stated to be \$500.00.

Witness: I now produce, as Exhibit D-124, my purchase deed, dated January 22nd, 1917. This is a Deed of Sale from Joseph Burnett to Freeman T. Cross, executed before Louis Bertrand, Notary Public.

BY MR. KER (continuing):

30 Q.—There was a spur line into that mill at mileage 12?

A.—Yes.

Q.—Who built it?

A.—I built it.

Q.—And you paid for it yourself?

A.—Yes.

Q.—Did it belong to you?

40 A.—There is not a spur on the C.P.R. that belongs to the people who built it. They put in the steel, and charge you rental for the steel, and so on.

Q.—It is done under the ordinary siding agreement?

A.—Taking out ties and switch ties, the C.P.R. never charged me anything for the use of the steel, but I laid it. I was charged for the laying of the steel, and the ties, and the grade, but I was never charged for the use of the steel.

Q.—What was the cost of the laying of that siding?

A.—I do not know.

*In the
Superior Court*

No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 28th, 1932.
(continued)

Q.—What do you claim as being the value of the land?

Witness: As a mill site?

Counsel: The value of the property—any site you like. What do you contend is the value?

A.—It goes into my whole established industry.

10 Q.—What do you maintain is the value of the plot or land?

Witness: The value as farm land, as I bought it?

Counsel: The value is whatever value is set up in the Pleadings?

A.—Yes.

20 Q.—I notice you set up a value of \$12,000, including the land and tracks. What part of the \$12,000 is applicable to the land or site, and what part is applicable to the tracks?

A.—The flooding spoils the entire property as far as value is concerned.

Q.—Is that your answer?

A.—As far as destroying the property. The road is taken away. The railroad is taken away, and the best part of the mill site is taken away—your shipping point.

30 Q.—I was not asking you how it was destroyed. My question was this: you claim \$12,000 as the value of the site, including the tracks. What part of that \$12,000 is applicable to the site, and what part is applicable to the siding or tracks?

Witness: Do you mean the old track?

Counsel: I suppose there was nothing but the old track on it. Your Declaration says: "Value of site, including land and tracks, \$12,000". What are the relative proportions in that \$12,000 as between the site value and the track value?

40 Witness: What part?

Counsel: Of the \$12,000. What part do you claim as being the value of the site, and what part do you claim as the value of the tracks?

A.—That was made up as a total destruction of that property, \$12,000—that is my knowledge. That was the way my experts made it up.

In the
Superior Court
No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 28th, 1932.
(continued)

Q.—Do you or do you not know what part is applicable to the site, and what part is applicable to the tracks?

A.—No. That is the total. The flooding of that property has made a total loss of that property as far as I am concerned.

Q.—In your estimation, what would have been the value if there had been no track there?

Witness: The land in itself?

10 Counsel: Yes.

A.—The new C.P.R. line that is going through there now

Q. (interrupting)—I am speaking of the old spur line. If you had no spur on there, what would you consider to be the value of that site?

A.—A business man would not buy a site until he would know where he could put in a spur, and whether he could put in a spur.

Q.—In other words, it would be of very little value without the C.P.R.?

20 A.—The C.P.R. had nothing to do with my shipping. They only took out my cars. As I put them on the track for them they took them out.

Q.—If there had not been any siding on that property, what would have been its value as a site for a saw mill?

A.—I would not buy it.

Q.—You cannot tell, then, what part of the value of the site, including land and tracks, is applicable to tracks, or to the fact that tracks are there?

30 A.—The most important thing in the lumber business is how you are going to get your stuff out.

Q.—So, practically the whole value is due to the siding being there?

A.—I would not buy unless I knew how I was going to get my lumber shipped away, especially taking out ties.

Q.—Do you say \$12,000 is the value of the whole property, including the land, buildings, track and everything else?

40 A.—It is a part of my whole established industry. I would not sell it for \$12,000. It works in with the whole of my established industry. If you are running two or three businesses, and one of them is taken away, the other two may fall to the ground. You ask me if I would take it away for \$12,000. I would not.

Q.—I did not ask you that at all. Is \$12,000 the total valuation you place upon that property?

A.—As far as I am concerned, as a block of an established industry. As a piece by itself I would not consider the value \$12,000.

Q.—You claim \$1,913 additional as the replacement value of the buildings?

*In the
Superior Court*
—
No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 28th, 1932.
(continued)

A.—Yes.

Q.—That is to be added to the \$12,000?

A.—Yes.

Q.—What buildings are on it?

A.—There is nothing there now.

BY MR. SCOTT:

Q.—You may refresh your memory by looking at the Exhibits
10 filed, if you wish to do so.

A.—Some of the buildings are dismantled. They have been
blasting for the road, and the railroad going through there, and
everything else, has left the buildings useless anyway.

BY MR. KER (continuing):

Q.—The railroad left the buildings useless?

A.—They have put holes through my roofs. They even put holes
through the cab of my truck.

20 Q.—The railroad did that?

A.—Blasting for the railroad.

Q.—And you have a case pending for the damages resulting
from that?

A.—It just depends. If we take it as a whole; I will not go on
the C.P.R. for anything. We are going to take this as a damage case
as a whole.

Q.—Is it not a fact the C.P.R. has undertaken to compensate
you for the damage by placing the line through there?

A.—Yes, but they never did it.

30

BY MR. SCOTT:

Q.—That is apart from the flooding damage caused by the Gat-
ineau Power Company?

A.—Yes.

BY MR. KER (continuing):

Q.—There were buildings there?

40

A.—Yes.

Q.—And you say most of those buildings were ruined by blast-
ing by the C.P.R.?

A.—The roofs of them.

Q.—And the right-of-way of the C.P.R. ran right through the
middle of the property?

A.—A small portion.

Q.—I am speaking of the new right-of-way.

In the
Superior Court

No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 28th, 1932.
(continued)

A.—It took a small portion of the property.

Q.—And the new right-of-way involved doing away with the siding, did it not?

A.—Yes.

Q.—In paragraph 27 of your Declaration you have an item of \$100,000 for goodwill of your power business. What does that mean?

A.—The goodwill.

Q.—What do you mean by goodwill?

10 A.—It is doing away with my business. I am deprived forever of it. I am no longer in the power business.

Q.—What do you mean by the goodwill?

A.—I am done away with. The business is taken away from me. That is my goodwill.

Q.—Your business is taken away from you?

A.—Yes.

Q.—Are you not still operating the business?

A.—Yes, I am operating under difficulties.

20 Q.—Then where does \$100,000 of goodwill come into a business that is still being operated by you?

A.—It is operating under difficulties. My goodwill is the time of 1926, when I was going fine, and everything was lovely. Now the picture changes. My goodwill, if you ask me, is easily answered. All my goodwill was gone when I was taken.

Q.—By "goodwill" do you mean the capitalized amount of the revenues derivable from the properties?

A.—That is a part of the way of coming at it.

Q.—What other way is there of coming at it?

A.—I do not know.

30 Q.—Was this the only thing for which you claim \$100,000?

A.—That is a part of it.

Q.—What is the other part?

A.—I am deprived of that business for all time.

Q.—But, you still operate it?

A.—As I told you, under difficulty. My goodwill was in 1926, and it was worth \$100,000.

Q.—In other words, you believe you could have sold that property for \$100,000?

A.—I do not believe it; but I would not sell it,—I would keep it.

40 Q.—You believe you could have sold it?

A.—I do not know whether I could or not. It was my business, and I built it up, and enjoyed it, and it was taken away from me.

Q.—Who took it away from you?

A.—The dam at Chelsea destroyed it.

Q.—How?

A.—It put the whole thing on the blink. When the transformers were under the water they were destroyed. I cannot carry on with

In the
Superior Court

No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 28th, 1932.
(continued)

the transformers under water. The power was chopped off.

Q.—In what respect do you say your goodwill (for which you claim \$100,000) was destroyed, in regard to your power and distribution?

A.—In 1926 it was completely destroyed, as far as I was concerned—goodwill and everything else.

Q.—But, you are still operating it?

A.—A portion of it, yes.

Q.—All except the Kirk's Ferry—Cascades section?

10 A.—The whole works are destroyed. It is all affected.

Q.—You are operating it all except the Kirk's Ferry—Cascades section?

A.—Every bit of the section is affected from the water at Chelsea dam.

Q.—At the present time is your distribution system operating over every part that was operating before, except the Kirk's Ferry—Cascades section?

A.—This morning you asked me if it was affected around Wakefield, and I told you it was. Wakefield is affected.

20 Q.—Is it or is it not operating at Wakefield?

A.—The plant is not operating. The powerhouse is shut down.

Q.—Is any part of your distribution system, other than the Kirk's Ferry—Cascades section, not operating?

A.—My power house is absolutely shut down, and not operating. The transmission line is out from the Gatineau Power Company, through transformers, and we are carrying on under difficulties; taking everything as it comes.

30 Q.—You are carrying on in every section of your distribution system except that between Cascades and Kirk's Ferry?

A.—Yes,—the transmission line—anything we could carry on, we did. In 1926 we took everything as it came. We did our best to carry on and keep my customers going.

Q.—And, so far as your distribution system is concerned, you are carrying on in every respect in the same locality as you were carrying on before—apart from the section between Cascades and Kirk's Ferry?

40 A.—At Meach Creek it is absolutely cut off. My brother was two years without power—separating and everything else by hand—the stove and everything else. It was all cut off.

Q.—Who cut it off?

A.—The Gatineau Power Company cut it off at the upper end of Kirk's Ferry—up in the loop there. It is about two pole lengths, but they cut him off.

Q.—Am I not right in stating that at the present time every portion of your distribution system except the portion south of Cascades is in operation?

*In the
Superior Court*
No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 28th, 1932.
(continued)

A.—The transmission line is carrying on, but

Q.—(Interrupting): Will you please answer my question. Is your system operating in every portion except.

A.—(Interrupting): The power house at Farm Point is completely shut down. That is my system. The power house is as much my system as my pole line is.

Q.—I am asking you about your distribution system.

A.—That is much different. Now it is the transmission line. It is absolutely the same up to below Cascades. You spoke of my system—that is different.

Q.—I asked you to produce profit and loss statements for the years 1921 to 1931 with respect to your lumber industry. Tell me your estimate of revenue and expenditure for your lumber business for the year 1921?

A.—I cannot tell you now.

Q.—Can you give me an estimate of any kind of the revenue and expenditure of your lumber business, per year, between 1921 and 1931?

20 Mr. Scott: I object to the witness being asked in regard to his business since 1926.

BY MR. KER (continuing):

Q.—I asked you to produce your Statements of Revenue and Expenditure of your lumber business between 1921 and 1931. Have you any Statements in regard to that?

30 Mr. Scott: We object to being called upon for the production of any books or Statements subsequently to the date of the Order-in-Council approving the plans for the development.

(The objection is reserved for argument before the Trial Judge.)

BY MR. KER (continuing):

Q.—Have you any Revenue and Expenditure Statements, or any estimate of any kind of your earnings or expenditures on your lumber business for 1921?

40 A.—No. I explained it to you this morning. One year I had a bookkeeper—that was in 1920-21. That was the only year I had a bookkeeper, up to those dates. The way I carried on the business before, the records are in my Auditor's office, from 1914 up. Until 1914, I had nothing—no records. I have no records since, except whatever records you may get there year by year.

Q.—Can you show me a record of your revenues and expenditures in connection with your lumber business for the year 1921.

*In the
Superior Court*

No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 28th, 1932.
(continued)

A.—No.

BY MR. SCOTT:

Q.—Except the books now before you?

A.—Except the books here, yes.

BY MR. KER (continuing):

10 Q.—And, those books are not produced?

A.—But, they are here.

Mr. Ker: I object to the witness making any reference to the books, unless they are produced.

Witness: That is all I have.

BY MR. KER (continuing):

20 Q.—Can you state whether there is any record anywhere of revenue and expenditure on your lumber business for the year 1921?

A.—There is nothing in my records or books, only that Mr. Millen's office has a yearly balance.

BY MR. SCOTT:

Q.—And the books now before you?

A.—Yes, and the books here.

30 Mr. Ker: I ask that the last question and answer be struck from the Record.

BY MR. KER (continuing):

Q.—What books are before you?

A.—This is a book for the 1920-21. In that year I had a book-keeper named Perry, and this is his work. I never saw it since that date until about a couple of days ago.

Q.—What is this book to which you refer?

40 A.—I do not know.

Q.—You do not know of any existing record of the revenues and the expenditures for that year?

A.—Except these books.

Q.—Apart from the books which you have before you but which are not produced?

A.—Yes.

*In the
Superior Court*

No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 28th, 1932.
(continued)

Mr. Scott: They are produced. The witness has been called upon to produce them.

Mr. Chisholm: They are tendered in accordance with the defendant's order to produce.

BY MR. KER (continuing):

10 Q.—From those books which you tender, can you indicate to me any part or portion which contains any record of the expenditures in your lumber business in 1921?

A.—No.

Q.—You spoke of auditors?

A.—Yes.

Q.—Is there a record in the auditor's books of the revenues and expenditures in your lumber business for 1921?

A.—He brought down a yearly statement. I am not prepared to say how he did it.

20 Q.—Have you with you a record of these statements, as you were called upon to produce?

A.—No.

Q.—Why not?

A.—They can be got at Millen's office. They are not in my possession. Here is what I gathered up by chance, knocking around.

Q.—I ask you whether or not you have any statement with you which would show what I have asked for?

A.—No.

Q.—Where could it be obtained?

30 A.—In Murray Millen's office. The nearest I got was a yearly record.

Q.—Why did you not bring it with you?

A.—They were not in my possession.

Q.—But it is your statement?

A.—Yes.

Q.—Will you kindly have it for the trial?

A.—Yes.

Q.—Year by year?

A.—Yes.

40 Q.—And you will make it available to counsel as soon as possible, so that we may avoid any long delay in examining you on it?

A.—Very well.

Q.—Have you any record of the same kind available for any of the years 1922 to 1926 inclusively?

A.—No, no more than that.

Q.—Have you any idea of what your annual revenue and expenditure were during those years, without reference to books?

In the
Superior Court

No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 23th, 1932.
(continued)

A.—I started without a dollar

Q.—(Interrupting) Did you start without a dollar in 1921?

A.—In 1902 I started without a dollar, and in 1914—and you can get the records from Millen's office—they came over the ground and took a fair estimate of my assets, and lots of the stuff was put in a consideration of one dollar.

10 Q.—But I am not examining you on that at all. I asked you whether you can give me an estimated statement, from memory, or from your idea, or from your knowledge, of what your revenue was during the year 1921?

Witness: Up to the year 1921?

Counsel: After the year 1921—to 1926.

A.—No, I could not.

Q.—Then the statement made in your Declaration, paragraph 16, that the annual profit from your lumber business averaged \$20,500 is not based on any figures taken from any books?

20 A.—That figure was taken by experts who came up and valued each asset that I had, and put it in the record based on that way of giving it out. I had nothing at all to do with it. It was gathered from nothing only on the ground itself.

Q.—I do not understand your answer.

A.—If you have a mill, or a bush, or a bit of property, it would be valued in the same way. Each asset was valued at so much by my experts.

Q.—It was a value put on your assets?

A.—That was the way that value was arrived at.

30 Q.—But this figure of \$20,500 is supposed to represent the annual profit. How did you arrive at that figure?

A.—I arrived at that sum from the revenue that was taken in from those assets.

Q.—What was taken in from the assets?

A.—Yes.

Q.—What does the Statement of the Assets include?

A.—I could not tell you that.

Q.—Have you any idea in your own mind as to how that figure of \$20,500 originated or is made up?

40 A.—No, I do not know. All I know is that whatever is put there is through my experts. I do not know offhand.

Q.—Is there anywhere any record of any kind which would show your average annual profit over those years?

A.—I said it once or twice before. Mr. Millen has the whole thing in those years available—anything that I know of.

Q.—This is presumably your business, and you are charging a colossal sum for it.

In the
Superior Court

No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 28th, 1932.
(continued)

A.—I left it to my auditor each year.

Q.—You are claiming that the annual profit derivable from your lumber business was in the neighbourhood of \$20,500. Will you please tell me what is the basis for this statement?

A.—The amount is based on the assets, as far as I know.

Q.—You were asked to produce a list of your timber limits, by lots. Did you bring it?

A.—I now tender to you deeds and licenses, in which the lots are listed.

10 Q.—Will you please let me have a list of your timber limits?

A.—These are deeds, and they are also lists of the lots covering the timber limits.

Q.—In paragraph 15-A you refer to “ near mileage 12, adjacent to Kirk’s Ferry, 500 acres of freehold ”. Will you kindly produce your title deeds for the 500 acres of freehold limits referred to in this section?

20 Mr. Scott: The witness gave his licenses and his deeds to his solicitor, Mr. Chisholm, who has prepared and listed them.

BY MR. KER (continuing):

Q.—You claim for 500 acres of freehold timber limits adjacent to Kirk’s Ferry?

A.—Whatever Mr. Chisholm has.

Q.—But that is not an answer to my question. You claim for 500 acres of freehold timber limits adjacent to Kirk’s Ferry?

A.—Yes.

30 Q.—Do you claim, as set out in paragraph 15-B of your Declaration, for 400 acres of freehold adjacent to Alcove?

A.—I cannot recall that.

Q.—Do you or do you not claim for the timber limits referred to in Section 15-B of your Declaration, 400 acres of freehold, adjacent to Alcove?

A.—That has been taken out.

Q.—Then you do not claim for it?

A.—No.

40 Q.—So we may strike from your Declaration any pretensions which you may have set up with regard to Section 15-B of your Declaration?

A.—Yes.

Q.—That is to say, 400 acres formerly worth \$40.00 an acre?

A.—Yes.

Q.—You do not claim for that?

A.—No.

In the
Superior Court

No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 28th, 1932.
(continued)

Q.—You claimed in your Declaration that this had been reduced in value by \$25.00 an acre?

A.—Yes.

Q.—So we must strike off \$10,000 on that item?

A.—Yes.

Q.—This item, involving a claim of \$10,000 against the Company, is abandoned by the Plaintiff?

A.—Yes.

10 Q.—In paragraph 15-C you claim for 900 acres of freehold adjacent to Farm Point?

A.—That has to be reduced, and when combined with "A" (which is also reduced), the total of the two will be 877 acres freehold, formerly worth \$40.00 an acre. The lot numbers are shown in the list produced as Exhibit D-125.

Q.—I therefore take your answer to mean that the total acreage involved in sections 15-A and 15-C together, shown in the Declaration as 1,400 acres freehold, is now reduced to 877 acres freehold?

A.—Yes.

20 Q.—In other words, a reduction of 523 acres?

A.—Yes.

Q.—For which you have made claim in your Declaration at \$25.00 an acre, indicating a further reduction of \$13,075 in your claim against the Company?

A.—Yes.

Q.—So on items 15-A, 15-B and 15-C in your Declaration you reduce your claims by \$23,075 on these three items alone?

A.—Yes.

30 Q.—Will you kindly produce your documents of title covering the lots which are listed as appertaining to A and C?

A.—I produce, as Exhibit D-126, a Deed of Sale from Mrs. O'Rourke to Freeman T. Cross, of June 11th, 1928, Louis Bertrand, N.P.; for lots 19-A in the 11th Range, Hull, covering 100 acres, and 19-B in the 12th Range, Hull, covering 100 acres.

40 I produce, as Exhibit D-127, Deed of Donation by William Cross to F. T. Cross, of June 27th, 1921, Louis Bertrand, Notary Public, covering lots 18-A in the 12th Range, Hull, 100 acres; 22 in the 12th Range, Hull, covering 200 acres; 23-A in the 12th Range, Hull, covering 100 acres; part of lot 23-B in the 12th Range, Hull, 80 acres; part of lot 24-B in the 12th Range, Hull, 97 acres.

I produce, as Exhibit D-128, Deed of Sale from James Hammond to F. T. Cross, of June 6th, 1927, F. A. Labelle, Notary Public, covering lot 19-A of the 12th Range, Hull, 100 acres.

Q.—I notice your Deed from Hammond, Exhibit D-128, was passed in June, 1927, after the water was raised.

A.—Yes, that is the date the Deed was passed.

Q.—The price was \$1,000?

In the
Superior Court
No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 28th, 1932.
(continued)

A.—I think so. It should be on the Deed.

Q.—What value do you place in your Declaration upon that piece?

A.—I do not know. I did not separate them out one from another.

Q.—You claim they are worth \$40 an acre?

A.—Yes. That has been put on by my bush travellers who went there.

10 Q.—In other words, you purchased this Hammond lot in 1927 for \$1,000, and you are now claiming it to be worth \$4,000?

A.—Yes.

Q.—And that the Company Defendant has depreciated it by \$2,500?

A.—Yes, by doing away with my mill site.

Q.—How far is that from your mill site?

A.—About three miles.

Q.—It is not, of course, affected in any way by flooding?

A.—No.

20 Q.—It is high and dry?

A.—Yes.

Q.—Have you ever taken any wood off it?

A.—Some.

Q.—How much?

A.—Not very much. In feet it would run somewhere in the neighbourhood of 25,000 or 30,000.

Q.—The property you got by donation from William Cross in 1921 consisted of five lots with a total alleged area of 577 acres?

A.—Yes.

30 Q.—That was by donation—you paid nothing for it?

Mr. Scott: The Deed speaks for itself.

BY MR. KER (continuing):

Q.—The Deed states it is made without charge or condition?

A.—Yes.

BY MR. SCOTT:

40

Q.—The donor was your father?

A.—Yes.

BY MR. KER (continuing):

Q.—You estimate those 577 acres to be worth \$40.00 an acre?

A.—Yes.

In the
Superior Court
No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 28th, 1932.
(continued)

Q.—And that they have been depreciated by \$25.00 an acre?

A.—Yes.

Q.—How far are they from your mill?

A.—About the same distance—about three to four miles.

Q.—They are not in any way affected by flooding or otherwise
by the river?

A.—No, none of my bush property is affected by flooding.

BY MR. SCOTT:

10

Q.—You mean none of them are flooded?

A.—None of them are flooded.

BY MR. KER (continuing):

Q.—None of them are actually affected by the water in the
river?

A.—No more than the site of the milling being done away with.

20 Q.—To which of your mills do you allege the lots referred to in
sections A and C of paragraph 15 of your Declaration (shown in
paragraph A of Exhibit D-125) were tributary as far as lumber was
concerned?

A.—The electric mill was put down south, and we would take
the hardwood and perhaps draw it to the mill. The hardwood would
not float. The soft wood, we would take anything that would come
down Meach Creek down to Farm Point. My soft wood that was
over the hill, on the east side of the mountain, would go down to the
electric mill, and be drawn back to Meach Creek—a short haul.

Q.—Which of those lots would be tributary?

30 A.—They would go to both.

Q.—In other words, the hard wood from all the lots would go
to Alcove?

A.—To mileage 12. Not altogether. Perhaps it would be shorter
to draw it down to Farm Point. A portion of anything on the rise
of land as soft wood came down to mileage 12. Therefore, one lot
might be brought to the two places—one for hard wood, and one for
soft wood.

Q.—Did you ever take any of the lumber that was in Meach
Creek over the height of land to the mill at mileage 12?

40 A.—Yes.

Q.—How?

A.—By sleighs. Just the hard wood—not the soft wood.

Q.—Can you tell me what amount of wood you cut off those
limits referred to in Exhibit D-25 as being sections A and C, in the
year 1921?

A.—All I can give you is an average. From two million to four
million feet.

*In the
Superior Court*
—
No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 28th, 1932.
(continued)

Q.—Out of A and C alone?

A.—Yes. From Farm Point mill and mileage 12—from two million to four million feet.

Q.—How much timber did you cut per year off those lots referred to in sections A and C, since you have had them?

BY MR. SCOTT:

10 Q.—That is from the Hammond property, the O'Rourke property and your father's property?

A.—It would not run one million feet.

BY MR. KER:

Q.—A year?

A.—Yes.

I used to get a cut every so many years, and then buy the farmers' logs, and keep over 50 per cent of the cut in that way.

20 Q.—I suppose the largest part of the wood you used in your various mills was wood you bought from farmers?

A.—I bought about 50 per cent of it in that way. I would buy the cut every year and take it out, and clean it off. I never bought the land from them. Then I kept my own in reserve.

Q.—For what years?

A.—Each year. Since I have been in business.

Q.—You say you bought the largest part of the wood you manufactured?

30 A.—I do not say the largest part. Sometimes it might be 90 per cent off my own property; other years it might not be 50 per cent.

Q.—Am I to understand that what you cut off your own property varied from 50 per cent to 90 per cent of your yearly cut?

A.—Yes.

Q.—In paragraph 15-D of your Supplementary Declaration you claim 200 acres of freehold land adjacent to Farm Point. Will you let me have the title to that?

40 A.—I produce, as Exhibit D-129, a Deed of Sale from Mrs. J. A. Murphy to F. T. Cross, dated December 24th, 1928, F. A. Labelle, Notary Public, with notice of cadastre attached thereto, covering the north half of lot 2, 12th Range, Township of Eardley, 100 acres; and the south half of the west half of lot 1 of the 12th Range, Township of Eardley, covering 50 acres.

Q.—The price in this Deed is stated to be \$400?

A.—Yes.

Q.—You claim \$3,000 for that?

A.—That is the price in the Deed, but it stood me much more

*In the
Superior Court*
No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 28th, 1932.
(continued)

than that. Those parties owed me about \$3,000. He died, and it was the old estate winding up. They gave it to me for what it was worth, and it was put in the Deed for \$400.00.

BY MR. SCOTT:

Q.—And you wrote off the \$3,000?

A.—Yes.

10 BY MR. KER (continuing):

Q.—You had been cutting off Mrs. Murphy's property prior to 1928?

A.—Yes.

I produce, as Exhibit D-130, Deed of Sale from Martin Hendricks to F. T. Cross, dated July 20th, 1918, Louis Bertrand, Notary Public, covering the north part of lot 28-B, 15th Range, Township of Hull, 50 acres.

20 Q.—In these Deeds which you have produced, 150 acres were purchased from Mrs. Murphy and 50 acres were purchased from Martin Hendricks. In the Hendricks Deed the price for 100 acres is given as \$900; which is \$9.00 an acre?

A.—Whatever the Deed says.

Q.—And the price for the 150 acres you purchased from Mrs. Murphy is mentioned as \$400?

A.—Yes, but I wrote off the \$3,000 which the Estate owed me.

Q.—How far are those lots from your mills?

A.—About a mile and a half to two miles—a mile and a half.

30 Q.—They are high and dry above the water?

A.—Yes.

Q.—In paragraph 15-E you refer to 5,210 acres under timber lease from the Crown. Will you let me have your leases to that property for the various years since they have been issued?

40 A.—I produce, as Exhibit D-131, certificate relating to Forest Concession No. 58, Township of Wakefield, certified to by F. X. Lemieux, Deputy Minister of Lands and Forests, to which is attached a license affecting the same limits, together with three receipts from the Department of Lands and Forests, each dated April 8th, 1932.

Q.—I notice your license is also dated April, 1932?

A.—For the years 1931-32; 1932.

Q.—Is it or is it not the fact it is dated 1932?

A.—The license for the year 1931 is. It is certified and signed in duplicate at Quebec, April 7th, 1932.

Q.—Where are your licenses for the years preceding 1931-32 for those limits?

*In the
Superior Court*
No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 28th, 1932.
(continued)

A.—I do not know. I do not think I ever had one in my possession. I bought this from the Bank of Montreal, and they kept it there until I paid for it in later years. I just paid my stumpage dues and my ground rent, and I never got any license.

Mr. Scott: The certificate of the Deputy Minister speaks for itself.

Witness: Yes. I had it since 1917.

10

BY MR. KER (continuing):

Q.—Are you filing Exhibit D-131 in justification of your title for the 5,210 acres of timber leased from the Crown?

A.—Yes.

Q.—I see that between 1923 and 1928 your license for those limits was not in existence. There was no license issued to you. Did you have those limits under license every year from 1917 forward?

A.—Yes.

20

Q.—Did you pay ground rents every year?

A.—Yes.

Q.—Have you a statement of the ground rents you paid each year on those limits?

A.—No, I have not. I just sent them a cheque whenever they sent in their bill. Sometimes it would run for two years.

Q.—How did they establish the bill? You must have made reports on the cuts?

A.—You are speaking of the stumpage dues.

30 Q.—Have you any memorandum showing the amount of stumpage dues you paid?

A.—No, I have not. I cut very little timber on those limits.

Q.—How do you account for that?

Witness: For what?

Counsel: Between 1923 and 1928 you had no license, and you paid no stumpage. Between 1923 and 1928 you paid no ground rent or stumpage on those limits. You only paid all the arrears in 1928. That is what the certificate says.

40

A.—I paid the ground rent and stumpage. There were years I would buy from farmers, and I had freehold at that time. I reserved my limit. If I did not pay any stumpage, it was because I cut none on that limit those years.

Q.—It did not matter whether you cut or did not cut, you should have paid the ground rent.

A.—I paid the ground rent all the time.

*In the
Superior Court*

No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 28th, 1932.
(continued)

Q.—But you did not pay the ground rent for 1923-27, until 1928?

A.—They have it in 1928 in one block.

Q.—That was some time after the water was raised, and you thought it well to pay up your ground rent?

A.—Oh, no. I was not worrying about the water.

Q.—You paid no stumpage dues between those dates?

10 A.—I did not take any out. If they have it on that document and they did not bill me with it, I did not take out any.

Q.—Do you know whether or not you paid any stumpage to the Government between 1923 and 1928?

A.—No, I do not think I did.

Q.—Did you cut anything off those limits in those years?

A.—I do not think so. If I did not get a bill, I did not.

Q.—So those 5,210 acres of timber limits were not much utilized by you between those years?

20 A.—No. I have explained it. I reserved the limits as long as I could by buying cheaper timber elsewhere. As long as I could buy cheaper timber elsewhere I reserved the limits.

Q.—What prompted you to pay up in 1928?

A.—The Department forced me to do so.

Q.—But you need not have paid them. You could have abandoned the lease?

A.—They insisted upon them being paid up.

Q.—Could you not have abandoned the lease and got out of it?

A.—I do not know whether I could or not. I did not ask that question. I got a bill, and I paid it.

30 Q.—Surely if those timber limits had been reduced to practically no value by the operations of the Gatineau Power Company in the river, what was the object of renewing your leases a year or two after the water was up?

A.—I cannot say about that. Do you mean to say I did not think anything of the limit that I would not pay my bill and reserve my limit?

Q.—But you did not see fit to do it for four years?

A.—I explained that.

Q.—And that is the only explanation you have to give?

A.—Yes.

40 Q.—That you cut nothing off those limits in that time?

A.—If they did not bill me with anything I was not cutting anything off them.

In the
Superior Court
No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 29th, 1932.
(continued)

And on this twenty-ninth day of September, in the year of Our Lord one thousand nine hundred and thirty-two, personally came and reappeared,

FREEMAN T. CROSS,

and his examination on discovery on behalf of the Defendant was continued by Mr. Ker, K.C., of Counsel for Defendant as follows:—

10 BY MR. KER:

Q.—Will you please let me have a list of the lots referred to in paragraph 15-F as adjacent to Farm Point covering 520 acres under timber lease from private individuals?

A.—I produce as Exhibit D-132 a Deed of Donation from William Cross to Wyman E. Cross, 27th June, 1921, Louis Bertrand, N.P.

20 I also produce as exhibit D-133 a Declaration by F. T. Cross and Wyman Cross, 19th March, 1932, Louis Bertrand, N.P.

These Deeds cover the following lots:—

Lot 24-A in the 12th Range of the Township of Hull, 100 acres.

The west half of lot 21-B in the 13th Range of the Township of Hull, 50 acres.

Lot 24-B in the 13th Range, Township of Hull, 100 acres.

Lot 25-B in the 13th Range, Township of Hull, 100 acres.

Lot 26-B in the 13th Range, Township of Hull, 100 acres.

Lot 25-B in the 14th Range, Township of Hull, 70 acres.

30 Q.—I understand, therefore, that you rely insofar as your title to the timber lands mentioned in paragraph 15-F of your declaration, upon the two Deeds which you now produce as Exhibit D-132 and D-133 respectively?

A.—Yes.

Q.—The Deed D-133 being dated the 19th March, 1932?

A.—Yes.

Q.—Referring back again for the moment to something we were speaking about yesterday: you stated that your power plant was under the supervision of one man?

40 Witness: In what year?

Counsel: Well, you gave me to understand that it was at all times. You stated that this man attended to the power house, and when there were storms he went out and repaired the lines, and charged you fifty cents an hour?

A.—It was looked after by him from 1928 to 1929 when Mac-Rostie took it over.

*In the
Superior Court*

No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 29th, 1932.
(continued)

Q.—Was he on duty twenty-four hours a day?

A.—MacRostie?

Q.—No, not MacRostie. I know MacRostie is not on duty twenty-four hours a day; the man you had to look after it?

A.—Yes, he was right alongside the power house twenty-four hours every day. He slept right alongside it. He slept as close to the power house as he could sleep.

Q.—In case a storm knocked down one of your poles, for instance, what procedure would he follow?

10 A.—The switch would turn off right at the pilot lamp, at his bed.

Q.—The switch would go off at the pilot lamp near his bed?

A.—The automatic switch would cut out on the line. He would go out at all hours.

Q.—Would he cut your whole line out?

A.—Yes.

Q.—Every section of your distribution system?

A.—Yes.

20 Q.—And then, when he would go out, how would he find where the damage was?

A.—He would go along the road.

Q.—He would go along over the whole road?

A.—It is not so long.

Q.—Would he have to go over the whole line in order to find out where the damage was?

A.—He might find it out after being out five minutes, close to the power house.

30 Q.—He had no direct means of knowing where that trouble was without going to find it?

A.—No.

Q.—And in the meantime the whole system was out of commission?

A.—Till he found the trouble.

Q.—Till he found the trouble, and repaired it?

A.—Yes.

Q.—Then, he went back to the power house and threw the switches on again?

A.—Or 'phoned back.

40 Q.—When this man was asleep, I suppose the power house would run by itself when nobody was there at all?

A.—Well, all the time it ran by itself.

Q.—Did the power house run twenty-four hours a day?

A.—Yes, the majority of the time, except, as I explained, one year out of ten or fifteen it might have been a few hours off during that length of time.

Q.—Am I to understand then, that except for a period once, as

In the
Superior Court

No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 29th, 1932.
(continued)

you say, in ten years or so, that you were giving twenty-four hours continuous service to your customers apart from breakdowns on your distribution line, in all other years?

A.—When I first started I only gave them up till twelve o'clock and then, later years I began the twenty-four-hour system.

Q.—How long did the twenty-four-hour service last?

A.—It continued.

Q.—Do you say when you first started you only gave service up till twelve o'clock? What twelve o'clock? Do you mean twelve
10 o'clock midnight?

A.—Midnight. That lasted for three or four years.

Q.—That is to say, it would go on from what time till mid-
night?

A.—It started at dusk, whenever dusk came.

Q.—It started at dusk in the evening and again after midnight, which would perhaps be an average of eight hours?

A.—Somewhere thereabouts.

Q.—And how long did that system of only giving eight hours
20 service last?

A.—Three or four years.

Q.—From what year?

A.—From the time the power house was built in 1911 or 1912.

Q.—So in 1916, 1917 or perhaps 1918, you changed over and gave them twenty-four-hour service?

A.—Yes.

Q.—And you continued with that twenty-four-hour service until when?

A.—Right up to the present date.

Q.—You are quite positive that for four years after your power
30 house was built you have been continuously giving a twenty-four-hour service to your customers apart from breakdowns?

A.—Apart from breakdowns, and one year in ten or fifteen when there would be low water.

Q.—Were the interruptions frequent?

A.—No. Some years I would run a whole year without one interruption.

Q.—How many miles of lines did you have when you were giving this service which was looked after by the one man?

40 A.—Some thirty miles of wire all told, the secondary primary wire.

Q.—That was wire on the poles. Does that mean ten miles of line?

A.—I could not say.

Q.—How many miles of line? I am not speaking of how many yards of wire were used, but how many miles of line were composed in your distribution line?

*In the
Superior Court*
No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 29th, 1932.
(continued)

A.—Three wires on the line.

Q.—I am speaking of pole lines, how many miles of pole lines were there on your distribution system?

A.—That is made up of so many poles on an average.

Q.—I know that, but how many miles of line?

Mr. Scott: It is mentioned in the particulars.

Witness: It is mentioned in the particulars. From memory I
10 cannot tell just exactly.

BY MR. KER:

Q.—Refer to your particulars then. What do your particulars show?

BY MR. SCOTT:

Q.—Look at the top of the page, Mr. Cross. Read it out?
20

A.—“Particulars of the points to and from the 31 miles of the transmission line extend.”

Q.—These the particulars in paragraph 27 of your Supplementary Declaration?

A.—Yes.

Q.—That is correct, Mr. Cross?

A.—Yes.

BY MR. KER:

Q.—Those 31 miles that you speak of are miles of pole lines?
30

A.—It is covering from point to point.

Q.—It has no reference to the length of wires which you put on those poles, because there would be three wires on the poles, would there not?

A.—Some have three, some have two.

Q.—Those thirty-one miles have no reference to the total length of the wire then?

A.—Well, it is thirty-one miles, thirty-one miles of wire.

Q.—You say thirty-one miles of transmission line?

A.—Where there would be two strands it would be three times
40 that.

Q.—So that this one man, up till the time you handed it over to Mr. MacRostie, looked after those thirty-one miles of transmission line?

A.—Yes.

Q.—And you say that over those lines, summer and winter

A.—Excuse me, I have not got thirty-one miles of transmission

*In the
Superior Court*
No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 29th, 1932.
(continued)

line. Of those thirty-one miles, quite a bit of that is secondary line.

Q.—I won't worry about that. I do not care whether it is transmission or secondary. It is pole lines?

A.—He looked after the pole lines.

Q.—It is pole lines?

A.—Yes, pole lines.

Q.—And it is your considered statement that there were times when for a year you would go without an interruption on this line, on the twenty-four-hour service?

10 A.—There would be some years there would be nothing wrong in the whole twelve months of the year, with that pole line.

BY MR. SCOTT:

Q.—That is, before the flooding by the Company?

A.—Yes, before 1926.

BY MR. KER:

20 Q.—I am speaking of to the time you handed it over to Mr. MacRostie?

Mr. Scott: We are not speaking of any time after 1926, unless the Judge so orders.

BY MR. KER:

30 Q.—You said that you dispensed with the one-man service on the line, and that you handed it over to Mr. MacRostie?

A.—Yes.

Q.—Up to that time you had not been suffering any severe interruptions?

Mr. Scott: I object to any question as to what happened to Mr. Cross' distribution system after the flooding by the Gatineau Power Company, or, indeed, after 1926, for the reason that any such question or any such testimony is irrelevant under the Special Act.

40 (The objection is reserved for the decision of the Trial Judge.)

(The Defendant reserves its right to continue the examination on this point after a ruling by the Trial Judge.)

Mr. Scott: Provided just ruling is favourable to the Defendant.

BY MR. KER:

*In the
Superior Court*

No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 29th, 1932.
(continued)

Q.—Up to the year 1926, then, there were no interruptions of your service at all?

A.—Oh, yes. I did not say that.

Q.—What did you say?

A.—Some years I would run the whole twelve months, and other years perhaps I would have three or four interruptions, perhaps one in a week or in a short time.

10 Q.—How many years between 1918 (when you went on to a twenty-four-hour service) and 1926 were there in which there were no interruptions whatever of your service?

A.—Some eight years. I would run about two years in that length of time.

Q.—Do you mean that there were two years in the eight years in which there were no interruptions?

A.—I am speaking from memory; about two years; there was over one, anyway.

20 Q.—During which of those two years the service was never interrupted in a manner to require your man to go out and do any repairs on the line—your service was not interrupted to your customers in a manner to make it necessary for you to close the current off?

A.—The man can speak for himself.

Q.—I am not asking you that?

A.—To my knowledge, the man never went out for one year on the line—they never called for him on the line for one year. I did not pay him. I paid him when he went out, and he put in his bill. To my knowledge, I never paid him.

30 Q.—In other words, it is your contention here that your line of thirty-one miles in length was capable of being maintained in proper shape by one man?

A.—Yes.

Q.—At an expenditure of \$50.00 a year?

A.—A total of about \$200.00.

Q.—I am speaking now of his work on interruptions; at a total expense of \$50.00 a year?

A.—Yes.

40 Q.—I suppose if that is the case, and you had no interruptions for, let us say, two years, and after that very, very occasional interruptions in the other years, you could not have had any complaints about your line?

A.—Not very many, for sure.

Q.—You did not have many?

A.—No.

Q.—Did you have any?

A.—Until 1926, I think I can safely say I do not think I had one per cent.

*In the
Superior Court*
No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 29th, 1932.
(continued)

Q.—What do you mean by one per cent?

A.—One per cent of the whole total customers.

Q.—Were there any complaints in 1926?

A.—Yes. That is the time the brushing took place.

Q.—Up to May 21st, 1926, were there any complaints?

A.—No.

Q.—Do you swear that?

A.—Yes, to the best of my knowledge.

10 Q.—Not to the best of your knowledge. You always get around
it by saying to the best of your knowledge?

A.—It is seven years ago, and I am not going to swear that a
man did not come to my door at night and say, "The lights are off".
I am not going to swear that.

Q.—Were there any complaints during the year 1926 after that
time?

A.—Lots of them.

Q.—Part of your lumber business was the manufacturing of ties.
I believe?

20 A.—I cut ties.

Q.—What percentage of your business would be devoted to the
manufacture of ties?

A.—Some years I would not take out one per cent of ties, and
other years I would take out sixty per cent.

Q.—Let us say from 1921 to 1926, what percentage of your busi-
ness was devoted to the manufacture of ties?

A.—Twenty or twenty-five per cent.

Q.—Not more than that?

A.—No.

30 Q.—Ties, of course, are shipped out at once, I suppose, as soon as
they are made?

A.—Sometimes. Sometimes we hold them. I have seen them
piled up twenty feet above the top of the car.

Q.—You hold them the same length of time that you would
hold lumber?

A.—As a rule, we ship them out sooner.

40 Q.—During the same period from 1920 to 1926, I have asked
you to produce (let us say from 1921 to 1931 in view of Mr. Scott's
objection—we will limit that from 1921 to 1926) a statement of
timber cut in each year on all the limits referred to in your declara-
tion. Have you got a statement of that kind?

A.—No.

Q.—Why not?

A.—I have not got a complete statement. I never kept a com-
plete statement.

Q.—You don't know how much timber you cut during those
years?

In the
Superior Court

No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 29th, 1932.
(continued)

- A.—No, an average of from two to four million feet.
Q.—Each year?
A.—Each year, on an average.
Q.—What was the lowest you ever cut in any year during that period?
A.—Oh, I could not say that.
Q.—How do you arrive at your average, then?
A.—If you pin me down to one year, and back to ten years
Q.—Did you ever run below two million feet?
10 A.—Yes, and I might have gone up to six millions some years.
Q.—How low did you go?
A.—I might have gone below, I don't know.
Q.—But you are quite sure you averaged between two and four million feet board measure from 1921 to 1926?
A.—Feet board measure.
Q.—Per year?
A.—Yes.
Q.—Cut off your limits and off Crown limits?
20 A.—No, I would not say that. I bought quite considerable.
Q.—I am asking you what you cut. I am not asking you what you bought.
A.—You asked me, off my own limits. I did not buy it. I cut off my own limits. I am explaining that.
Q.—Of those two to four million feet averaged over those years, what did you cut off your own limits?
A.—Some years I would cut ninety per cent and some years I would not cut forty per cent off my own limits.
Q.—As you stated yesterday, it averaged between fifty and
30 ninety per cent off your own limits?
A.—Some years.
Q.—It averaged over those years between 50 and 90 per cent, varying?
A.—Yes.
Q.—The balance you purchased?
A.—Yes.
Q.—In 1926 what was the board measure capacity of your piling ground? How much could you pile per acre?
A.—In 1926, do you mean what I could pile on my piling
40 ground?
Q.—What quantity of timber could you pile on the piling ground that was vacant then?
A.—The piling ground now, if we did not sell one board at all during the season cut, is that what you are alluding to?
Q.—No. I am asking what was the capacity of your piling ground?
A.—We did not sell a board at all.

*In the
Superior Court*
No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 29th, 1932.
(continued)

Q.—Apart entirely as to whether you sold or not, what was the capacity of area as a place for piling ground.

A.—I never piled my lumber in one pile when shipping. It depends how high you are going to pile your piles, and how far you are going to put them apart. I have no idea how many feet I can pile on that piling ground. It depends how you are going to pile it.

Q.—You have no idea how much capacity you had on that piling ground in 1926?

10 A.—If you put it up forty feet, I might put up five million feet. If you put it eight feet, I would not pile a million feet.

BY MR. SCOTT:

Q.—But you could pile up to forty feet?

A.—Yes.

BY MR. KER:

20 Q.—I take it you are unable to supply me with the statement I asked you for in paragraph 5 of the Notice to Produce, as to the amount of timber cut in each year between 1921 and 1926?

A.—Only an average.

Q.—And that average is an average, according to your statement, of from two to four million feet board measure per year, which also included the board lumber which you purchased?

A.—Yes.

Q.—And that the cut was running fifty to ninety per cent off your own limits during those years?

30 A.—Yes, fifty to ninety per cent.

Q.—Are you in the lumber business at the present time?

A.—No.

Q.—What is your business at present?

A.—Nothing.

40 Q.—Paragraph 4 of the Particulars which you have furnished with reference to paragraph 27 of your Declaration, refers to certain storage dams and improvements in the upper reaches of Meach Creek, say, to the outlet of Carmen Lake, is valued at \$1,500.00, and that the outlet of Spring Lake is \$800.00, making a total of \$2,300.00, and you reduce the amount of \$8,000.00 claimed in your Declaration to this \$2,300.00 which is referred to in your Particulars. What proprietary interest, if any, have you got, in any of those storage dams? In this connection I refer you to the Notice to Produce, paragraph 3, in which you were asked to produce all documents of title covering your ownership, or right, or interest, in storage dams referred to in paragraph 4 of your Particulars?

A.—The storage dam, I asked leave to put it up on Carmen's

*In the
Superior Court*

No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 29th, 1932.
(continued)

Lake. He said absolutely it would not do him any harm, and that I could put it down. I did not raise the water in the lake any higher in the spring freshet, the nine-foot cut in the rock, and in the dry season to allow the lake to drop nine feet from average high water mark

Q.—That was for the purpose of log driving?

A.—Both for driving and power purposes.

Q.—Do you own that dam?

A.—I did the labour on it.

10

Q.—Do you own the dam?

A.—I own the material.

BY MR. SCOTT:

Q.—Then you own the dam?

A.—Well, I don't own the land.

BY MR. KER:

20

Q.—Do you own the land on which the dam is built?

A.—I have no ownership to the land. I asked for the rights to put it there.

Q.—Have you any written evidence to the rights of that dam, or to have it there?

A.—No, nothing in writing.

Q.—Have you ever had this dam approved by the Department of Lands and Forests of the Province of Quebec?

A.—No.

30

Q.—As to the dam at Spring Lake, will you explain what ownership you pretend to have in that?

A.—That is on my own property.

Q.—And what does that dam impound?

A.—The lake is about half a mile long and a quarter of a mile wide.

Q.—What is the name of the lake that the property is impounded on that dam?

A.—Spring Lake.

Q.—What is the nature of the dam?

A.—It is a wooden dam, banked with earth.

40

Q.—When was it built?

A.—In 1924 or 1925, I think.

Q.—Are you sure?

A.—To the best of my knowledge, 1924 or 1925.

Q.—It is built upon your own property?

A.—Yes.

Q.—Built by you on your own property?

A.—Yes.

*In the
Superior Court*

No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 29th, 1932.
(continued)

- Q.—Have you ever had any authority for the impounding of the waters of Spring Lake, from the Department?
A.—No.
Q.—When did you build the Carmen Lake dam?
A.—The same year, I think.
Q.—1924?
A.—1925. In fact, I was two years. I started one year and finished in another year.
10 Q.—Of course, those dams are in no way physically affected by the waters of the Gatineau River?
A.—Well, for power purposes they are affected.
Q.—How much higher than the Gatineau River?
A.—They are flooded.
Q.—How much higher are they than the Gatineau River?
A.—100 feet.
Q.—The waters then come down into Meach Creek?
A.—Yes.
Q.—Then how much higher is it than the Gatineau River?
20 it is A.—I think Meach Creek is something like 80 feet higher—no, 80 feet less. You mean of the level of the Gatineau?
Q.—Approximately what level?
A.—It is approximately eighty feet above the Gatineau River.
Q.—At the end of Meach Lake as it runs into Meach Creek you have another dam?
A.—There is another dam there.
Q.—When was that dam constructed?
A.—I worked on that dam. I built the dam there myself in 1900.
Q.—The water runs through that dam from Meach Lake into
30 Meach Creek, runs down this slope of 80 feet, and half way down the hill goes into your sawmill, and the balance at the bottom of your property goes into the power house?
A.—Yes.
Q.—The sawmill water wheel, the sawmill being half way up the hill?
A.—Not for half way up the hill.
Q.—I am speaking approximately; about midway up?
A.—It is about three feet above the level 321, the tail race.
Q.—The sawmill?
40 A.—Well, it is only about three feet.
Q.—How many feet above the 321.5 level is the intake of your pipe into your sawmill from Meach Creek?
A.—The level of 325 and 330 went right under the tailrace of the sawmill and submerged the wheel by the surveyors' pickets at that time in 330.
Q.—Whose surveyors?
A.—The International Paper Company.

*In the
Superior Court*

No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 29th, 1932.
(continued)

Q.—How do you know that?

A.—I saw them there.

Q.—Are you swearing that? Are you telling me as a matter of straight fact that the tailrace water wheel connected with your sawmill is only at level 325?

A.—My statement is the surveyors that were around, they told me themselves, and put down pickets, that that was the level of 330, and it came up around the tailrace and submerged the tailrace, the lumber mill at Farm Point, 330.

10 Q.—Will you tell me what the vertical distance would be from the top of your power house at the bottom of the hill to the bottom of your sawmill part way up the hill?

A.—Are you talking about the bottom of the draft tube or the sawmill wheel?

Q.—I am talking of the sawmill itself?

A.—The sawmill is twenty-four feet on the upper floor, and the bottom under the water comes out first 24 feet lower.

20 Q.—How high is that above the roof of your power house—the vertical distance?

A.—The top of the mill?

Q.—The roof of the mill?

A.—The roof of the mill would be about 26 or 27 feet high, that is, the top of the mill.

Q.—And how high is your power house?

A.—It is only ten feet more.

Q.—So from the top of the power house, if I understand you correctly, to the base of the tail race of the saw mill, how far vertically?

30 A.—The only statement I can give, which I know is a fact at 330, if these pickets are right, and the engineer told me it was correct, it is in the tailrace of my saw mill 330, from the facts right on the ground, and the top of the power house is only ten feet high, and it will certainly submerge the whole bottom of my wheel, the lumber mill.

Q.—If the lumber mill were at the top of your power house, the bottom of your wheel of your saw mill would be submerged?

A.—Yes.

Q.—You are quite convinced of that?

40 A.—Yes.

Q.—Did you ever take any levels to prove that?

A.—No, I did not.

Q.—At any rate, the water from the wheel at the saw mill discharges into Meach Creek?

A.—Yes.

Q.—It does not run through your power house?

A.—No.

In the
Superior Court

No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 29th, 1932.
(continued)

Q.—So that there is a diversion of the water of Meach Creek, insofar as its production of energy is concerned, part of which is going into the saw mill when the saw mill is working, and part of it going into the power house?

A.—Yes.

Q.—Can it all be diverted into the power house if the saw mill were not working?

A.—Yes.

10 Q.—It can all be put through the power house?

A.—Yes.

Q.—When it is all going through the power house, what amount of electrical energy is the power house developing?

A.—I stated yesterday about 200 horsepower.

Q.—What is the rating of your wheel? I think you said you did not know?

A.—I don't know.

Q.—What is the kilowatt capacity of your generator?

A.—125 kilowatts, I think.

20 Q.—Have you any Deed for the property on which the Spring Lake dam was built?

A.—Yes, I think it is among those papers here.

Q.—Will you indicate to me what lot it is?

A.—The fifty acres I got from Mr. Hendrick as referred to in Exhibit D-130. The Spring Lake dam is built on property which I acquired from Hendrick on the 20th July, 1918, under the Deed filed as Exhibit D-130 on discovery, as referred to in paragraph 1 of that deed.

30 Q.—That Deed you have already produced in connection with your alleged claim for timber lands.

A.—Yes.

I want to correct my evidence as to the water going through the power house wheel. We have ample water for the two wheels at certain times of the year when we cannot put it all through the power house wheel, the water that comes down Meach Creek.

Q.—I see what you mean. I am to understand, therefore, that if you were operating your saw mill and your power plant you have got to divide the water coming down Meach Creek between them?

A.—Oh, absolutely. It runs both machinery.

40 Q.—But not the same water? The same water does not run the same machinery; it does not go through the saw mill?

A.—No, it is a "T" off the one penstock.

Q.—You state in your particulars: "Plaintiff claims these dams were rendered useless by the flooding and taking of his industry at Farm Point". I understand, of course, there is no actual flooding affecting the waters which have to do with these dams:

*In the
Superior Court*

No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 29th, 1932.
(continued)

there is no flooding from the Gatineau River which affects those lands?

A.—As far as flooding is concerned.

Q.—And, as a matter of fact, those dams are absolutely unaffected insofar as they might serve the saw mill?

A.—Oh, no, they are no use to me when the saw mill is not in operation.

Q.—There is no reason for the saw mill not being in operation, except insofar as the piling ground is concerned?

10 A.—That is the whole thing. That is everything in the lumber business, to get rid of your stock from the mill.

Q.—Let me understand this clearly: your total claim for the so-called destruction of your lumber business, including your dams on the high level, results from the fact that you state that you have insufficient piling ground due to the flooding by the Company?

A.—As far as Farm Point.

BY MR. SCOTT:

20 Q.—Insofar as Farm Point is concerned?

A.—Insofar as Farm Point is concerned, and it is taking away a part of my established industry, that is, speaking of mileage 12 down there. That is part of my business. If you take that away you hinder every dam on that Creek and every bit of the lumber operations.

BY MR. KER:

30 Q.—I want to understand you quite clearly on your testimony on this point. You are maintaining that the Company Defendant has destroyed two businesses, a power business and a lumber business?

A.—Yes.

Q.—You allege they have destroyed the lumber business, first of all, because they have, or would, submerge at the level of 321.5 your piling ground, and also because having destroyed your electrical business they have interfered with the operation of the electrically driven lumber mill?

40 A.—They have interfered with my lumber business.

Q.—With electrically driven lumber mills?

A.—Also the mill.

Q.—Is that so?

A.—If you take away one unit out of the business, the business may fall to the ground; you interfere with my whole lumber business, the dam at Chelsea; you interfere with the whole works.

Q.—I want to understand this clearly that the effect on your

*In the
Superior Court*

No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 29th, 1932.
(continued)

lumber business is caused, first of all, by reason of the fact of sub-
mersion of your piling ground?

A.—Yes.

Q.—That is the particular effect that it has at Farm Point?

BY MR. SCOTT:

Q.—That is one of many?

A.—That is one unit.

10

BY MR KER:

Q.—The only ill effect to the Farm Point lumber mill unit is
the effect to the piling ground?

A.—As far as that unit is concerned at Farm Point, that is, in
the lumber business.

Q.—The only effect to your lumber unit at Farm Point is the
effect caused by the submersion of the piling ground?

20 A.—To the electric light plant. You are speaking of the lumber
business?

Q.—I am speaking only of the lumber business. The unit of
the lumber business at Farm Point, the only effect is on that unit.
It could operate successfully by itself as one unit. It is physically
possible to operate it in every respect, except insofar as the piling
ground?

A.—There is the piling ground, and there is no way to ship
out there. The railway is taken away.

30 Q.—The railway spur and the piling ground are the only two
possible objections raised by the flooding?

A.—On that business.

Q.—That is all?

A.—Yes.

Q.—Your contention is that so far as mileage 12 and the Alcove
Mill (which are one and the same Mill) are concerned, whether it
be at Alcove or at mileage 12, that by reason of the effect upon the
power plant at Farm Point you are unable to secure electrical energy
to run it?

A.—I am drowned out as well.

40 Q.—And the land upon which it was built is submerged?

A.—Yes.

Q.—Was the portion of the land, the actual structure, the frame
building, the portable mill on which the mill was erected, submerged?

A.—I don't know, but to the best of my knowledge a part of it.

Q.—A large part of that property at mileage 12 was made the
subject of expropriation by the C.P.R. for the right of way of their
railway?

*In the
Superior Court*

No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 29th, 1932.
(continued)

A.—Not a large portion.

Q.—A considerable part of it?

A.—One-third.

Mr. Scott: Any expropriation proceedings taken by the C.P.R. speak for themselves.

BY MR. KER:

10 Q.—Whatever that extent may be as these proceedings may disclose, they in themselves would of necessity have caused the removal of your siding at mileage 12, would they not?

A.—That is the flooding.

Q.—I am not speaking of the flooding. I am saying the relocation of the C.P.R. right of way would of necessity have deprived you of your siding at mileage 12?

A.—No, it would not deprive me. The C.P.R. siding still remained below. I had a siding into my mill and the Gatineau highway came down below my property

20 Q.—What is the use of talking like that. Your deposition is full of irrelevant matter. I am asking you, yes or no, whether the fact that the C.P.R. was relocated and your line expropriated would of necessity have involved the removal of the siding which was there before?

A.—Yes, if they took up the old siding and put it on the hill.

Q.—Could that old siding have been operated as it was with the C.P.R. line relocated as it was?

A.—No.

30 BY MR. SCOTT:

Q.—The old siding?

A.—The old siding.

BY MR. KER:

40 Q.—And you are not aware that any of the actual constructions or buildings which might have been on mileage 12 would have been submerged, or whether they would not, by the Gatineau Power Company's operations?

A.—I think there was part of those buildings submerged with the water.

Q.—Do you know?

A.—I don't know. I have not been down to where the old buildings were at that time. Some were taken away.

Q.—How much power did that portable mill at mileage 12 use?

*In the
Superior Court*
—
No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 29th, 1932.
(continued)

A.—Eighty horsepower, one fifty, and one thirty motor.

Q.—How much did your distribution system use?

A.—I have no check on what it used.

Q.—You don't know?

A.—No.

Q.—You have no idea, although you have been operating that distribution system since 1912; you have no knowledge of the consumption of power?

10 A.—All I know is, we had full load with them.

Q.—I am not asking you that?

A.—That is all I do know, that is, the power that is in that machinery there gave the full load off and when we would saw, if we were short of power for serving customers in the fall of the year we would stop as soon as it came dusk, to give the load to the customers.

BY MR. SCOTT:

Q.—That is, you would stop your lumber operations?

20 A.—Yes

BY MR. KER:

Q.—Which then are you suggesting was the primary part of your business, the lumber business or the power business?

A.—I stated yesterday very clearly they both run together.

Q.—Which would you consider to be the more important?

30 A.—Oh, I don't know. I never took that into consideration. They both run together. Perhaps one would make a failure without the other.

Q.—May I suggest to you, in view of your statement, that the revenues from the lumber business were \$20,000 and the revenues from the distribution business were \$8,000. Would that give you any idea of what the relative importance of the two businesses was?

A.—The lumber was the first business I started, so therefore I appreciated more the lumber business.

Q.—As a matter of fact, the power distribution business was subsidiary to the lumber business?

40 A.—I started the electric plant and worked it together with the lumber business.

Q.—When your portable mill which utilized eighty horsepower was operating, were you able to give complete service on your distribution system?

A.—Yes.

Q.—Why was it necessary to turn it off at dusk when you needed the other load?

A.—In the lumber business we could start an hour earlier in the

*In the
Superior Court*
No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 29th, 1932.
(continued)

morning and quit an hour earlier in the evening which gave the ten hours to the work.

Q.—Do you mean to tell me that during the years from 1920 to 1926 you had at all times sufficient power to run your mileage 12 mill during the day and attend to all the needs of your distribution system?

A.—Not at all times. I told you of years striking in—you are getting around that time

10 Q.—Apart from the odd year, one in ten?

A.—Yes.

Q.—That you had ample power to keep your mileage 12 sawmill going which used eighty horsepower, and to take care of all the needs of your distribution system?

A.—Yes, and the customers were all well satisfied.

Q.—Up to 1926?

A.—Up to 1926.

BY MR. SCOTT:

20 Q.—Up to the Spring of 1926?

A.—Up to the Spring of 1926.

BY MR. KER:

Q.—Why did they become dissatisfied in 1926?

A.—They had lots of reasons to become dissatisfied. I was dissatisfied myself. The brush men were throwing down my line; they were throwing trees over the top of my wires.

30 Q.—Who was doing that?

A.—The Gatineau Power Company.

Q.—Where?

A.—All through Kirk's Ferry.

Q.—What part?

A.—Along the highway, the brush—I told you yesterday I had to take the man and go and shut off the power house, or half of them would have been killed.

Q.—That was in connection with the relocation of the highway?

40 A.—I don't know what it was in connection with, but the trees came along my wires, and the blasting of stones from the railway was going on up there.

Q.—And you think it is fair to charge all that damage to the Gatineau Power Company?

A.—I am just telling you that that is the fact.

Q.—And it was that which resulted in the complaints?

A.—It might have started them. I don't know what started it, but it started in 1926.

*In the
Superior Court*
No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 29th, 1932.
(continued)

Q.—You still had as much power available in 1926 as you ever had?

A.—Well, till the flooding started.

Q.—The flooding did not start in 1926. What lines and poles did the Company ever cut down of yours?

A.—I did not say they cut them down. They broke them down.

Q.—What lines, or what poles, did the Company break down, and where?

A.—At Kirk's Ferry.

10 Q.—How many poles did they break down?

A.—I don't know how many poles.

Q.—Do you know of one they broke down?

A.—Yes.

Q.—That the Gatineau Power Company broke down?

A.—I am not saying the Gatineau Power. The men did it. I went to look and they would say for me to send them a bill. They told me to keep track of it.

20 Q.—How many poles on your system in that district were broken down?

A.—Now, I could not tell you how many were broken, but I do know the wires were broken every day or so. There was a man came down to fix the wires, and they simply could not keep them up.

Q.—How many poles were broken down on your system by the Company Defendant?

A.—To the best of my knowledge there would be six or seven, somewhere thereabouts.

Q.—Where were they?

A.—In Kirk's Ferry.

30 Q.—All of them?

A.—Well, along the line from Cascades down to the lower end of Kirk's Ferry.

Q.—What year was that in?

A.—It was the spring before the flooding started.

Q.—What year was that in?

A.—And even up to the fall of 1926.

Q.—How long did that business of knocking poles down last?

A.—They started to brush in March.

Q.—Of what year?

40 A.—The year they started to build the dam, they started in the fall, and started to brush in January at Chelsea, and about the 1st March they were in Kirk's Ferry, and that remained until late in the fall.

Q.—What do you mean by brush?

A.—Falling trees along the Gatineau Highway, and over where the poles were on both sides of the road—there were trees.

*In the
Superior Court*

No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 29th, 1932.
(continued)

BY MR. SCOTT:

Q.—By falling trees you mean cutting down trees?

A.—Cutting down trees and throwing them along the line. The men could not do anything else, because they were on both sides of the road.

BY MR. KER:

10 Q.—Is it your contention they were cutting trees for re-location of the highway in 1926?

A.—I don't know. They were cutting them to get them out of the way before the water came up, so they would not be sticking out of the water. My poles stuck up, the few that remained, and the trees were taken away.

Q.—Those poles were knocked down?

A.—Correct.

Q.—And the wires were interfered with?

20 A.—They went all under water, transformers and everything else.

In taking the crossing at Cascades—I sat up one Saturday night and went down to the Cascades at three o'clock in the morning and there was nothing doing. I went down at six o'clock in the morning and there was a truckload of men with material, shutting off the power by a short circuit or something, to leave the wires high enough for the ballast for the raising of the rails at that point, over those high voltage wires, and they would not get off, so I went up on the Sunday morning, and got a bailiff out of church, and brought him down, and still he held out, he was going to go through with the job. At last I said, "Come down tomorrow morning, we will go through in a legal way under protest, I will let you go through".

30 Q.—I don't know what you are talking about. I did not ask you any question.

BY MR. SCOTT:

Q.—When you say there was a truck there, is that in respect of this matter of complaints on your line?

40 A.—Yes. If they made a short circuit on my line, my line would be put out of business.

BY MR. SCOTT:

Q.—Whose truck was it?

A.—The International Paper Company's.

*In the
Superior Court*

No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 29th, 1932.
(continued)

BY MR. KER:

Q.—Not the Gatineau Power Company?

A.—I don't know what it was, then. I think it was the International Paper Company, then.

Q.—Paragraph 21 of your declaration refers to your being the owner of the portion of lot 23-B in the 16th Range of the Township of Hull, and you describe that property which is on the east side of the river?

10 A.—Yes.

Q.—You acquired that property from Elizabeth Carmen?

A.—Yes.

Q.—How much did you pay for it?

A.—I think \$500.00. The Deed speaks for itself.

Q.—Has it all been paid?

A.—Yes. It was paid a year after it was bought.

Q.—Has the price been fully paid now?

20 was so long ago. A.—Yes, long ago. In fact, I don't know when it was paid, it

20 Q.—What sort of property is it? Were there any buildings on it?

A.—Two buildings on it.

Q.—What kind of buildings?

A.—Summer cottages.

Q.—Did you build them?

A.—Yes.

Q.—You say the value of that property is now \$3,000.00?

A.—It is in the declaration there.

30 Q.—You say you purchased this property for the purpose of using the gravel in the construction of the dam which you proposed to build at Cascades?

A.—That was the intention.

Q.—You purchased that property for that purpose?

A.—That was the intention.

Q.—When you purchased it?

A.—Yes.

40 Q.—But you purchased it a year before you purchased the Cascades? How do you account for that? You did not own the Cascades when you purchased that property.

A.—I can account for that. I can answer that. I was seven years trying to get the Cascades property. That is the answer.

Q.—I ask you is it a fact or is it not?

A.—It is a fact. I was seven years trying to get hold of the water power you took away from me.

Q.—I am asking you, is it or is it not? I suppose you think that is a very clever answer?

*In the
Superior Court*

No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 29th, 1932.
(continued)

A.—Well, it is facts. That is all it is.

Q.—It is quite out of the record and has nothing to do with the case, or with the question I am asking you. I am asking you whether it is true or not that you purchased this property, presumably for the purposes you stated in your declaration, of using the gravel for the dam before you had the property of the dam at all?

A.—Well, I always figured I would get the Cascades, and I did get it.

10 Q.—In addition to claiming the value of this property, you are claiming \$3,000.00 for gravel which you say you had hauled across the river?

A.—Yes.

Q.—In what year did you do that?

A.—I started in the summer of 1925 and 1926. I think the gravel was hauled in the winter of 1926, somewhere thereabouts.

Q.—So when you state in your declaration in paragraph 25 that you hauled this gravel in 1924, that is not correct?

A.—If it is stated 1924, I don't think it is.

20 BY MR. SCOTT:

Q.—In or about the year 1924?

A.—I don't think it is. To my knowledge, we started early in the summer and put in the machinery. I put in machinery to take out that gravel and worked at it.

BY MR. KER:

30 Q.—When you were hauling it over in 1925 or 1926, the Company's development was already under way?

A.—I did not know whether they were going to take my power. No one gave me information they were going to drown me out.

Q.—As a matter of fact, did you not haul that gravel over with the intention of selling it to people who were over there?

A.—No.

Q.—Did you ever sell any of that gravel?

A.—Two years before—two or three years before.

40 MR. SCOTT:

Q.—You do not understand the question.

A.—I think I quite understand.

BY MR. KER:

Q.—The gravel you hauled over, and for which you are claiming \$2,000?

*In the
Superior Court*

No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 29th, 1932.
(continued)

A.—I never sold one shoveful.

Q.—You never sold any?

A.—Not a particle.

Q.—How many yards of gravel were there in that?

A.—I can get you the detail of that pretty accurately from the man who hauled it there, but I claim I hauled over there some loads, about in the neighbourhood of a couple of thousand yards.

10 BY MR. SCOTT:

Q.—Cubic yards?

A.—Cubic yards.

BY MR. KER:

20 Q.—And it is your contention that although the Gatineau Power Company's development was then being pursued and in process of construction, you hauled that gravel over in 1925 and 1926 for the purpose of making a development yourself at Cascades?

A.—Yes.

Q.—You had, of course, no plans approved for your development?

A.—No.

Q.—There were no plans made for your development?

A.—No.

Q.—Had you any idea how much gravel or material you would need?

A.—No, I did not go into that.

30 Q.—Had you any tests made of the gravel?

A.—No.

Q.—What did you propose to do with it? Turn it into cement?

A.—Yes.

40 Q.—I notice in paragraph 27 of your Supplementary Declaration under the head of "Lumber Business", you detail certain valuations in Exhibit P-66 which you filed with the declaration, the detail of which is, \$165,112, and included in your Exhibit P-66 is an item of five lots on the east side of the Gatineau River, \$1,500; are those five lots on the portion of the same property to which you refer in your supplementary declaration of which I have just spoken, referred to in paragraph 21 as the gravel property for which you are claiming \$3,000 for the property?

A.—Those five lots?

Q.—I am asking whether the five lots for which you are claiming \$1,500 in Exhibit P-66, are part of the property of 23-B in the 16th Range referred to in paragraph 21 for which you are also claiming in that paragraph the value of \$3,000?

*In the
Superior Court*
No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 29th, 1932.
(continued)

A.—I could not say. It says five lots on the east side of the Gattineau river—well, that speaks for itself.

Q.—Of the official cadastre?

A.—That is the same lot numbers.

Mr. Scott: Do I understand, Mr. Ker, you want to know whether what we have been calling the gravel pit property is a portion of these five lots which are referred to in this Exhibit P-66?

10 Mr. Ker: I do not want to know that. I want to know whether the five lots that are referred to in Exhibit P-66, are a portion of the lot 23-B the value of which is claimed for in paragraph 21?

Mr. Scott: That is, the gravel pit property?

Mr. Ker: I am not speaking about gravel pit properties. It is mentioned here as a lot which is worth \$3,000. Let us not talk about gravel pit property.

20 BY MR. KER:

Q.—You are claiming \$3,000 for lot 23-B on the east side of the River?

BY MR. SCOTT:

Q.—Is that not known as the gravel pit property?

30 Mr. Ker: I don't care. It is in your declaration.

BY MR. KER:

Q.—Is it not a fact that the five lots claimed for in Exhibit P-66, form part of lot 23-B for the value of which you claim in paragraph 21 of your Declaration?

A.—By the way it is put in here, it is five lots, \$1,500. They speak for themselves as to the value of those lots on the river front.

40 BY MR. SCOTT:

Q.—Where are they situated?

A.—On the gravel pit property, the frontage on the gravel pit property, then, the balance of the lot is at other points down through the whole of the gravel pit. . . .

BY MR. KER:

*In the
Superior Court*

No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 29th, 1932.
(continued)

Q.—But in your Declaration paragraph 21, you state you are the owner of lot 23-B in the 16th Range—“Five or six acres more or less, and bounded generally by the river and north by Stevenson and east by a fence extending twenty-five feet out from the fence, and southerly by an old log fence”, and paragraph 22 states you got that property at a certain time and that the value of that property is \$3,000. Is there included within the area of that property the five lots which you are now claiming for under Exhibit P-66?

10 A.—That might be duplicated. I cannot speak as to that. MacRostie did that work. It might be duplicated the way you explained there.

Q.—That is probably a duplication?

A.—It may be.

BY MR. SCOTT:

Q.—Mr. MacRostie can give explanations?

A.—Yes.

20 BY MR. KER:

Q.—You have that piece of property at the east side of the river listed as being part of your lumber business. How do you make that out? It is across the river, is it not?

A.—I can explain that. Every bit of land I am owner of works into the lumber business, more or less. If I was not in the lumber business I would not have that lot across the river.

Q.—But you say you bought it from Cascades?

30 A.—If I did not have the lumber business at Farm Point I would not have Cascades. If I was in the Old Country I would not be at Cascades or Farm Point either.

Q.—Do you pretend that that lot on the other side of the river has anything to do with your lumber business?

A.—I absolutely claim they all work together, every particle I am owner of. My established industry is the whole.

Q.—Will you tell me what relation the lot on the opposite side of the river, which consists as you say in part of five building lots, has to do with your lumber business?

40 A.—As far as the lumber business is concerned itself, we do not use gravel in the lumber business.

Q.—I did not ask you that.

A.—As far as the lumber business is concerned itself, it is not part of that lot on the other side of the river.

Q.—I draw your attention again to the fact that in Exhibit P-66 under the heading of summary of values of buildings and included as physical assets of the lumber business, you have listed

*In the
Superior Court*
No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 29th, 1932.
(continued)

under buildings, numbers 36, 37 and 38, three buildings valued respectively at \$1,305 odd, \$1,375 odd and \$1,273 odd. Are those the buildings on the east side of the river?

A.—The buildings on the east side of the river should be all within the buildings, the same as on the west side of the river.

Q.—Why? What have the cottages on the east side of the river got to do with the lumber business?

Mr. Scott: He has already said it is in the wrong place.

10

BY MR. KER:

Q.—Have those buildings anything to do with your lumber business?

A.—Every particle, back of the hill, or in the bush, and in the front and in the back and the gravel pit, and all have been affected by the flooding as a whole.

Q.—Do you swear the gravel pit has been affected by the flooding?

20 A.—As far as I am concerned, it has been affected as a whole.

Q.—Why?

A.—It is no use for gravel.

Q.—There is just as much gravel there as ever was there?

A.—Who is going to use it?

Q.—Who was going to use it before?

A.—I was going to use it before.

Q.—Have these buildings that you are claiming these various sums I have just mentioned, on the east side of the river, been affected?

30 A.—No, they have not been affected.

Q.—Do they form any part of the lumber business?

A.—You are coming at the same question again?

Q.—I know I am.

A.—I have answered it. Will I repeat it again?

Q.—I ask you whether this part of the land on the east side of the river had anything to do with your lumber business?

A.—As far as the lumber business itself, it has not affected those buildings or that property, as far as the lumber business itself, but as a whole they are all affected.

40 Q.—They have to do with your lumber business?

A.—Lumber business, electric light business and any business in my life is part of it.

Q.—Must I keep on and waste time on this?

A.—If you talk till night you cannot change my thought. It is all one.

Q.—What is the nature of the houses on the east side of the river?

*In the
Superior Court*
No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 29th, 1932.
(continued)

A.—Summer cottages.

Q.—Which you would let to private people if they wanted to rent them?

A.—Yes.

Q.—What connection have they with your lumber business?

A.—The gravel pit still remained. They did not take any more of my gravel away from me.

Q.—I am not asking you that.

A.—I am telling you.

10 Q.—I am asking you what have those three cottages which you let to your summer customers to do with the lumber business on the other side of the river?

A.—Have I not answered that?

Q.—What have those three cottages to do with your lumber business?

A.—As I stated before, as far as the lumber business is of itself, they have nothing to do, but as a whole they are all affected, every particle of my business.

Q.—How are those three cottages affected?

20 A.—If you take a part of a man's business away from him, or the biggest part of a man's business, I don't know what is going to become of the rest. I won't take the responsibility.

Q.—The three houses which were designed to be let to summer people and which have in no way been affected by flooding, what have they to do with your lumber business?

A.—When the establishments are taken away, they are no use to me.

Q.—You want the Company to buy you out, that is what you are looking for?

30 A.—They bought me out. They have drowned me out.

Q.—They have not drowned those three houses out?

A.—No.

Q.—They are on the other side of the river?

A.—Yes.

Q.—They are summer cottages?

A.—Yes.

Q.—And why are you claiming damages of \$3,000.00?

A.—I am telling you why.

40 Q.—That is your only excuse?

A.—I have no business, no nothing. That is why.

Q.—In other words, what you claim is because the Company is putting up a certain amount of water on a portion of your piling ground, and reducing the head of your power plant at Farm Point, for that reason you claim the Company should be obliged to buy you out completely.

*In the
Superior Court*
No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 29th, 1932.
(continued)

Mr. Scott: I object to the form of the question as it does not give a summary of the allegations contained in the Plaintiff's Declaration or of the testimony already given by him to date on the examination on discovery.

BY MR. KER:

10 Q.—Is it a fact that your pretension is the Company should pay you this huge sum of money?

A.—No huge sum of money.

Q.—Is your contention based upon the fact that they have flooded a portion of your piling ground, and reduced your electric outfit at Farm Point?

(Same objection.)

(Same reserve.)

20 Q.—Is that your contention?

A.—I told you before, Mileage 12 is affected as well as Farm Point.

Q.—That is affected through what I have just said, the effect on your power property?

A.—And the lumber business as well as the piling ground.

Q.—That is the underlying basis of your claim?

A.—My claim is absolutely as a whole. I am out of business. That is my claim.

30 BY MR. SCOTT:

Q.—As set forth in your declaration?

A.—As set forth in my declaration.

BY MR. KER:

40 Q.—And the reasons you allege or maintain for having been put out of business is, because the Company has flooded a portion of your piling ground and has flooded a portion of your tailrace. Is that the fact?

Mr. Scott: I object to this question inasmuch as it does not summarize the allegations of the Plaintiff and is an attempt to mislead the witness.

Mr. Ker: I object to the statement that it is an attempt to mislead the witness.

*In the
Superior Court*

No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 29th, 1932.
(continued)

BY MR. KER:

Q.—What reasons have you for stating that the Company has put you completely out of business?

A.—Well, the facts are very clear. I am absolutely out of business, and the water is on my property, and you have not paid for it. If you had paid for it I might be in business somewhere else, but I am in business nowhere today.

10 BY MR. SCOTT:

Q.—And your reasons are set forth in your Declaration?

A.—Well, there is only the one reason.

BY MR. KER:

Q.—What is the other reason?

20 A.—The reason is, you have taken my property, and you have not paid for it. That is the reason.

Q.—The only property we have taken

A.—You have taken it all.

Q.—Is it your pretension that we have taken all your property?

A.—Everything I am owner of, you have destroyed it. My whole life's earnings are taken. You have ruined me. That is what you have done. You have ruined my health and everything else. That is what you have done, and I will put that before the Judge.

30 Q.—Do you maintain that by the physical flooding or the raising of the water which the Defendant has done or proposed to do to 321.5 that the Defendant Company has affected everything

A.—You have affected everything, my health and everything else.

Q.—You are not making any claim for your health?

A.—No, but I might later on.

Q.—The building No. 31 for which you claim \$14,595, is, I think, the hotel?

A.—Yes, the hotel.

Q.—Has that been actually physically affected in any way by the water levels of the Gatineau River?

40 A.—Yes.

Q.—To what extent has it been affected?

A.—The client who had it for years before the flooding only remained a couple of years after. They could not do anything with the cellar. The ground floor was damp and musty.

Q.—Do you know anything about the elevation of the ground floor?

A.—No.

*In the
Superior Court*
No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 29th, 1932.
(continued)

Q.—Do you maintain that hotel is a part of your lumber business?

A.—I stated it before. You cannot take me back to changing my system whatever.

Q.—In other words, your hotel is a part of your lumber business?

A.—Everything I own as a whole.

Q.—Have you ever operated that hotel yourself?

A.—No, I never was an hotel keeper.

10 Q.—Still, you maintain it is part of your lumber business?

A.—Yes.

Q.—You are claiming altogether for forty buildings, in your Declaration?

A.—At Farm Point.

Q.—You are claiming in your Declaration for forty buildings. Where they are, I don't care.

20 Mr. Scott: We are claiming for more buildings, and you know that as well as I do, Mr. Ker.

BY MR. KER:

Q.—You are claiming by your Declaration for forty buildings?

A.—Yes.

Q.—Exhibit P-66?

A.—Yes.

30 Q.—They are not all located at Farm Point? Some of them are on the other side of the river? Of those forty buildings, how many are actually physically affected? Now, I am leaving out this question of the effect which you have explained of your alleged damage to your business generally; how many of those forty buildings are actually adversely and physically affected by the water level of 321.5?

A.—There would not be so many of those.

Q.—How many? Five?

A.—There would be eight or nine, that is, in the water itself coming in and affecting the foundation of the buildings.

40 Q.—If they are affected by the typical contact with the water or by seepage, how many would there be?

A.—About eight or nine, that is, counting the hotel and the Gatineau road, doubling the road there.

Q.—I have asked you to produce a statement of your fifty trips to Montreal? Is this statement which you hand me, and which I have marked as D-134 on discovery, a statement of the fifty trips that you made to the city, for which you are claiming?

A.—I have no other record of those trips.

*In the
Superior Court*
No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 29th, 1932.
(continued)

Q.—Is this the statement you give me in answer to my request for particulars?

A.—Yes.

Q.—This appears to show a total of 41 days?

A.—Yes.

Q.—This says, "Days spent by Mr. Freeman T. Cross, railroad expenses to Montreal"?

10 Q.—November 6th and 26th, 1930. Am I to take it, therefore, that your allegation of fifty trips to Montreal is now reduced by this exhibit to forty-one days in Montreal?

A.—Yes.

Q.—This trip, for instance, November 6th, 1930, did you go back to Ottawa the same day?

A.—I could not tell you that offhand.

Q.—You have got it down as a trip to Montreal, days spent in Montreal November 6th, 1930. Is that one day?

A.—Yes, most likely.

Q.—And \$12.00 on that day would consist of what?

20 Mr. Scott: It states here railway fare and meals.

BY MR. KER:

Q.—That includes your railway fare?

A.—Yes.

Q.—Of how much?

A.—\$7.50 or something.

30 Q.—Then, I see that in November, 1931, you were at one time here for the fourth, fifth and sixth, and then the 9th, 10th, 11th, 12th and 13th; what is the rate you are charging for each of those days that you were in Montreal?

A.—\$5.00 for meals and \$7.00 for railway fare, \$12.00 a day.

BY MR. SCOTT:

Q.—Five dollars for room and \$7.00 for meals?

A.—Yes.

40 BY MR. KER:

Q.—Where did you stay at those times when you were here?

A.—I stayed all over, at the Windsor, the Ford Hotel and the Mount Royal.

Q.—How many days did you stay at the Windsor?

BY MR. SCOTT:

*In the
Superior Court*
—
No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 29th, 1932.
(continued)

Q.—Name the various hotels you stayed at?

A.—The Ritz-Carlton.

Q.—The Windsor, the Ford Hotel. Did you stay at the Mount Royal Hotel?

A.—At the Mount Royal.

BY MR. KER:

10 Q.—How many days did you stay at the Ritz-Carlton.

A.—I don't know.

Q.—Did you stay any night at the Ritz-Carlton?

A.—Yes.

Q.—How many nights?

A.—Two or three.

Q.—How many nights did you stay at the Windsor?

A.—One or two.

Q.—How many nights did you stay at the Mount Royal?

20 BY MR. SCOTT:

Q.—If you don't know, just say so.

A.—I don't know how many nights I stayed.

BY MR. KER:

Q.—How many days, as far as you can remember, did you stay at the Mount Royal Hotel?

A.—I don't know.

30 Q.—Was it one night?

A.—Yes, it was one night.

BY MR. SCOTT:

Q.—More than one night?

A.—Well, more than one night.

BY MR. KER:

40 Q.—How many nights did you stay at the Ford Hotel?

A.—One night.

Q.—Only one?

A.—Yes.

Q.—Were you having your meals in the hotel where you were staying?

A.—Sometimes I did, and sometimes I did not.

Q.—Meals, \$7.00 a day each day?

*In the
Superior Court*
No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 29th, 1932.
(continued)

A.—Yes.

Q.—Did you actually pay that for meals, each day?

A.—Yes.

Q.—You swear that?

A.—I swear when I was on the train I could eat a good meal. I did not get off very light. I can swear that.

Q.—Do you expect I am going to take that for an answer?

A.—You want to know how much I eat, I am telling you I ate a big meal.

10 Q.—You are claiming \$7.00 for each day you were in Montreal for meals. Did you actually spend that on meals?

A.—I averaged seven dollars a day, some days I am not a big eater. Other days I am a big eater.

Q.—You swear you spent on an average seven dollars a day for food?

A.—About that.

Q.—Where did you stay when you were in Quebec?

A.—The last time at the St. Louis.

20 Q.—When were these four railway trips to Quebec?

A.—Is the date not mentioned there?

BY MR. SCOTT:

Q.—Read that, Mr. Cross?

A.—The 8th, 9th, 10th, 11th, 12th, 15th, 16th, 17th, 18th and 19th.

Q.—Of what month?

A.—In February.

30 BY MR. KER:

Q.—You did not go to Quebec each of those days? What days did you go to Quebec? You have four railway trips. You went down sometime during those dates when those four trips were made?

BY MR. SCOTT:

Q.—Those four trips were made during that period?

40 A.—Yes.

BY MR. KER:

Q.—Have you a statement of the amounts making up \$195.00 paid to the Registry Office at Hull?

Mr. Scott: We are not making any claim for that.

*In the
Superior Court*

No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 29th, 1932.
(continued)

(The Plaintiff states he withdraws this claim.)

BY MR. KER:

Q.—You have withdrawn Mr. Labelle's account of \$350.00?

A.—Yes.

Q.—You have withdrawn Louis Bertrand's account of \$918.00?

A.—Yes.

10 Q.—Have you the details of Mr. J. M. Robertson's account?

A.—I now produce Mr. Robertson's detailed account dated March 7th, 1932, and annex it to his account which has already been filed as Exhibit P-69.

Q.—You were asked in connection with this account to give the dates at which these services were rendered: there are no dates given?

Mr. Scott: The exhibit speaks for itself.

20 BY MR. KER:

Q.—You have no record of the dates upon which Mr. Robertson's services were rendered to you?

A.—No.

Q.—Will you kindly secure these?

Mr. Scott: I object to this question. It is for the Defendant to call Mr. Robertson.

30 BY MR. KER:

Q.—When did you first receive an account from Mr. Robertson?

A.—I never received it.

Mr. Scott: The first account you received from Mr. Robertson is March 7th, 1932.

BY MR. KER:

40 Q.—That is the first time you ever received an account from him?

A.—Yes.

Q.—When did you first employ him?

A.—In 1927, I guess, somewhere thereabouts—1927 or 1928. He was the first with the Commission.

Q.—Do you know what portion of that account represents services which he may have performed for you with reference to the

*In the
Superior Court*
No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 29th, 1932.
(continued)

matters which were before the Quebec Public Service Commission in 1927?

Mr. Scott: I object. All Mr. Cross could say is that the account with the details as rendered speaks for itself.

Witness: The account speaks for itself.

10 BY MR. KER:

Q.—You have no other information than what is mentioned in that account?

A.—No.

Q.—And no other account was ever rendered to you until March, 1932?

A.—No.

20 Q.—Have you got the particulars of the account of Mr. W. L. Scott, Barrister of Ottawa? When did you first retain Mr. W. L. Scott's services?

Mr. Scott: Mr. W. L. Scott was retained by my firm as our Ottawa agents, and not by Mr. Cross.

Witness: I now produce Mr. de Gaspé Beaubien's detailed account, dated March 15th, 1932, and annex it to his account dated February 3rd, 1932, and already filed as Exhibit P-70.

BY MR. KER:

30 Q.—Will you please produce the particulars of Mr. MacRostie's claim of \$10,437.42, filed as Exhibit P-71?

A.—I now produce the details of Mr. MacRostie's account, dated April 12th, 1932, and I attach those details to the original Exhibit P-71, to form part thereof.

Q.—I notice the particulars which you now file, dated April 12th, 1932, indicate a total amount of \$8,500 for services by Mr. MacRostie?

A.—Yes.

40 Q.—The particulars of Mr. MacRostie's claim, which you now file in the document dated April 12th, 1932, refer to a total of \$8,500 apparently representing services only?

A.—Yes.

Q.—I notice there is in addition a further sum of expenses, \$1,513.17 and \$424.25, referred to in paragraph 28 of the Declaration. Have you any particulars of those additional amounts?

A.—They are shown as expenses.

*In the
Superior Court*
No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 29th, 1932.
(continued)

Q.—I am asking you if you have any details of them?

A.—The details are attached to the Exhibit P-71.

Q.—The details of expense are attached to the Exhibit?

A.—Yes.

Q.—When did Mr. MacRostie first render you an account in connection with those services?

A.—The dates are on them, I think.

10 Q.—The letter addressed to you at Farm Point, enclosing a memorandum of a total bill of \$10,012, is not dated. Can you tell me when you first received an account for services from Mr. MacRostie?

A.—In the year 1926. I never received an account. This is the only account I received from him.

Q.—Exhibit P-71 is the only account or memorandum of services or fees which you ever received from him?

A.—Yes.

Q.—And that was rendered to you some time during the year 1932?

A.—Yes.

20 Q.—Am I right in stating that the items Adamson & Hazelgrove, \$800.00, referred to in paragraph 28 of your Supplementary Declaration, has been withdrawn?

A.—Yes.

Q.—Am I right in stating that the amount claimed on behalf of W. G. Adamson, \$216.00, in the same paragraph, is also withdrawn?

A.—Yes.

30 Q.—Am I right in stating that the name Burgess & Adamson, \$1,250.00, in the same paragraph, should read Hazelgrove & Adamson?

A.—Yes.

Q.—This item, I understand, is not withdrawn?

A.—No.

Q.—You were asked to produce the details of this account. Have you them with you?

A.—I have no other details than as shown in the account Exhibit P-84.

40 Q.—When were the services referred to in this account rendered?

A.—The date is in the account.

Q.—There is no date given on the account?

A.—1932.

Q.—The account is dated March 3rd, 1932. When were the services rendered?

A.—1928, 1929 or 1930, or somewhere thereabouts.

*In the
Superior Court*
No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 29th, 1932.
(continued)

Q.—Is the account dated March 3rd, 1932, the first account you ever received from those gentlemen?

A.—That is the first account.

Q.—With respect to the valuations which you have placed upon timber limits, will you tell me upon what you base your valuation of \$40.00 an acre?

A.—On standing timber, and the haul, and the quality of timber; on an average market price.

10 Q.—So your \$40.00 an acre is reckoned upon the price of the timber as cut from those limits; not on the standing timber?

A.—The standing timber. The value of the standing timber.

Q.—You value it at \$40.00 an acre as standing timber?

A.—Yes.

Q.—When were you last on those limits?

A.—Some years I would not touch but very little of those limits. I would be buying a cut, as I explained before. We worked off them right along up to two years ago.

20 Q.—The purport of my question was when did you personally visit those limits last?

Witness: Myself?

Counsel: Yes.

A.—About two years ago.

Q.—Within the last two years you have seen all the limits you claim for in this action?

30 A.—I would not say I saw them all, or every corner of them, but I have been in the neighbourhood of them all in that length of time.

Q.—Did you estimate or fix this price of \$40.00 an acre, or did others do it for you?

A.—Others have travelled out to see it, and I have confirmed this price as being a fair market value of the timber.

Q.—In any event, I take it, the \$40.00 you are claiming per acre is in respect to standing timber—it is not taking into consideration the land value or anything of the kind; it is in respect to the amount of timber?

40 A.—The land as well, of course.

If you cut a bush off, the growth is coming up, if you do not cut it too close. The standing timber off this means nothing to the limit for the time being. It depends on how long you are going to hold the limit.

Q.—Can you tell me what \$40.00 an acre amounts to per square mile? How many acres are there in a mile?

A.—640.

*In the
Superior Court*
No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 29th, 1932.
(continued)

Q.—Am I correct in saying (and I think I am) that works out to \$25,600 a square mile?

A.—If those figures are correct.

Q.—Will you say whether they are or not?

Mr. Scott: That is a matter of arithmetic.

BY MR. KER (continuing):

10 Q.—It is, as a matter of fact, \$25,600 per square mile?

A.—Yes.

Q.—And you are claiming that has been depreciated by \$25.00 an acre?

A.—In some cases.

Q.—There are certain cases where you are claiming \$25.00 per acre depreciation?

A.—Yes.

Q.—In other words, we may consider that where the depreciation is \$25.00 per acre, it represents \$16,000 per square mile?

20 A.—Yes.

Q.—Leaving the balance as the value of the limits—\$25,600, less \$16,000?

A.—Yes.

Q.—That would be \$9,600?

A.—Yes.

Q.—Have you ever purchased any timber cutting rights from the Government?

A.—Not from the Government itself, no.

Q.—I think you have about eight square miles of Government license timber?

30 A.—Yes.

Q.—How much did you pay a mile for it?

A.—I paid \$2,000.00, in 1910 or 1911.

Q.—\$2,000.00 for the whole eight miles?

A.—Yes.

BY MR. CHISHOLM:

40 Q.—When was that?

A.—About 1910 or 1911.

BY MR. KER (continuing):

Q.—You have been cutting off it from time to time since then?

A.—No; very little has ever been taken off that. I reserved it.

Q.—In the ordinary course of business what was the current average price for a timber limit in 1926, from the Government?

In the
Superior Court

No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 29th, 1932.
(continued)

A.—Those limits on the Gatineau are the closest limits to the capital, and that is what I have; and in wood alone it could be very valuable. Do not go away up to Baskatong, or anywhere like that. That limit is very close in. There is some of that limit within eighteen miles of the capital.

Q.—Perhaps you would not mind answering my question. Do you know anything about the current price of timber limits in 1926?

10 Witness: Whereabouts? It depends on where the limit would be.

Q.—You paid \$2,000 for eight miles?

A.—Yes.

Q.—How much would that be per mile?

A.—That was bought at a Sheriff's Sale.

Q.—As a matter of fact, it is \$250 a square mile?

A.—I could have taken in \$25,000 for it a year after, but I would not do it.

20 Q.—Will you answer my question? \$2,000 for eight square miles is \$250 a mile, which is what you paid for the limit?

A.—Yes; I have told you that.

Q.—You contend those limits have been depreciated by \$25,000?

A.—Yes.

Q.—Although you paid \$2,000 for them?

A.—Yes.

Q.—You personally cannot testify as to the actual quality or quantity of timber on those limits in 1926, or at the present time; either on the freehold or on the Crown limits?

30 A.—I did not travel the whole thing personally right from end to end, but I have a rough idea of what was on them when I bought them, and I have a rough idea of what came off them, and I have a rough idea of the growth that might be on those limits from time to time.

Q.—Have you even a rough idea of the amount of merchantable timber, board measure, per acre upon the freehold limits for which you are claiming at the present time?

A.—I did not cruise it in that way.

Q.—You have not any idea?

40 A.—No.

Q.—Nor have you any idea of the amount of merchantable timber on the Crown land leases you have?

A.—It is a big question to ask about merchantable timber. A tie can be made out of an absolutely unmerchantable piece of timber. My limit is practically across the river—a hardwood proposition. One bushman could put them all down as unmerchantable, and another might class it as merchantable timber.

In the
Superior Court
No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 29th, 1932.
(continued)

Q.—What do you class it as?

A.—Merchantable timber.

Q.—Have you any idea of how much merchantable timber, according to your way of thinking, there is on an average per acre on those Crown limits at the present time?

Witness: Per acre?

10 Counsel: Or the total if you like—on the Crown limits.

A.—Some 6,000 to 7,000 feet per acre, merchantable bush.

Q.—That is an estimate you make yourself?

A.—It is a rough estimate.

Q.—Do I understand it to be the result of any cruising made by yourself?

A.—It is speaking just from my own memory.

BY MR. SCOTT:

20 Q.—It is mostly hardwood, I understand?

A.—The majority would be hardwood.

BY MR. KER (continuing):

Q.—From the Crown limits?

A.—Yes.

Q.—And on the freehold limits?

A.—It would be about fifty fifty.

30 Q.—Fifty fifty hardwood and softwood?

A.—Yes.

Q.—You got the Government leases, I think, from the McLaurin Brothers, who were in the lumber business?

A.—Through the Bank of Montreal.

Q.—Can you tell me when you got them?

A.—I think about 1911.

40 Q.—Are the leases which you have filed in connection with this examination as Exhibit D-131 now for the same extent of land as you purchased from McLaurin in the first place, or are they for a less extent?

A.—To my knowledge I think there has been maybe one or two squatters' rights off them since that time.

Q.—What acreage?

A.—They generally look for a couple of hundred acres, or a hundred acres.

Q.—How much is occupied by others than yourself?

A.—Maybe a couple of hundred acres.

*In the
Superior Court*

No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 29th, 1932.
(continued)

Mr. Scott: I think Exhibit D-131 speaks for itself, and shows just what it is.

BY MR. KER (continuing):

Q.—I see there is a deduction of the south half of lot 28 in the Fifth Range?

A.—Yes.

10 Q.—But that is not exactly what I want to know. Since you bought those limits from the McLaurins, has any part of them, with the exception of this south half of lot 28 in the Fifth Range, been withdrawn from the original licenses you got from the McLaurins?

A.—There might be one or two. I cannot say from memory. Maybe a couple of hundred acres all told.

Q.—In any event, at the present time you have not as much extent of timber lands as you had when you bought from McLaurins?

A.—No.

20 Q.—Can you give me an estimate of the merchantable timber on the lands which you claim to hold as freehold?

Witness: In total?

Counsel: Yes.

A.—You can work up the figures. It is a matter of figures again.

Q.—Are they wooded to the same extent and in the same proportions?

A.—They would be much better wooded.

30 Q.—Can you give me an estimate of the approximate amount per acre?

A.—Buying a bush wooded similar to those which we hold I would figure on a million feet to the hundred acres—the way we cut it, into ties and material of that kind.

Q.—So the great extent of your business is ties, is it?

A.—No. A percentage of it is.

Q.—How many feet do you think there would be if you were not cutting it into ties?

40 A.—I cannot tell you that. You cannot classify a tree standing. It depends on what you are going to cut it into. It is different if you are going to make a tie, or a piano stool, or anything like that. When a log is cut, sometimes the centre of it is rotten and you cannot make anything out of it. Other times it is rotten at the stump, and two feet up it is sound.

Q.—You say your loss on the Crown timber lands is \$25,600?

A.—Yes.

Q.—How much do you estimate them to be worth now, or how

*In the
Superior Court*

No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 29th, 1932.
(continued)

much did you estimate them to be worth in 1926, after taking off that loss?

A.—\$5.00 an acre on the Crown lands.

Q.—In the other instances you say the land was formerly worth so much; in this instance you merely say the depreciation you claim. What was it worth before this depreciation?

Witness: That is the eight square miles under the license?

10 Counsel: Yes.

A.—I do not own the land. I just have the cutting rights.

BY MR. SCOTT:

Q.—You say they have been depreciated by \$5.00 an acre?

A.—Yes.

20 BY MR. KER (continuing):

Q.—You say the eight square miles have been depreciated to the extent of \$25,600. What was the total value per acre before the depreciation?

A.—You would have to take the wood out, and put up a mill across on the other side. The difference in the haul, and the shipping would run about from \$3.50 to \$5.00 a thousand extra on every thousand feet, to put that timber to the market. That would be the difference.

30 Q.—If they have been depreciated by \$25,600, what were they worth before?

A.—\$8.50.

Q.—In other words, they were worth \$8.50 before, and they have now been depreciated by \$5.00?

A.—Yes.

Q.—How do you arrive at the figure of \$8.50?

A.—I am telling you the difference in haul, and building a mill, and difference in transportation, to get it to the market.

Q.—Hauling it to where?

40 A.—Ottawa—or shipping to the railroad. It is on the east side of the river.

Q.—Perhaps we are speaking at cross purposes. Before 1926, and up to the early part of 1926, what did you consider those Crown lands to be worth an acre?

A.—From about \$8.50 to \$10.00 an acre.

Q.—Why do you fix the figure of \$8.50 to \$10.00 an acre for the wood on those lands, when you are claiming \$40.00 an acre for

*In the
Superior Court*

No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 29th, 1932.
(continued)

the freehold land? How do you account for such a vast difference, when the wood is substantially the same?

Mr. Scott: The witness has not said the wood is substantially the same. He said the wood on the freehold land is an entirely different class of wood.

10 Witness: On the west side of the river we are much closer. I have timber within eight miles of Ottawa. On the bush alone, for a corded proposition, I would sell it out at \$40.00 or \$50.00 an acre, acre by acre—just to a wood man—no lumber at all. They could go right to the bush, and make four or five trips a day with a truck.

BY MR. KER (continuing):

20 Q.—Then, how have they become depreciated by \$25.00 an acre, if you can sell them at any time on account of their proximity to Ottawa? You think they could be sold at any time for \$40.00 an acre?

A.—Yes.

Q.—Then how could they be depreciated to the extent of \$25.00?

A.—I am in the lumber business. I am not in the wood factory business.

Q.—If their original value was \$40.00, and you can still sell them for \$40.00. . . .

30 A.—(Interrupting): You asked me the value, and how I came to get the value for it. I say you are getting good value at \$40.00 an acre.

Q.—In other words, you think you could sell it for \$40.00?

A.—If I was in the business I could probably go out and sell them. They have been paying as high as \$50.00 an acre for wood for a corded proposition.

Q.—This land is still there, and you can sell it at any time you want to sell it?

A.—I am not in the business now.

Q.—Do you swear you are not in the lumber business now?

A.—I swear I am not in the lumber business.

40 Q.—Who is doing it for you?

A.—The International Paper is doing it for me.

Q.—I did not know that.

A.—I have been working for you for the last eight years. You ought to know it.

Q.—Just tell me what you are doing. You are working for yourself now.

A.—At that rate I will have to pay you.

*In the
Superior Court*

No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 29th, 1932.
(continued)

Q.—When did you last buy or sell any lumber?

Mr. Scott: I object to the question as relating to something which happened since the approval of the Order-in-Council in 1926.

Witness: In 1926 I was in the lumber business.

BY MR. KER:

10 Q.—Are you in it now?

Mr. Scott: I object to the question as irrelevant and illegal, in virtue of the provisions of the Special Act.

(The objection is reserved for the decision of the Trial Judge.)

A.—No.

20 BY MR. KER (continuing):

Q.—Your answer is you are not?

A.—Yes: not now: 1932.

Q.—You have done no lumbering business in 1932?

A.—No.

Q.—Did you sell any lumber in 1932?

A.—Selling it, yes; but not manufacturing it.

30 Q.—You are not in the lumber business, because you are not manufacturing?

A.—The lumber business runs four or five years from your start to your finish—your collections, the manufacturing, the driving, and cleaning up. There is no lumber business can start and finish in a year.

Q.—Has any new lumber been brought into your business this year?

A.—No.

Q.—Do you swear that.

A.—I did not sell any new lumber.

40 Q.—Did you buy any?

A.—I bought a few logs that were cut early in the fall by a man up the creek—a matter of 5,000 or 6,000 feet.

Q.—If you are not in the lumber business, what is the object of renewing your timber licenses this year?

A.—If you do not rent a house, what is the object of giving it to another party for nothing? Is that an answer?

Q.—You have not those timber limits because you are in the

*In the
Superior Court*

No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Examination
Sept. 29th, 1932.
(continued)

lumber business; you are just merely holding them because of their value?

A.—Yes. I told you the value of them per acre.

Q.—Can you tell me how much lumber you have bought this year?

Mr. Scott: I make the same objection to this question.

10 A.—It would not exceed about 10,000 feet, or so. It is there yet, not manufactured—it is in the log.

Q.—What is the condition of the lumber business at the present time; is it good or bad?

Mr. Scott: I object to the question as irrelevant and immaterial to the issues, particularly as they are governed by the Special Act, 22 George V, Chapter 128, Section 3, which reads:

20 “ The date with reference to which valuations shall be made shall be the date of the Order-in-Council approving the plans for such development ”.

(The objection is reserved for the decision of the Trial Judge.)

Cross-examination

CROSS-EXAMINED BY MR. SCOTT, K.C.,
OF COUNSEL FOR PLAINTIFF:

Q.—Is it the fact that freehold land is worth more than licensed land?

30 A.—Oh, yes, much more.

Q.—Looking at paragraph 27 of your Supplementary Declaration, I see an item of \$53,000, which is the figure stated as the amount that would have to be deducted from your claim supposing Cascades were developed up to an elevation of 318 feet?

A.—Yes.

40 Mr. Ker: I object to the question and the answer, inasmuch as the question does not arise out of the examination-in-chief, and inasmuch as the witness is a hostile witness to the Defence and must not be led.

BY MR. SCOTT (continuing):

Q.—That \$53,000 is referred to in Exhibit P-57

Mr. Ker (to witness): Will you kindly not answer those questions until I have an opportunity of objecting to them if I consider it fit.

*In the
Superior Court*

No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Cross-examination
Sept. 29th, 1932.
(continued)

I ask the courtesy of my learned friend to allow me to prevent his witness from answering until I make my objection.

I want to have it appear on the Record that this evidence is objected to on the ground that it does not arise out of the examination-in-chief, and that there is no reference anywhere in the examination-in-chief to an item of \$53,000.

BY MR. SCOTT (continuing):

10 Q.—If you had developed at Cascades, would you have gone on generating electricity at Farm Point, or would you have allowed Cascades to furnish you with electricity?

A.—I would have allowed Cascades to furnish me with electricity, and charged the item.

Q.—And written off the loss of your generating plant at Farm Point?

A.—Yes.

20 Q.—In answer to my learned friend, Mr. Ker, yesterday, you told us that in 1904 or thereabouts you started without a dollar?

A.—Yes.

Q.—And entered into the lumbering business?

A.—Yes.

Q.—And that you carried on your lumbering business until 1911 or 1912, when you built this power plant at Farm Point?

A.—Yes.

Q.—And thereafter you began to build up a distribution system, supplying electricity to the localities you mentioned yesterday?

A.—Yes.

30 Q.—After 1912 you continued that programme?

A.—Yes, carrying on.

Q.—Carrying on your lumbering business, and your electric light business?

A.—Yes.

Q.—I think I understood you to say this morning that you owned a hotel at Farm Point?

A.—Yes.

Q.—Did you build the hotel, or did you buy it?

A.—I bought it.

40 Q.—Do you remember approximately when?

A.—1918, or 1919, or 1920—somewhere about there.

Q.—You also stated that you supplied cottages to the workmen employed in your mill at Farm Point?

A.—Yes.

Q.—And you furnished them with electricity?

A.—Yes.

Q.—Those were your own cottages?

*In the
Superior Court*
No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Cross-examination
Sept. 29th, 1932.
(continued)

A.—Yes.

Q.—Built on your own land?

A.—Yes.

Q.—And you supplied them with free electricity?

A.—Yes.

Q.—By reason of furnishing them with free lodging in those houses, and free electricity, I presume your payroll was affected?

Mr. Ker: I object to the question as leading.

10

(The objection is reserved for the Trial Judge.)

A.—Yes.

BY MR. SCOTT (continuing):

Q.—What effect did it have on the wages you paid your workmen? Did you pay them more, or less?

A.—Much less.

20 Q.—Much less than if they had not had the free light and free houses?

A.—Yes.

Q.—You were asked by my friend Mr. Ker to file various Deeds to timber limits acquired by you, or license limits acquired by you, during this period between 1904 and 1926?

A.—Yes.

Q.—During that period you started, and gradually extended, this electrical distribution system of yours in the way you indicated?

A.—Yes.

30 Q.—Where did the money for doing that come from?

A.—My Farm Point water power.

Q.—From the business you were conducting at Farm Point?

A.—Yes.

Q.—Both the electrical business and the lumbering business?

A.—Yes.

Q.—What policy were you pursuing during those years? Were you expanding your industry?

40 A.—Expanding all the time. As soon as I made a dollar a put it out purchasing property, mills, and limits, and building up in that way. I bought farms too, and I built mills.

Q.—You filed yesterday, as Exhibit D-129, a Deed of Sale from Mrs. Murphy to yourself, passed December 24th, 1928. You remember she sold you the north half of lot No. 2, 12th Range of Eardley, containing 100 acres of land more or less; and the south half of the west half of lot No. 1 of the 12th Range of the Township of Eardley, containing 50 acres of land more or less. You told us

*In the
Superior Court*

No. 53.
Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Cross-examination
Sept. 29th, 1932.
(continued)

yesterday you had, in fact, been cutting on this property prior to 1928?

A.—For years before that.

Q.—Can you give me any idea of how many years before?

A.—Ten or twelve years. I probably would take a few feet off one year, and some more another.

Q.—By arrangement with her?

A.—Yes.

10 Q.—You also filed, as Exhibit D-128, a Deed of Sale from James Hammond to yourself, passed on June 6th, 1927?

A.—Yes.

Q.—He sold you certain property known as lot No. 19a, 12th Range, Hull, containing 100 acres of land more or less?

A.—Yes.

Q.—Is that one of your timber properties?

A.—Yes.

The same condition existed there as the Murphy property. I had been cutting on it before.

20 Q.—For some time before?

A.—Five or six years.

Q.—You had that arrangement with Hammond?

Mr. Ker: I object to this evidence. The Deed has been produced, and speaks for itself.

BY MR. SCOTT (continuing):

30 Q.—You had been cutting on the land before to supply your mill with timber from that land?

A.—Hammond himself was cutting on the land, and the timber came to me; and an arrangement was made that he wanted \$1,000 for the lot. The arrangement was finished and completed, and he got his cheque for the \$1,000 the day the Deed was passed.

Q.—You filed, as Exhibit D-132, a Deed of Donation from William Cross (your father) to Wyman E. Cross (your brother, I understand) of certain lots of land mentioned in the Deed passed on June 27th, 1921, before Bertrand, Notary Public?

A.—Yes.

40 Q.—You also filed with it a Declaration made in notarial form, dated March 19th, 1932?

A.—Yes.

Q.—This Declaration was passed before Bertrand, Notary Public, and is signed by Wyman Cross and by yourself?

A.—Yes.

Q.—You were one of the parties to this document?

A.—Yes.

*In the
Superior Court*

No. 53.

Plaintiff's
Deposition
on Discovery.
(Supp. Hearing)
F. T. Cross,
Cross-examination
Sept. 29th, 1932.
(continued)

Q.—Does it correctly recite the agreement and understanding between Wyman Cross, yourself, and your father?

Mr. Ker: I object to the question, on the ground that the Deed is filed and speaks for itself, and no evidence can be introduced to contradict or vary it.

10 Mr. Scott: My answer to the objection is I am not asking the witness to contradict the terms of the document. I am simply asking him to say whether a certain Declaration made between himself and his brother, before Bertrand, Notary Public, on March 19th, 1932, correctly refers to an understanding between the two parties to the Deed and their father.

BY MR. SCOTT (continuing):

Q.—Is the statement made in this Declaration correct?

A.—Yes.

20 Q.—Some of those workmen who lived in your cottages at Farm Point would go out into the bush and cut for you in the winter?

A.—Yes.

Q.—And their families would remain in the houses?

A.—Yes.

Q.—I suppose that also affected their wages?

A.—Yes.

Q.—In other words, you paid them less for cutting in the winter time by reason of the fact that they got free lodging and free light?

A.—Yes.

30 Mr. Scott: Further cross-examination of the witness is reserved for the trial.

Mr. Ker: What do you mean? You cannot do that with an examination on Discovery. You must close your cross-examination now. You cannot continue it before the Trial Judge.

I object to any reserve of the right to continue the cross-examination of the witness on Discovery at the trial.

40 (And further deponent saith not.)

*In the
Superior Court*

No. 54.
Agreement re
Defendant's
Demurrer
Against Para. 1 & 2
of Plaintiff's
Supplementary
Declaration.

**PLAINTIFF'S EVIDENCE
(Supplementary Hearing)**

10 With respect to the Defendant's Demurrer against paragraphs 1 and 2 of the Supplementary Declaration and the preamble of paragraph 3; if the Demurrer is sustained, of course, no evidence can be offered in support of those paragraphs and part paragraphs; if it is not sustained, the parties agree that in lieu of tendering oral testimony, the following will be taken to be the facts:

Original Bills 170 and 171 as set out were introduced at the behest of the Defendant Company and were contested before the Committee by Plaintiff, and Bill 171 did not go beyond the Committee stage, and Bill 170 as originally introduced was replaced by the one which became Chapter 128 of 22 George V.

20

30

40

*In the
Superior Court*

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Examination
Oct. 6th, 1932.

DEPOSITION OF NORMAN B. MACROSTIE, A WITNESS
PRODUCED ON BEHALF OF PLAINTIFF

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

10 NORMAN B. MACROSTIE,

of the City of Ottawa, Civil Engineer, aged 47 years, a witness produced on behalf of the Plaintiff, who, being duly sworn, doth depose and say as follows:

EXAMINED BY MR. ST. LAURENT,
OF COUNSEL FOR PLAINTIFF:

20 Q.—Mr. MacRostie, you were heard as a witness on the principal action in this case before it was taken under advisement?

A.—Yes.

Q.—Prior to the legislation passed at the last Session?

A.—Yes.

Q.—And you stated in that case you were a Quebec Land Surveyor and Civil Engineer?

A.—No.

Q.—You were a Provincial Engineer?

A.—No.

Q.—A Civil Engineer?

30 A.—Civil Engineer.

Q.—And that you have had several years' practice and experience, particularly in the Ottawa and Gatineau districts?

A.—I have.

Q.—What would be the effect of a controlled elevation of the waters of the Gatineau at point 321.5 over that elevation?

A.—It would be the added damage from elevation 318 to 320.

Q.—What would be the effect above 321.5 of maintaining a controlled elevation of the Gatineau waters at 321.5?

40 A.—It would be an addition of about three to three and a half feet.

Q.—Is that special to that locality or is that what happens in maintaining controlled elevation of waters in a general way?

A.—It is a general rule.

Q.—How does that general rule apply to the particular topography of the Cross properties above the Chelsea dam?

A.—There would certainly be damage to an additional three or three and a half feet, and possibly more.

In the
Superior Court

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Examination
Oct. 6th, 1932.
(continued)

Q.—How would that damage be brought about?

A.—Due to the softening of the earth above 321.5, and that effect in this area I have observed over a period of five or six years, and it has actually worked out that way.

Q.—How long have you known the Cross property on the Gatineau?

A.—In a general way for many years, about eighteen or nineteen years, and in a particular way from 1926.

10 Q.—It is admitted that there was an electric system there, although there may be some dispute as to its value. How long, to your knowledge, had Mr. Cross been exploiting that electric system?

A.—To my knowledge, about eighteen years.

Q.—Your knowledge would go back to about 1914?

A.—To 1914.

Q.—At that time he was exploiting an electric system?

A.—Yes.

Q.—And has he been continually exploiting it since that time?

A.—Yes.

20 Q.—And I believe you told us in the other case that for the last two or three years you have been in charge of it?

A.—Since July, 1930, we have been keeping the books and looking after any repairs that were necessary and receiving complaints and attending to them.

Q.—What happened to the portion of Plaintiff's distribution system for supplying electricity between Cascades and Kirk's Ferry?

Witness: Ultimately, do you mean?

30 Counsel: Yes.

A.—It was ultimately drowned out.

Q.—How was that brought about?

A.—By the raising of the waters in the Gatineau River.

Q.—The raising resulting from the construction of the works?

A.—Of the dam at Chelsea.

Q.—What effect did the raising of the water of the Gatineau River have upon the Power Plant at Farm Point?

A.—It has ultimately been put out of commission.

40 Q.—How did it affect the Power Plant at Farm Point?

A.—It flooded out the tailrace and reduced the amount of available power.

Q.—And by what means was the power that was to be produced at that plant replaced?

A.—We are purchasing it from the Gatineau Power Company and have been since the summer of 1930.

Q.—At what cost?

*In the
Superior Court*
—
No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Examination
Oct. 6th, 1932.
(continued)

A.—Approximately \$250.00 to \$275.00 a month. It runs at about \$20.00 per horsepower plus a consumption charge.

Q.—What is the meaning of that expression?

A.—That depends on the amount; it is the peak load used during the month. I will produce some of the bills if necessary. The total bill, I say, runs in the neighbourhood of \$250.00 to \$275.00.

Q.—Has the exploitation of the electric business since you took charge of it in the summer of 1930 been profitable or otherwise?

A.—It has not been profitable.

10 Q.—What were the outgoings of the business?

A.—There was the amount payable to the Gatineau Power Company, and the installation of transformers, meter reading, cost of sending out accounts and collection of same. Those are the items that we have paid, and any repair items.

Q.—What has been the cost of taking care of the accounts?

A.—I have paid the stenographer \$12.00 a week for looking after that; \$25.00 a month to the meter reader, and then the repairs as they came in.

20 Q.—The regular charges would be the power charges to the Gatineau Power Company?

A.—Yes.

Q.—The girl's salary about \$600.00 a year?

A.—Yes.

Q.—And the meter reader's salary about \$300.00 a year?

A.—Yes, to date. I have made no charge for office space and our own supervision. We have not been paid that at all yet. As to these others I am reciting the amounts that have been paid.

30 Q.—Were there as many or more, or less customers in 1930 than there were before the raising of the level of the Gatineau Waters.

Mr. Ker: This special Act which has been passed governing this case states that Your Lordship shall value these properties as of 1926. I take it for granted in order to do that, in order to avoid the prejudice which this company may have caused, if any, to the Plaintiff, it is necessary to establish what it was worth in 1926, and to contrast that with the present time or subsequent. The Plaintiff in this case has been examined on discovery, and throughout the entire
40 deposition my learned friends objected to my making any evidence by the Plaintiff himself as to the values of anything after 1926. I think he is wrong, but I submit my learned friend should be consistent and I would like to have a decision on this point now.

Mr. St. Laurent: I have finished making evidence on that point. I allege that at the present time it does not earn a profit. I am going to endeavour to prove that prior to the flooding out which

*In the
Superior Court*

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Examination
Oct. 6th, 1932.
(continued)

took place in 1926 there were more customers than there are at present.

His Lordship: I will reserve the objection.

BY MR. ST. LAURENT:

10 Q.—Before the portion of the distribution system between Cascades and Kirk's Ferry was destroyed?

A.—There would be less.

Q.—Less than at the present time?

A.—Yes.

Q.—Have you been able to ascertain how many customers there were on that portion of the line which was affected on the Defendant's works—physically affected.

A.—The complete system, or the portion between Cascades and Kirk's Ferry?

Q.—The portion between Cascades and Kirk's Ferry?

20 A.—I cannot tell you.

Q.—Could you give the number of customers there?

A.—No. The information which I have gathered is to the effect around twenty-five or twenty-six, but I cannot give that of my own personal knowledge.

BY MR. KER:

Q.—That is, on that one branch?

A.—Yes. I cannot give that of my own personal knowledge.

30 BY MR. ST. LAURENT:

Q.—What other business was Mr. Cross engaged in prior to the raising of the waters of the Gatineau River?

A.—In addition to the electrical business he was engaged in the lumber business, and besides that he had a number of buildings in this locality which he would rent out for specific purposes.

Q.—Where was his chief lumber mill situated?

A.—At Farm Point.

40 Q.—Did he have other mills?

A.—He had.

Q.—Where?

A.—One at Alcove and one at Mileage 12.

Q.—Where is Alcove with respect to Farm Point?

A.—It is about three miles above Wakefield, and about seven and a half miles above Farm Point.

Q.—Those would have to be added together?

*In the
Superior Court*

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Examination
Oct. 6th, 1932.
(continued)

- A.—No, seven and a half miles total.
- Q.—Seven and a half miles total brings it about three miles above Wakefield?
- A.—Yes.
- Q.—And where was Mileage 12 with respect to Farm Point?
- A.—About three miles below Farm Point.
- Q.—Where would it be with respect to Cascades?
- A.—It is below Cascades.
- Q.—And above or below Kirk's Ferry?
- 10 A.—Oh, it is just about Kirk's Ferry. I think it is slightly above.
- Q.—Then, it would be between Cascades and the Chelsea dam?
- A.—Yes.
- Q.—How was the Farm Point Saw Mill operated?
- A.—It was operated by water power from Meach Creek.
- Q.—By the direct application of water power?
- A.—Yes.
- Q.—And how were the other mills operated?
- 20 A.—They were operated by electrical energy supplied from the Meach Creek Power plant.
- Q.—What is the effect of the controlled elevation of the waters at 321.5 on the Mileage 12 Mill property?
- A.—The effect of it is to flood out the siding which was at Mr. Cross' mill at Mileage 12, to flood out the road which was the means by which we shipped out his slab wood and any other material necessary to be shipped, except by rail, and flooded out practically all the low land at the Mill site—when I say low, I mean flat land, approximately flat land.
- 30 Q.—What was the actual raising of the level opposite that property, approximately?
- A.—I will have to speak from memory as to the levels there. I would say around twenty-five feet possibly, or more.
- Q.—The natural level was raised approximately twenty-five feet at that time?
- A.—About twenty-five feet.
- Q.—Will you just give us a general description of that locality. What is the topography of that locality.
- 40 Witness: For Mileage 12?
- Counsel: Yes.

A.—It is an irregular shaped piece of property bordering on the Gatineau River and the Gatineau Highway. There was a siding from the C.P.R. on the front of this property, and back of that siding Mr. Cross had a small mill supplied by motive power by a

*In the
Superior Court*

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Examination
Oct. 6th, 1932.
(continued)

portable mill. The lower part of that property is slightly sloping towards the highway. As you get further back from the river it becomes quite steep, and the buildings, the stables and bunk houses were built back of this steep portion. Mr. Cross used the upper portion as a log rollway or skidway, and the logs would come from the higher elevation down to the saw mill where they would be sawed, and then called on the lower portion and loaded on to the freight cars.

- 10 Q.—On to freight cars on the railway siding?
A.—On the freight cars on the railway siding. Some may have been shipped out by truck. I cannot speak as to that.
Q.—On what side of the river?
A.—It is on the west side of the river.
Q.—After the raising of the water was there any land which those business premises were going to use?
A.—No.
Q.—There was nothing left there that could be used in respect of what was flooded?
20 A.—No.
Q.—Where were the supplies for these mill operations coming from?
A.—I believe they came from the timber limits on the west side of the Gatineau River, and lying between Meach Lake and the Gatineau River.
Q.—Have you a plan showing those timber limits?
A.—I have a plan showing the location of them.
Q.—The plan you have is a topographical survey of the Ottawa-Gatineau district on which you have indicated the timber limits in
30 question?
A.—No, that is one I suggested putting in showing the general location of Alcove, Farm Point and Mileage 12, of the topography of the country around it. That is not the one I referred to before.
Q.—Will you file that as Exhibit P-90?
A.—Yes.
Q.—And will you point out to his Lordship the localities you have been speaking about upon this plan?
A.—On Exhibit P-90, I write the words " Mileage 12 ", and have placed an arrow pointing to the location of the site of Mile-
40 age 12.
Q.—Have you the Deed for that Mileage 12 property?
A.—It is among the records. Mr. Chisholm has it.
Q.—Have you made maps and plans with respect to these three mills, Alcove, Farm Point and Mileage 12, showing the limits claimed to be owned by Mr. Cross?
A.—Yes. The 520 acres of freehold or leasehold exclusive of the

*In the
Superior Court*

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Examination
Oct. 6th, 1932.
(continued)

Crown lands, I have not put that on, because my map would not admit of it going on.

BY MR. SCOTT:

Q.—The Crown lease is on the east side of the river?

A.—The Crown lease is on the east side of the river. I have everything on the west.

10 BY MR. ST. LAURENT:

Q.—Will you file a copy of that as Exhibit P-91?

A.—Yes, I file a copy as P-91, showing the location of the lots referred to in paragraph 15 of the Supplementary Declaration.

Q.—And you have coloured them in pink?

A.—I have coloured them in pink, and marked the lot numbers on them.

It would cover A, B and D. Section C includes the Crown lease.

20 Q.—You have annexed to Exhibit P-91 a typewritten statement and a reference to the lands described in items A, B and D of that typewritten statement?

A.—Yes.

Q.—And does not show the land in item C of that statement, is that correct?

A.—Yes.

Q.—My understanding is that a statement of the lot numbers was filed on the examination on discovery relating thereto?

A.—Yes, and this refers to those.

30 Q.—And this map purports to show the location of the lots to which the statement refers?

A.—Yes.

Mr. Ker: I would like to have my objection recorded on the part of the Defendant to the production of evidence respecting timber limits of this kind.

His Lordship: Objection reserved.

40 BY MR. ST. LAURENT:

Q.—Do you know from your own knowledge for how many years Mr. Cross has been carrying on this lumber business?

A.—For a number of years. I could not say when he first began.

Q.—It was going on when you first had knowledge of it?

A.—I would not say that. I cannot remember the first time I noticed that mill going up the Gatineau. I would not like to say the year it began.

In the
Superior Court

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Examination
Oct. 6th, 1932.
(continued)

Q.—What effect has the raising of the water to control elevation 321.5 had on the Farm Point mill?

A.—It has totally destroyed the piling ground, or it will totally destroy the piling ground. The raising of the water to 321.5, that is, a permanent controlled elevation, will completely destroy the piling ground.

Q.—Have you investigated the situation there?

A.—I have.

10 Q.—With respect to the subsoil?

A.—I have.

Q.—What sort of investigation did you make?

A.—I had a series of test pits made fairly well covering the piling ground to find out what material was underlying it.

Q.—And what did you find?

20 A.—I found the top of the material underlying the piling ground is, first on the surface there are five to six feet of a crust, which is consolidated. It is hard. It is ordinary clay, with a little bit of loam mixed in with it, and underlying that it is a soft mixture of clay, and a little bit of sand in it, which, when we brought the augur, when we pulled the augur up it was that soft that it just ran out the side of the augur, this stuff that you would squeeze through your fingers very easily when you got down to the water.

Q.—How far down did you go?

A.—I went down 36 feet.

Q.—And you found the same substance all the way down?

30 A.—Substantially the same substance all the way down. We could not go down to the solid bottom because it was impossible to get the augur out. We had to use a windlass. When we got down twenty feet we had to use a windlass to haul it up on account of the suction, and as you would get up stuff would run out of the augur. It was impossible to go any further. You could do it by driving piles; otherwise I don't think you could.

Q.—How does that material which you found and which runs in that way compare with the material of the top crust?

40 A.—It is substantially the same material. Of course, the top has a certain amount of crust on it, and there are odd places where you could find boulders lying on top of it and there is more of the alluvial soil on the top. Due to exposure to the weather and things like that the character changes somewhat.

Q.—Will you file as Exhibit P-92 a copy of the plan prepared and filed by the Defendant when trying to expropriate the Mileage 12 property, and say if it is that portion which is coloured red on that plan?

A.—It is.

Q.—Will you file as Exhibit P-93 a copy of the plan and description filed by the Gatineau Power Company when attempting to ex-

*In the
Superior Court*

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Examination
Oct. 6th, 1932.
(continued)

appropriate the Farm Point property, and say if it is the portion coloured red on that plan?

A.—It is the portion coloured red. There is also a portion having an area of 7.05 acres coloured yellow, which is at substantially the same elevation as the other portion, but which evidently has been excluded.

Q.—Is it, or is it not, affected by the controlled elevation of the waters at 321.5?

10 A.—It is affected. The portion coloured yellow is affected by the controlled elevation of 321.5.

Mr. Ker: I object to the production of this plan as being in no way relevant to the matter of estimating the damage. It has nothing whatever to do with the matter.

(The Court reserves the objection.)

A.—They are substantially along the 325 level.

20 BY MR. KER:

Q.—But they are not below the 325; if anything they are above?

A.—Yes.

Mr. Ker: Produce your contour plans, Mr. St. Laurent.

30 Mr. St. Laurent: I would also like to produce this one. However, I will withdraw it for the time being and when we produce the contour plan there will not be any discussion as to the facts, because the contour plan will show.

Mr. Ker: I may say the same objection applies to this plan of Mileage 12. It does not refer to this level at all. It refers to a very excessive level.

BY MR. ST. LAURENT:

Q.—Have you a contour plan showing the elevation 321.5?

40 A.—I have a plan showing, not only 321.5, but the 325, the 318, 316.6.

Q.—Will you file that plan as Exhibit P-93?

A.—Yes. This is checked by myself. There are certain revisions on it.

BY MR. KER:

*In the
Superior Court*

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Examination
Oct. 6th, 1932.
(continued)

Q.—That is the Farm Point property?

A.—Yes, the Farm Point property.

Might I also put in a plan which I have prepared myself showing the 321.5 contour as the lowest contour, and showing the other elevations up to the top of the Meach Creek dam going up the side of the hill, to show the slope of the hill going up?

BY MR. ST. LAURENT:

10 Q.—Will you file that as P-94?

A.—Yes.

BY MR. KER:

Q.—Were those plans prepared by you?

A.—The first one, I took my outline from your own plan that was filed, and I checked that and made any revisions that I found were necessary.

20 BY MR. ST. LAURENT:

Q.—And the plan P-94 was prepared entirely by yourself?

A.—Entirely by myself.

Q.—Will you file as Exhibit P-95 this copy of the original expropriation plan which is drawn to the same scale, is it not, as P-93?

A.—Yes, 200 to the inch.

Q.—And which will show by comparison how the portions coloured yellow and red are affected by these contour lines?

30 A.—Yes.

Mr. Ker: I do not wish to make unnecessary objections to these productions, but is this plan which you produce as Exhibit P-94 not sufficient to give all the information?

Mr. St. Laurent: All this land which was coloured is for all practical purposes affected by the elevation 321.5. There may be certain knolls that are not affected, but for practical purposes the whole of it is affected.

40 Mr. Ker: I do not think you have proved that. Why do you produce a plan showing up to 321.5 and take for granted that all that land is affected?

Mr. St. Laurent: You yourself found it was not practical to exclude the small knolls in order to merge this 321.5 when you were taking it. You yourselves treated what was within this as being all one.

*In the
Superior Court*

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Examination
Oct. 6th, 1932.
(continued)

Mr. Ker: I submit it is not relevant to the case what we did or did not do.

(The Court reserves the objection.)

BY MR. ST. LAURENT:

Q.—Is or is not the land coloured red and yellow affected by maintaining the waters at controlled elevation 321.5?
10

A.—It is affected by it.

Q.—Is it possible in view of the nature of the sub-soil you found by investigation there, to raise the elevation of this land by filling in for the purpose of using it for a piling ground?

A.—Not except at excessive costs.

Q.—Will you explain a little more fully what you mean by that answer?

A.—For a piling ground I would consider a gravel fill is not suitable, because the water rises up through the top part of it and we would have capillary action, and you would have your bottom
20 of the piles damp all the time. I would say a fill adjacent to a water like this should be stone-filled. In my opinion, that ground will not carry stone fill because it may submerge at five or six feet of top crust continually. Through time it will soften down just the same as the under part, and then there would be no bearing surface. The stones would then simply go down out of sight. The only way to fill that satisfactorily would be to pile it, the cost of which is prohibitive.

Q.—How would that be done? You say the only way would be to pile it?
30

A.—That is, to drive sticks right down to the solid bottom. I have not been able to get down to it. I know it is beyond 35 feet.

Q.—And the cost of that

A.—Would be prohibitive.

Q.—And is it your opinion as an engineer that that would be the only practical way of filling this in, or raising the elevation?

A.—It is my opinion, and it is also my statement that it is the only way in which I would guarantee a permanent job.

Q.—Did you show this stuff you had taken up from these test
40 pits to other engineers?

A.—I did.

Q.—To whom?

A.—I showed them to Mr. Beaubien and to Mr. Robertson.

BY THE COURT:

Q.—What conclusion did you draw from that situation?

*In the
Superior Court*
No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Examination
Oct. 6th, 1932.
(continued)

A.—The situation, my Lord, is that this ground which Cross has used as a piling ground could not be filled in and raised up in a satisfactory manner to allow him to continue after the water is raised to the controlled elevation of 321.5, and there is no other land around there that he could use. P-94 is produced to show that.

BY MR. ST. LAURENT:

10 Q.—And what effect would that have on the saw mill and lumber mill at that point?

A.—You have to have a piling ground for your lumber or else you are out of business, that is all.

Q.—Then what is your statement with respect to the effect of maintaining the controlled elevation of 321.5 upon the lumber business at Farm Point?

20 A.—It is that it takes all the land practically to the foot of the hill, all the land which is, or could be, used for a piling ground, right to the foot of the hill, and from there up the ground is very precipitous, and is used for his cottages, and he has no remaining land which he can use as a piling ground.

Q.—Are we to take it from that, that your statement is the controlling of the elevation 321.5 destroyed Farm Point as a site for his lumber business?

A.—Yes.

Mr. Ker: I object to this evidence.

BY MR. ST. LAURENT:

30 Q.—As there is an objection to this question, will you make your own summary of what your statement is of the effect of raising the elevation of water to 321.5 at Farm Point?

A.—What I have intended to convey by my evidence is, that when the water is raised to the controlled elevation of 321.5, that there is no more land which can be used for the piling ground, or which can be made suitable for the piling ground, and therefore that lumber industry without a piling ground is useless, and therefore the lumber interests at Farm Point is destroyed.

40 BY THE COURT:

Q.—What financial effect would that have on Mr. Cross, the Plaintiff?

A.—It completely wipes out his lumber industry. As to the extent of his financial loss, I am not prepared to say. I have never seen his books, nor do I know, only in a general way.

In the
Superior Court

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Examination
Oct. 6th, 1932.
(continued)

BY MR. ST. LAURENT:

Q.—How does this, if at all, affect the sawmill at Alcove?

A.—He received his sources of power from the plant at Farm Point, and that has been out of commission since 1930.

Q.—What kind of mills were these at Alcove and at Mileage 12? Were they mills that ran the whole year or a certain portion of the year?

10 A.—They would run a portion of the year.

Q.—During what portion of the year?

A.—Mr. Cross would know that better than I. I should judge three or four months maybe, and I do not think they would run concurrently.

Q.—With those kind of industries is it practical to purchase power from the ordinary power companies?

A.—It would be much more expensive than if you had it on call yourself.

Q.—Why is that?

20 A.—For one thing you have to pay for your peak load, and then you have to pay a standby charge. You may be using it one day and you may have some holdup for some reason and not use it the second day, and you would still have to pay for the power, and unless you give a long-term contract you have to pay a much higher price for the power.

Q.—What do you mean by a long-term contract?

30 A.—By the year. In connection with that I have some bills here showing that Mr. Cross paid at the rate of \$45.00 per horsepower per year, purchasing it by the month, to the Gatineau Power Company themselves. I have bills if you wish me to produce them?

Q.—Is that a price at which a lumber business can be carried on?

A.—I should think not.

Q.—Do you know this piece of property on the east side of the river which is referred to in the Pleadings as the Gravel Pit Property?

A.—Yes, I know the property.

Q.—How is that affected by the maintaining of the controlled elevation of 321.5?

40 A.—The portions bordering on the river only is affected, the shore line, that is, in a physical way.

Q.—What was on that shore line?

A.—Along the shore line and adjacent to it, he has two cottages.

Q.—Cottages for permanent occupation or for summer occupation?

A.—For summer occupation.

BY THE COURT:

*In the
Superior Court*

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Examination
Oct. 6th, 1932.
(continued)

Q.—On what part?

A.—On the east side of the river, my Lord, right opposite Farm Point.

BY MR. ST. LAURENT:

Q.—That is the property which is described in this exhibit which was filed with the Supplementary Declaration as Plaintiff's Exhibit P-64?

10 A.—That is the property.

BY THE COURT:

Q.—What would be the width of the river at Farm Point?

Witness: At the present time or before?

BY THE COURT:

20 Q.—Before.

A.—It varies quite a lot. There is a ferry just below Mr. Cross' property which is on the lower side of Mr. Cross' property. It was originally, I should say, seven or eight hundred feet.

BY THE COURT:

Q.—What is the width now?

30 A.—I should say now it would possibly be, may be, 150 feet wider, not very much, because the banks in respect of this flooded portion of Mr. Cross are reasonably steep.

BY MR. ST. LAURENT:

Q.—Did you see the gravel Mr. Cross claims to have carted across to the east side?

A.—I saw a pile of gravel between the Gatineau Highway and the railway on Mr. Cross' property, which he informed me was part of the gravel which had been hauled.

Q.—Are you in a position to say how much there was?

40 A.—No. The pile was partly submerged by water.

Q.—Did you make an estimate of the replacement value of the physical assets Mr. Cross had at Farm Point in connection with his electric light and power business?

A.—I did.

Q.—There was a statement filed in that connection as Exhibit P-65. Did you have anything to do with the preparation of that statement?

In the
Superior Court

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Examination
Oct. 6th, 1932.
(continued)

A.—I did.

Q.—Are those your figures?

A.—Those are the replacement values of those items?

Q.—How did you arrive, for instance, at the first one, \$4,110.29?

A.—I took the items in the power house and placed upon them a value, and also took the length of the transmission line—rather took the draft tube, figured out the quantities in it, and put those together it made up \$4,110.29.

10 Q.—Was that figure arrived at after measurements and actual calculation?

A.—Measurement and examination and calculation.

Q.—And represents, in your opinion, the replacement value?

A.—Yes.

Q.—Of that item?

A.—Yes.

Q.—Were the things which this would replace of that value in 1926, or should they be depreciated to any extent, and if so, to what extent?

20 A.—Those were the replacement values as of 1926. There should be a certain item for depreciation if you are asking for the fair value.

Q.—To get to the fair value of this item in 1926 for which the replacement value is \$4,110.29, what depreciation would you have to allow?

A.—The power house and draft tube I should think would be subject to very little depreciation. They are built of concrete and I do not think there would be more at the very outside than eight or ten per cent depreciation in those.

30 Q.—So on that one item of \$4,110.29 there might be from eight to ten per cent depreciation?

A.—Yes.

Q.—The next item is the penstock and concrete saddles, \$3,650.00?

A.—The penstock itself would be subject to a heavier rate of depreciation.

Q.—What would be the depreciation on that item?

40 A.—I would say that the depreciation on that item, and I will include the concrete saddles because they are smaller masses of concrete, and subject possibly to the action of frost, moisture getting in around the penstock and having an effect from time to time. I would say thirty per cent for those.

Q.—How was the power house item of \$5,650.00 arrived at?

A.—That was arrived at by detailing the items that were in the power house, and placing upon them a value which I obtained from a catalogue price of the items as of 1926.

Q.—You have your work material for that?

*In the
Superior Court*
—
No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Examination
Oct. 6th, 1932.
(continued)

A.—No, I have not the catalogue with me. I just took the unit prices out of it.

Q.—Have you a list of the details which you added up and which make up that total?

A.—Yes.

Q.—What depreciation should there be from that to get at the fair value of what existed in 1926?

A.—I would place, maybe, forty per cent on this.

10 His Lordship: Is that mentioned in the exhibit that is filed?

Mr. St. Laurent: Yes, in Exhibit P-65.

BY MR. ST. LAURENT:

Q.—The transmission line \$36,589.71, have you the details of your calculation with respect thereto?

A.—I have.

Q.—Was that replacement value?

20 A.—That was replacement value, and in connection with those thirty-one miles I would like to say that the details of that item were supplied to me, that is, the number of piles and the count of the piles and the count of the transformers were obtained by a man named Frederick in Mr. Cross' employ. I have the original book he used for that purpose, and which I will file if you so desire, and which will be sworn to by Mr. Frederick himself who is in Court in Campbell's Bay today. He could not be here.

30 Q.—Will you file the book as an Exhibit subject to proof by Mr. Frederick?

Mr. Ker: I object to the production of this book by this witness.

BY MR. ST. LAURENT:

Q.—As there is an objection to filing this book at the present time we will suspend it, but I would ask you to initial the cover so that I can have Frederick identify the initials and tie up the information we will get from Frederick with that he gave you?

40 A.—I have written on the back of the cover of this book, "Information used in the estimating of transmission line", and have signed it myself.

Q.—On that information you made up your calculation of \$36,589.71. Was that replacement value?

A.—That was replacement value.

Q.—How much money depreciation should there be there to get at the fair value in 1926?

*In the
Superior Court*

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Examination
Oct. 6th, 1932.
(continued)

A.—I have placed on that thirty-five per cent depreciation, that is, taking it over as a whole. Some of the poles were almost new and others of them have been in various stages of decay from perfect down to not so good.

Q.—Well then, if what the Plaintiff is entitled to is replacement values, it would, in your opinion, be \$50,000.00?

A.—The replacement value, yes.

Q.—And that is the figure which appears on P-65?

A.—Yes.

10 Q.—And if he is only entitled to the fair value as the physical condition made it in 1926, there would be these depreciations you have mentioned?

A.—Yes, the depreciation I have mentioned.

Q.—Which would reduce that \$50,000.00 by something like \$16,500,000?

A.—I would want to work that out on each one.

Q.—You gave us the percentage?

A.—I gave you the percentage.

20 Q.—The next item in paragraph 27 of the Supplementary Plea is \$100,000.00 for the goodwill of the electric light and power business. You, as an engineer, I presume, were not able to make any estimate of that?

A.—No.

Q.—The following item is the replacement value as per summary and detailed values with respect to the lumber business as shown on Exhibit P-66. Did you prepare the Exhibit P-66?

30 A.—I gave a list of the items in it. There are some items there which were not calculated by myself: for instance, the matter of the buildings. That item is the valuation made by Messrs. Hazelgrove and Adamson, Architect and Contractor. I have my own for that item. I made the estimate of the dam on Meach Creek and the penstock and sills, my own; the equipment and the saw mill, my own; the C.P.R. Siding, my own; private roads around the yard and the wells and the crib work are my own; the storage dam in the upper reaches of Meach Creek are not my own; the service pipe lines for water, the details were supplied to me by Mr. Frederick. The land, is all my own.

40 Q.—Then, in Exhibit P-66, the \$88,401.57 for buildings is not yours?

A.—No.

Q.—Nor the \$8,000.00 for the storage dams and improvements in the upper reaches of Meach Creek?

A.—No.

Q.—And with respect to the \$1,740.00 for the service pipe lines for water, the calculation is yours. Information was given to you by Mr. Fredericks?

*In the
Superior Court*
No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Examination
Oct. 6th, 1932.
(continued)

A.—By Mr. Fredericks.

Q.—And the rest of the items were estimated by yourself?

A.—By myself.

Q.—Did you make an estimate of the buildings?

A.—I did.

Q.—What figure did you arrive at for this replacement value of the buildings?

10 A.—I arrived at a value of the buildings exclusive of the mill, of \$66,256.00 as the replacement value, with a fair value of \$45,654.50 as of 1926. I have all the buildings here with their percentages of depreciation and the sizes of the buildings and all, and a summary on the front page which I will put in.

Q.—Will you file this as Exhibit P-96?

A.—Yes.

Q.—This is your own detailed valuation?

A.—That is my own detailed valuation.

20 Q.—Showing the replacement value, and showing the fair value as of 1926, it being the replacement value I presume, with a certain percentage for depreciation taken off?

A.—Yes, and the depreciation shown on the underpart. Each building is gone into. I have produced group 1, 2, 3, 4, etc., and I have these buildings that are associated with it as stables and out-houses and so on, No. 1-A, 1-B, 1-C and so on.

Q.—Have you a plan to which this refers or with which it corresponds?

A.—I have. I will file the plan as Exhibit P-97. This plan simply shows the groups, the location of the different groups on the property.

30 Q.—Do the numbers there correspond with the group numbers in your Exhibit P-96?

A.—They correspond with the group numbers. I did not put the sub group numbers on that. I just simply put the groups like 1, 2, 3, 4 etc. up to 40.

Mr. Ker: I object to the production of this long list of buildings, 40 in number, as being irrelevant to the water level of 321.5.

(The Court reserves the objection.)

40 A.—I may say with the exception of three buildings, those three groups, those buildings are part of the lumbering industry. They are cottages for his employees, all working there.

BY MR. ST. LAURENT:

Q.—And what are the three groups that are not cottages for the lumbering business employees?

*In the
Superior Court*

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Examination
Oct. 6th, 1932.
(continued)

A.—The hotel and the two cottages on the east side of the river. Those are rental propositions.

Mr. Ker: It is not so stated in the declaration. In the declaration it is taken in as the lumber business.

BY MR. ST. LAURENT:

Q.—You stated that the group numbers used in your Exhibit
10 P-96 corresponded to the numbers shown in the plan filed as P-97?

A.—Yes.

Q.—Was there also any corresponding identification marks put on the actual buildings and shown to the representatives of the Gatineau Power Company?

A.—Yes. I went over each of these buildings and painted in large numbers the number on the group, the group number on the house and the letter number if it was house No. 24 I would put the house No. 24, and in several out-buildings that were around that house and that went in that group I would put 24-A, 24-B, 24-C and
20 so on, and gave a list of this to the Gatineau Power Company as well, so they might identify them and tie them in with our list.

Q.—When was that done?

A.—I did that in the early part of the summer.

Q.—Looking at the plan P-97, will you tell us how many of these groups, and which ones, are physically affected by the controlled elevation of 321.5?

A.—Group No. 5, Group No. 6, Group No. 10, Group No. 9. 11 is the Power House. Group 30, Group 27 and Group 31.

Q.—How, if at all, are the buildings of the other groups affected
30 by holding the controlled elevation at 321.5?

A.—The only physical effect that it would have would be any depreciated value due to having the water raised up so high in front of them, the water raising and lowering creates quite an odour and is objectionable. You might almost class it as a frog pond in front of them.

Then, if the lumbering business is removed, these buildings are occupied by employees of Mr. Cross who work in the lumber mill, and if these are removed there is no further use for the cottages.

The lumber industry is practically the whole thing at Farm
40 Point, and Mr. Cross had to provide cottages for his workmen in order to retain their services, and have them on call when he would need them.

Q.—If the lumbering business ceased at that point, would there be other work in the vicinity that would make that a fit location for labourers to reside at?

Mr. Ker: Can the witness answer that?

In the
Superior Court

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Examination
Oct. 6th, 1932.
(continued)

Witness: I do not think there would be enough work in that locality at all to provide for this number of men that are there.

BY MR. ST. LAURENT:

Q.—Your total valuation, exclusive of the mill, was \$68,256.00, and your fair value \$45,654.00, as against the replacement valuation and other valuations of \$88,451.57, including the mill; did you make a replacement valuation of the mill?

10 A.—I had some figures on that, but unfortunately I have been unable to find them, and I will have to give them from memory.

Q.—From memory, what was your replacement valuation?

A.—Somewhere between nine and ten thousand dollars on the mill.

Q.—And your fair valuation for 1926?

A.—That would be about eighty per cent of that.

BY MR. KER:

20 Q.—Is this the saw mill?

A.—The saw mill. I am sorry I have not got them. I hunted high and low for them.

BY MR. ST. LAURENT:

Q.—Your replacement valuation for the whole of the buildings there would be roughly \$78,000.00, as against \$88,000.00 set down by the other valuations?

30 A.—Yes.

Q.—So you would be about \$10,00.00 below them?

A.—Yes.

Q.—And your fair valuation would be something around \$52,000.00?

A.—\$52,000.00 to \$53,000.00.

Q.—Take the next item on Exhibit P-66, dam at Meach Creek; have you got the details of that valuation?

40 A.—I have. In the dam at Meach Creek there are 2,600 cubic yards of earth fill, upon which I place a value of 60 cents a cubic yard.

Q.—Making how much?

A.—Making \$1,560.00. There is rock fill, 4,257 cubic yards, upon which I place a value of \$2.00 per cubic yard.

Q.—How much does that amount to?

A.—That amounts to \$8,514.00. There are 954 cubic yards of concrete, upon which I place a value of \$15.00 per cubic yard, making a total of \$14,310.00. That makes a total of \$24,384.00.

*In the
Superior Court*

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Examination
Oct. 6th, 1932.
(continued)

Q.—Is that the replacement value or the depreciated value, if there was any depreciation value at all at 1926?

A.—That is the replacement value. The depreciated value would be very small. I do not think I would place more than ten or twelve per cent depreciation on that because it is fill in places and becomes more consolidated as time goes on.

Q.—So the fair value for 1926 would be something around that amount?

A.—About \$22,000.00.

10 Q.—Have you the details of the next item, your valuation of the penstock and sills at \$3,500.00?

A.—Yes. In connection with the penstock and sills, I would like to explain to your Lordship that it is a long penstock, coming from the dam up above, down to the saw mill, and then continuing from the saw mill down to the power house. Now, I have made a division of that. The part that is down from the dam down to the saw mill I have included with the saw mill itself. The portion from the saw mill down to the power house I have included that with the
20 power house.

Q.—So that is why you also add an item for penstock in the Exhibit P-65, it being for the portion of the penstock below the intake of the saw mill?

A.—Yes.

Q.—What is your valuation for the penstock from the dam to the saw mill?

A.—The portion from the dam to the saw mill I have allowed \$3,500.00 for it.

Q.—Replacement value or depreciated value?

30 A.—Replacement value.

Q.—What, in your opinion, would be a fair value after depreciation, if there was any depreciation in 1926?

A.—I would place the same depreciation as I placed on the other this morning, that is, thirty per cent.

Q.—So that instead of \$3,500.00 it would be roughly \$2,500.00, the fair value?

A.—Yes.

Q.—With respect to the equipment in the sawmill, \$18,551.82?

40 I will file as Exhibit P-98.

Q.—I note that this comes to \$15,145.49 instead of \$18,551.82 as listed in P-66; why that difference?

A.—The difference is explained by the fact that in the catalogue certain prices are put upon each unit, and then there is a discount allowed. That discount varies from year to year depending on conditions, and I did not realize until about a week and a half ago that I had allowed a lower rate of discount than was in force in 1926. It

*In the
Superior Court*

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Examination
Oct. 6th, 1932.
(continued)

was my assistant in checking over who drew this to my attention, and I had him revise that, making that allowance.

Q.—So that the \$18,551.82 is wrong, it having been made up by taking a smaller discount than you have since ascertained was in force in 1926?

A.—I think it was a fifteen per cent discount that the \$18,000.00 odd was used with, and there was a higher per cent rate of discount than that.

10 Q.—Is the \$15,145.49 replacement value or depreciated value?

A.—It is replacement value.

Q.—And to get at the fair value as of 1926, would there be any depreciation to be taken off?

A.—There would be depreciation to be taken off.

Q.—To what percentage?

A.—Twenty per cent.

Q.—So, roughly, \$3,000.00 would come off that if you were entitled to the fair depreciated value instead of the replacement value?

A.—Yes.

20 Q.—How did you arrive at your valuation of the C.P.R. siding to the mill?

A.—The C.P.R. siding to the mill is about 1,300 feet long. There are 1,253 cubic yards of ordinary fill which I placed at seventy-five cents a cubic yard, making a total of \$939.75. There are 482 cubic yards of ballast upon which I placed a value of \$2.00 a yard. These are all in place; 650 ties at 65 cents each, making a total of \$422.50; laying rails and ties, \$300.00, and matting under them. There is a certain matting placed under the fill of logs, and timbers, \$375.00. The total is \$3,001.25.

30 Q.—Is that replacement value?

A.—That is replacement value.

Q.—Should there be any depreciation taken off that to get at the fair value of 1926?

A.—No, I do not think so.

Q.—In your opinion, then, the fair value of 1926 would still be the \$3,001.25?

A.—Yes.

Q.—Was that physically affected, or if not, why do you take into account the siding?

40 A.—The siding is physically affected.

Q.—Physically affected by holding the water?

A.—Yes, because the raising of the water renders it such that the engines cannot go in on it now. The elevation of the siding, I think, is about 320.7, that is, the bottom of the loop. Of course, it gets up higher till it gets to the level of the railway.

Q.—Would there be any use for that siding at that point if the lumber business disappeared from it?

In the
Superior Court

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Examination
Oct. 6th, 1932.
(continued)

A.—No.

Q.—How did you arrive at your valuation of the private roads around the yard, \$3,000.00?

A.—That is an item which I have allowed a lump sum for, improvement to roads, grading roads and gravel that has been put upon them throughout the yard up on the side of the hill and back of Mr. Cross' residence.

Q.—What were those roads used for?

A.—They were used for access to the mill.

10 Q.—Is that just a rough estimate made up from looking at the road?

A.—That has been arrived at just simply by going over the roads and making an estimate myself. It was very difficult to get any detail of what was in that before, and I have allowed that amount.

Q.—The four walls, \$300.00?

A.—There is one of them on the Morrison property. There was one on group No. 31 and at two places back upon the hill.

Q.—Are they physically affected?

20 A.—The one in group number 30 and in group 27 are physically affected. The others are not.

Q.—Well, then, why did you take the others into account?

A.—Well, it is part of the permanent development that has been made there. A man has to have a well some place. The third one, I may say, is for watering the horses at Mr. Cross' stable. There is a well there.

Q.—Would there be any use for it if the lumbering business disappeared?

30 A.—No. That third one is between groups 13 and 15, and the last well, I think, is in group 17. It is either 17 or 19.

Q.—The next item is the crib work and log rollway. What did they consist of?

40 A.—350 feet. I might first explain that Mr. Cross built his mill, that is, where he piles his logs; the logs come down from the higher elevation on the level at the top of the dam. He has availed himself of what was partly the work of the dam, and partly on the natural condition. He has improved it, and has made a long sloping place where he can dump the logs from the upper side, and they come down to a crib work which he has built across the bottom. In front of this crib work he has a track and he tumbles the logs off the crib work on to a small carriage which he has running on tracks, and by gravity this goes down to the mill, and it is hauled empty by a horse, and he loads it up again and lets it go back again. On the log railway and siding there are 350 feet of track rails and ties, and the grading of the same I place at \$3.00 per lineal foot. Then the building up of the crib way and the improving of the lower part of the log rollway itself; there are 275 lineal feet of that, of crib work and grading, I

*In the
Superior Court*

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Examination
Oct. 6th, 1932.
(continued)

place at \$3.50 a lineal foot, making a total of \$962.50. The first item was \$1,050.00. The total comes to \$2,012.05. I put in an item and called it \$2,000.00.

Q.—Was that your replacement valuation or, in your opinion, the fair value at the time?

A.—Yes, replacement value, and I consider the same fair value.

Q.—The next item is land exclusive of mill site, two residential lots. Can you point out on any one of the plans you have filed where those two residential lots are, and how you arrive at that valuation?

10 A.—Yes, I can. Might I take all the land proposition together.

Q.—Perhaps it would be simpler to take all the items you have in P-66 for land valuations?

A.—Referring to Exhibit P-95, the land which I have included in Exhibit P-66, with the exception of twenty acres, which I will refer to later on, is the portion marked parcel No. 4 on Exhibit P-95. The portion marked parcel 5 on Exhibit P-95 and the area between parcel No. 4 and the Muluva Hill Road. The Muluva Hill Road is not marked on P-95.

20 Q.—It is marked on P-97, so its location is sufficiently identified?

A.—It is the main road going up from the Gatineau Highway through Mr. Cross' property. There are two ways by which you can arrive at the price of property. One is by the per square foot method, which is used more exclusively for city property and property of a nature where a small quantity is required, or where you use it for commercial purposes, and being of a higher relative value. Cottage sites and property like that in the Ottawa and Hull districts are usually sold by the foot frontage, although they are also sold by the acre. For my purposes I have placed these on a per foot frontage basis, and I have also reduced them to an acreage basis.

30 The per foot frontage basis I will file as Exhibit P-99, and along with P-99 should go Exhibit P-100, showing how Mr. Cross might sell this property off.

Q.—Have you got Exhibit P-100? P-100 is a plan showing what plots you considered for the purposes of making up your amount?

A.—Yes, the way I arrived at it.

40 Q.—P-100 shows what amount of ground you have listed on P-99?

A.—Yes.

Q.—Under the same number?

A.—Yes, with the exception of twenty acres marked up on the corner, and that is dealt with in the second to last item.

Excluding those twenty acres my total valuation is \$13,230.00, made up of the lots which number 29, \$6,110.00; two residential lots,

*In the
Superior Court*

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Examination
Oct. 6th, 1932.
(continued)

\$2,000.00, that is \$1,000.00 each; hotel site, \$1,200.00, and river front, \$3,920.00. That makes a total of \$13,230.00.

The area of these parcels of land, parcel No. 4, according to Exhibit P-95 is 7.8 acres. Parcel No. 5 is 1.6 acres.

BY THE COURT:

Q.—Do you call those lots?

10 A.—No, they are just parcels showing on Exhibit P-95 as filed on Mr. Cross for expropriation.

BY THE COURT:

Q.—When you talk of lots, what is the ordinary size of the lots?

20 A.—The size of the lots are shown in this plan P-100. That property is not subdivided, but it is just a method by which Mr. Cross might sell it. He has sold a great many lots, and they have been described merely by meets and bounds. He had a procès verbal made up covering lots, that I have placed in the schedule. P-99 shows the frontage I have given on each; the area between the parcel No. 4 and the Muluva Hill Road exclusive of Mrs. Cross' lot—I may say there is a portion marked on P-100 which is owned by Mrs. Cross, and which is left out of consideration in this case. That area is 6.1 acres, so I am making a total of 15.5 acres, for which I have placed a value of \$13,230.00. That works out at \$853.00 per acre.

In arriving at this basis I have been guided by a number of sales in that locality. First of all, that property of Mrs. Cross on the corner was purchased on September 16th, 1911, Deed No. 18307.

30 BY MR. ST. LAURENT:

Q.—You have certified copies of the deeds?

A.—I have certified copies.

Q.—The deeds you are going to refer to?

A.—Yes. That is, Wilson to Mrs. Cross. If you put it on the per foot frontage basis, this works out at \$3.30 per foot. If you put it on the acreage basis, it works out to \$1,045.00 per acre. That was a sale in 1911.

40 Then, April 5th, 1924, number 44242, Mr. Cross sold to Mrs. W. P. O'Meara. That portion of the land lies immediately to the north of parcel No. 1 shown on Exhibit No. 5, and is marked "O'Meara" on Exhibit P-100. It runs for a frontage of 200 feet. The whole 200 feet is not shown, but it is just a narrow strip between the Gatineau River and Road. That parcel works out at \$1.00 per foot frontage, or \$1,740.00 per acre.

August 21st, 1922, No. 40197, Mr. Cross to W. J. McNeil, part of lot 24-C, in the Sixteenth Range of Hull. It is a piece of land

In the
Superior Court

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Examination
Oct. 6th, 1932.
(continued)

approximately 60 by 102. It is somewhat irregular. The two sides are not quite parallel, but if you work it on a frontage basis it is \$2.50 a foot frontage, or \$1,080.00 per acre.

10 Deed No. 26874, date August 22nd, 1916, Cross to A. G. Roy, part of lot 25-C in the Sixteenth Range. This is going up on the hill; a piece of land 50 feet frontage by 170 feet in depth approximately. I may say the deed does not give the measurement, if my memory serves me rightly. Those measurements were given to me by Mr. Cross himself. 170 feet in depth is all right. The frontage is not given in this. It is between the Baldwin property and another property. I asked Mr. Cross and he said it was fifty feet frontage. That is \$3.00 per foot frontage. The sale was at \$150.00. It works out at \$3.00 per foot frontage, or \$784.00 per acre.

Sale from Cross to Lamb, August 27th, 1921, Deed No. 37507, part of lot 24-C, 84 x 132. This lot is slightly irregular. It is not exactly rectangle. It works out at \$1.17 per foot frontage, or \$400.00 per acre.

20 There is a sale from Cross to Mrs. W. J. Moore (Winifred Lambert), February 10th, 1925, a piece of land 125 feet by 140 feet. The sides are parallel, but the front and back are not quite parallel, for \$350.00. It works out at \$3.10 per foot frontage, or \$870.00 per acre.

Those are all sales by Mr. Cross.

I have also the sale dated October 26th, 1922, from E. Martineau to Catherine White, part of 24-C, Range 16, 91 feet along the C.P.R., 94 feet along the Muluva Hill Road, 75 feet along the southerly boundary and 65½ feet on the westerly boundary. The sale was for \$200.00. It works out at \$2.02 a foot frontage, or \$1,300.00 per acre.

30 The next sale is one by E. Martineau to J. B. Meunier, April 15th, 1926. This property has 119 feet frontage on the Dunlop Road, a depth of 48 feet on its easterly boundary, and 61 feet on its westerly boundary. The sale is at \$350.00. I am informed that there was a garage on that property.

BY MR. KER:

Q.—Where is this?

40 A.—The Dunlop Road and the Muluva Hill Road is the same thing. This one on the railway, too, is between the Roman Catholic Church and the C.P.R. on the north side of the road. I am informed there was a garage on that on which I placed a value of about \$75.00, and deducting that from the sale at \$350.00, it leaves \$275.00. This will give you substantially \$3.00 a foot frontage for this property, or \$2,047.00 per acre.

These are sales surrounding this property entirely, and I have also a couple of sales down at Cascades. There is a sale on June 21st, 1922 from Samuel E. Wilson to Alex. Garvock.

*In the
Superior Court*

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Examination
Oct. 6th, 1932.
(continued)

BY MR. KER:

Q.—That is a long way off?

A.—It bears out the general trend of prices. It works out at \$815 an acre. I have another one adjacent to that.

BY MR. ST. LAURENT:

Q.—What were those lots being sold for?

10 A.—The Garvock lot was sold at \$300.00.

Q.—For what purpose?

A.—For cottage purposes.

Q.—Summer cottage purposes?

20 A.—Summer cottage purposes. Alex. Garvock bought it for summer cottage purposes. I may say Mr. Garvock bought other property, but the description is irregular, and I have not been able to arrive at the exact area to my own satisfaction. The other sale was for about almost twice the amount of money this was, but I am excluding that because I cannot get the area to my own satisfaction, and the Baker property was sold for \$650.00 an acre. It was sold for \$175.00; it works out at \$175.00 per foot frontage.

Then, down at Cascades, too, part of lot 21-C in the 15th Range.

Those are the sales that have guided me in addition to my own knowledge of sales of property, which I submit in proof of my valuation.

Q.—If we take up the twenty acres on the hill which you said you were excluding from the discussions you have just been giving, how do you arrive at that valuation? What is your valuation for them, or how do you arrive at it?

30 A.—This is the depreciated value due to the water being raised up in front, and having what I have classed as a frog pond in front of it. The water rises up around the railway.

Q.—What could those twenty acres on the hill be used for without the frog pond?

A.—It is potentially available for summer cottage purposes and could be used for pasturing cattle and things like that, farming.

Q.—Is there anything to indicate any possibility of realizing the use for summer cottage purposes?

A.—I would think not to the same extent at the present time.

40 Q.—Is there any property adjoining that has been taken up for summer purposes?

A.—Yes, there is the Gilhooly purchase, part of this same lot. He owns it now, and Doctor Chabot is part of them; McKenzie is part of them. There are a number of cottages right on the end of this same property.

Q.—Cottages used as summer homes by people, the ordinary residents of Ottawa or Hull?

*In the
Superior Court*

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Examination
Oct. 6th, 1932.
(continued)

A.—Yes. One of the best cottages in this district and in the Gatineau Valley, that of Doctor Chabot, is adjacent to this, erected quite a long time ago.

Mr. Ker: I suggest that the Deed for this property be produced.

Witness: I have not the Deed of that.

10 BY MR. KER:

Q.—Why mention it if you don't know?

A.—I am not guaranteeing the title. That is handled by Mr. Scott in his office.

BY MR. ST. LAURENT:

Q.—Where are those twenty acres?

20 A.—Those twenty acres are on the west side of the C.P.R.

Q.—On higher level than we have been talking about?

A.—Yes.

BY THE COURT:

Q.—Where would it be on this plan?

A.—It is part of lot 25.

30 Mr. Ker: I object to all this evidence. They have not shown any ownership of this property yet and I cannot cross-examine this witness on this point if he does not own the property.

(The Court reserves the objection.)

BY MR. ST. LAURENT:

Q.—Are the five lots you have listed on Exhibit P-66 as lots on the east side of the river shown on this plan P-100?

A.—No, they are not.

40 Q.—Where would they be with respect to Farm Point?

A.—I can mark where the frontage would be?

Q.—On what exhibit?

A.—On Exhibit P-97. There are 540 feet frontage on the east side of the river extending from the southerly side of parcel No. 37. I will just mark 5 lots.

Q.—It is 540 feet?

A.—540 feet.

*In the
Superior Court*

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Examination
Oct. 6th, 1932.
(continued)

Q.—And you treat them as five lots?

A.—Yes.

Q.—If I understand the situation correctly those five lots are part of the property that has been referred to as the Gravel Pit property?

A.—Yes.

Q.—They are the frontage of this gravel pit property?

A.—Yes. I have placed a value at \$300.00 each on those.

10 Q.—Are there any summer cottages over on that side of the river, or were there any summer cottages over on that side of the river before 1926?

A.—Yes, there were a lot of cottages.

Q.—How, in your opinion, if at all, are these lots affected by holding the water at controlled elevation 321.5?

A.—They are affected. The front of the property, that is, the bank adjacent to the river will tend to break off and wash into the river, and also any trees that may be there will be destroyed, and it is not as good for bathing as it was before, because the water is much higher.

20 Q.—Is the access affected at all?

A.—They still have to cross the river.

Q.—Is it easier or more difficult to get across with the water raised than it was with the lower level?

A.—For cottage purposes I would say very little different.

Q.—How would your valuation of \$300.00 a lot for these lots compare with the valuation you put on to the other properties that you were talking about, that worked out around \$853.00 an acre?

30 A.—It approximates fairly close to the same, and dealing with the matter of damage to those I may say I acted for McAuliffe and Davis in their case before the Public Service Commission on which the judgment was \$750.00. The land value of this case is substantially the same as the land value allowed in that case.

Q.—What was the land value allowed in that case?

A.—The total award was \$750.00 for a parcel, for the cottage and the land.

Q.—How close to this was it?

40 A.—Oh, it is just a few cottages north of it. There are a number of other cases before the Public Service Commission which will substantiate this. I have not got this with me. I have acted for some of the owners. I have considered them in taking my valuation into account.

Q.—Did you consider the prices paid by the Gatineau Company for properties in that vicinity as shown by Deeds which are already of record?

A.—Only in so far as I have corroborated what I have in the case of the valuation of properties I have used sales of prior to 1926.

In the
Superior Court

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Examination
Oct. 6th, 1932.
(continued)

Q.—I presume we need not spend very much time on Exhibit P-67, that is, \$53,000.00, which, as I understand it, we are to deduct from the figures previously given, because by putting the elevation up to 318 at Cascades ourselves, we ourselves would have affected the items mentioned in P-67?

A.—Yes.

Q.—The items are arrived at on the same basis as in P-65?

A.—Yes, they are. May I ask what you have for the last two items on there. I think there is a figure transposed between the two.
10 The last line I have it here as 14, it should be 24, and the building \$25,000.00, that should be \$15,131.00.

Q.—The total is the same?

A.—Yes. The land should be \$24,000.00 instead of \$14,000.00 as in Exhibit P-67. Buildings should be \$15,131.00 instead of \$25,131.00 as in Exhibit P-67.

Q.—That is to say in typewriting this the "2" had been put ahead of the "4" while it should be ahead of the "5" and the "2" has been put ahead of the "5" while it should be ahead of the "4".

A.—I rather think it is my own error in dictating it to the stenographer. I had the two figures before me and I think I transposed them in dictating it.
20

Q.—I understand then it is a part of P-65 and P-66 which we ourselves would have affected by the claim we are making with respect to Cascades?

A.—Yes, up to elevation 318.

Q.—Is this made at the replacement value or depreciated value?

A.—The replacement value and the same depreciation should apply to these as I used on the others.

30 Q.—Of course, on the land losses I suppose there is no depreciation?

A.—No.

Q.—And on the building?

A.—The depreciation is shown, and the groups are shown on my exhibit covering this. I don't remember them offhand.

Q.—Have you the detail of the \$15,131.00?

A.—They are groups. I will have to work it out for you. Those buildings are the valuation of Messrs. Hazelgrove and Adamson for these cribs, and not mine. It would run, I should say, in the neighbourhood of thirty or thirty-five per cent depreciation on the buildings.
40

Q.—P-68 is the total valuation on the buildings, at Mileage 12. Whose figures are those?

A.—Messrs. Hazelgrove and Adamson.

Q.—Did you go over them?

A.—I have my own valuation which I will file as Exhibit P-101.

Q.—Your replacement value will be \$2,545.00, and you have

*In the
Superior Court*
—
No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Examination
Oct. 6th, 1932.
(continued)

shown what depreciation you take off in so far as value as at 1926, \$1,915.00?

A.—Yes.

Q.—Are those buildings physically affected?

A.—There is one of them which is physically affected. My recollection is that there are only one or two sheds at the bottom that were affected. They are shown on that plan P-92.

10 Mr. Ker: I object to this evidence on the ground that the plan P-92 shows area of land above 321.5 which is not in issue in this case.

(The Court reserves the objection.)

A.—I think there is one stable and one shed affected. I cannot distinguish it.

BY MR. ST. LAURENT:

20 Q.—Why have you made the valuation of the other buildings?

A.—Because there would be no further use for these buildings when he cannot operate on Mileage 12. There would be a loss.

Q.—Did you make a valuation of the site, including land and works, at Mileage 12?

A.—No.

Q.—Coming back to Exhibit P-66, I understand that you have advised the Plaintiff that the item of \$1,740.14 for service pipe should be abandoned as being something which would have been equally affected by any project at Cascades up to 318?

30 A.—I advised him that it would be affected by that. I cannot say whether it would be as good or not, because I have never seen the pipes. They are underground and naturally only in odd places have I seen them. I advised him for that reason to abandon them. These are certain water pipes that have been placed on the ground for serving cottages which, when the water is raised, would be affected. They are more subject to frost action; even supposing they are not under the water line, they are close to the water line and the frost is more severe, and I advised him to abandon them.

40 Q.—So, in your opinion, the item on P-66 for service pipe, \$1,740.14, should not be there if we persist in our claim for Cascades up to elevation 318, is that right?

A.—Yes.

Q.—Do you know what was the capacity of the generator at Farm Point or Meach Creek?

A.—Rated at 125 K.V.A.

Q.—What would that be in horsepower?

A.—About 167 horsepower. The rated voltage of the excitor is

*In the
Superior Court*

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Examination
Oct. 6th, 1932.
(continued)

125—167 horsepower, 125 K.V.A. is the electrical equipment.

Q.—I understand that the sawmill and the equipment you took into account were those which were in existence in 1926?

A.—Yes.

Q.—And, in fact, that mill was destroyed by fire two or three years or a year or two afterwards?

A.—It was burned in 1928.

Q.—And rebuilt?

A.—And rebuilt.

10 Q.—How would the rebuilt mill and equipment compare with the one that was destroyed by fire?

A.—It is approximately the same. I have the detail of the machinery if you so wish. It is approximately the same.

Q.—With respect to value?

A.—Just about the same.

Q.—Substantially a re-establishment?

20 A.—Yes. If anything, I would be in favour of the old one. I think there was more machinery in the old one and possibly a little bit bigger building.

Q.—Have you a photograph of the power plant at Farm Point as it existed in 1926?

A.—I have a photograph of the interior taken in 1926.

Q.—Will you file it as Exhibit P-102?

A.—Yes. I have also a photograph of part of the end of the tailrace which I will file as Exhibit P-103.

Q.—You were employed in your professional capacity by Mr. Cross in connection with this case?

30 A.—I was. I started in March, 1926. I won't say in connection with this part of it.

Q.—It appears from the allegation in paragraph 28 of the supplementary declaration that your bill for fees and expenses amounts to \$10,013.17. Will you look at this bill which has already been filed as Exhibit P-71 and say whether or not that is correct with respect to the services rendered?

40 Mr. Ker: I object to the production of this exhibit insofar as it concerns a record of services, or a bill for services rendered previous to the time of the institution of the present proceedings. I may say the Act is very definite on that point. It states the Court shall allow such fair compensation as it thinks should be allowed in respect of professional services having to do with the pending case. This bill runs back to 1926, long before the Order-in-Council was passed, long before the water was raised and years before this action was instituted, and I therefore object to the production of any claim of this engineer, and for the services which are charged here during

*In the
Superior Court*

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Examination
Oct. 6th, 1932.
(continued)

that time as being services which had reference to entirely different matters than the case which is before your Lordship.

Witness: It starts in 1928.

His Lordship: It is in the exhibit.

10 Mr. Ker: I object to anything prior to the institution of this action in March, 1931.

His Lordship: Does the declaration state that it is limited?

Mr. Ker: The Special Act says so.

Mr. Scott: The witness might explain what his services were.

BY MR. KER:

20 Q.—You have already changed two years of it now since it was first produced.

A.—The detail is from 1928.

Mr. Scott: Let him say what his services were.

His Lordship: I will reserve the objection.

30 A.—I will explain that, Mr. St. Laurent. When I first sent down my bill, I sent down my bill for the whole detail from 1926 to 1932, for everything. That was the letter that accompanied it and if you examine those items you will see the amounts have been changed on this Exhibit P-71. It was changed here in Montreal, and they did not delete this. I sent down a corrected one starting in April, 1928 or December, 1928.

BY MR. KER:

Q.—Then, if you are relying from 1928 on, I object.

40 A.—I am relying from 1928 on. That is the time shown in the exhibit.

Mr. Ker: Then I renew my objection that the witness is not competent to charge us with anything previous to the date of March, 1931, which is the beginning of the present proceedings. The previous proceedings were taken before the Quebec Public Service Commission and desisted from.

(The Court reserves the objection.)

*In the
Superior Court*

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Examination
Oct. 6th, 1932.
(continued)

A.—My letter of April 12th, 1932, is a corrected one which was sent down to the office here, and is the one that should have been given in and as marked on the top of that, that is, P-71, that is the corrected bill. The amount mentioned in this letter was positively different from what is here.

BY MR. ST. LAURENT:

10 Q.—Now that we have cleared that up
A.—The same thing applies to the expenses.

His Lordship: Is the amount mentioned in the Declaration correct according to this general evidence.

20 Mr. St. Laurent: He has sent a bill for which we have made a claim which goes back to the month of December, 1928. I am going to ask him what he did then, because it will be for your Lordship to decide whether or not it is something that comes within the Statute and your Lordship will take it into consideration.

His Lordship: Anyway, I will reserve the objection and he can be cross-examined on this point.

BY MR. ST. LAURENT:

Q.—What was the nature of the work you were doing for Mr. Cross from the 8th December, 1928, onward on the various dates set out in detail in this Exhibit P-71?

30 A.—Preparing a series of estimates of cost of dams and securing information requested by Mr. LaFleur at his office.

Q.—Having to do with what properties?

A.—With the Cascades property. I have excluded any work which I have done at Meach Creek, that was in connection with the case at Meach Creek before the Public Service Commission.

Q.—You have excluded from this account the services you rendered to Mr. Cross in connection with the Meach Creek property and the suit about it before the Public Service Commission?

40 A.—Yes, and also any work I have done in connection with the Pagan lands proposition.

Q.—All the work done by you, which consisted of estimating with respect to Cascades?

A.—Yes.

Q.—I see that the bill charges 29 days away from office, in Montreal and Quebec and attendance at Court, at \$100.00 a day?

A.—Yes.

Q.—How does that charge of \$100.00 a day compare with the

*In the
Superior Court*
No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Examination
Oct. 6th, 1932.
(continued)

charges you were making at that time to your general clientele for like services?

A.—It is the same.

Q.—Then the days at your office or in the Gatineau District are charged at the rate of \$50.00 a day?

A.—Yes.

Q.—How does that charge compare with the one you make for similar services to your general clientele?

10 A.—It is the same up in the Gatineau. I have considered this really on the same basis as office work, because I was in touch with my office and could lay out the work for my general staff, and although I was away from the office part of the day, still I was in touch with my office and could regulate and attend to it as it came in much better than when I am down here in Montreal or away, where I could not be in touch.

Q.—And these are the charges you have been making?

A.—Yes.

Q.—For how long back?

20 A.—For six or seven years.

BY THE COURT:

Q.—Do you swear they are your ordinary charges?

A.—My ordinary charges. I try as far as possible to keep my work on a piece work basis.

BY THE COURT:

30 Q.—Do you swear they are your ordinary charges?

A.—Yes.

BY MR. ST. LAURENT:

Q.—What part, if any, or all of the work for which this Exhibit P-71 is made up, has been used in connection with this case?

A.—Every solitary bit of it, and a good deal more.

Q.—Your exhibit also includes \$1,088.32 for expenses as detailed?

40 A.—As detailed, yes, and the dates opposite them as shown on the exhibit.

Q.—What do those items represent?

A.—Travelling expenses, phone expenses and items for material that I use in the office and hotel expenses away from Ottawa.

Q.—Do they represent expenses which were actually incurred in connection with that work?

A.—Actually incurred in connection with 'Mr. Cross' work here.

In the
Superior Court

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Examination
Oct. 6th, 1932.
(continued)

Q.—In the ordinary course of carrying out the professional work you were doing?

A.—Yes.

Q.—There is a charge of \$175.00 for professional services in connection with the Assembly Bill 170; what did you do in that connection?

A.—I went to Quebec.

Q.—At whose request?

A.—At the request of Mr. Scott.

10 Q.—Which Mr. Scott?

A.—W. B. Scott.

Q.—And how long were you there?

A.—From the 14th to the 17th.

Q.—From the 14th to the 17th of what month?

A.—February 14th to 17th, 1932. I went to work, came down to Montreal, and we had a conference in Montreal here one day, and went on to Quebec and we were there on the 15th, 16th and 17th. Of course, the others stayed in Quebec.

20 Q.—Is the expense account charged there the correct amount of the expenses you incurred on that trip?

A.—They are the correct amount. I stayed at the Chateau Frontenac.

Q.—And with whom were you in conference in Montreal and Quebec in that connection?

A.—With Mr. Scott and yourself.

Cross-examination

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

30 Q.—While we are on this matter of your account produced on the 9th March, 1932, as Exhibit P-71; that account as produced in the record at that time, I see, was an account to Mr. F. T. Cross, Farm Point, for professional services rendered by you for the years 1926, 1927, 1928, 1929, 1930, 1931 and 1932?

A.—And what amount have you got there for it?

Q.—\$9,588.00, and various other amounts which bring it up to a total of \$10,012.00.

A.—That is not the amount of the bill that I rendered.

40 Q.—Is that not on your heading and on your paper?

A.—It is on my heading, but the amounts have been changed. That had left my hands.

Q.—How do you mean the amounts have been changed?

A.—The amounts opposite that amount of \$8,500.00 have been changed.

Q.—Who do you think took it upon themselves to change an account of yours after you filed it as an exhibit?

*In the
Superior Court*

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Oct. 6th, 1932.
(continued)

A.—I did not file it as an exhibit. I sent it to Mr. Scott's office.

BY MR. SCOTT:

Q.—Where is the original?

A.—I am just trying to look that up. I think I have the original account here.

10 BY MR. KER:

Q.—Did you put in any amount in that matter?

A.—I did.

Q.—What was it?

A.—I am trying to find it for you, Mr. Ker, if you will just wait a moment. There is my carbon copy.

BY MR. SCOTT:

20 Q.—Read it into the record.

BY THE COURT:

Q.—That is what you call your true account?

A.—This is my carbon copy as sent from my office to Mr. Scott. The amount of \$8,500.00 on Exhibit P-71 as produced should be \$15,694.00, and that of course would change the totals which are altered on them, and then Mr. Scott wrote back and said he did not wish me to go back to 1926, but to start at the time when I considered the work was directly bearing on this case, so I revised my bill as the detail shown from December, 1928, and that amount is \$8,500.00.

30

BY MR. KER:

Q.—But your exhibit is filed?

A.—I did not file the exhibit. All I know is the letter sent from my office contained these amounts that I read out.

Q.—But it contained the dates 1926 to 1932 inclusively when it
40 left your office, did it not?

A.—Yes, and the amount, \$15,694.00.

Q.—Leaving aside the amount, I want to get the dates. The date is the thing I am more interested in. I find it difficult to understand now why two years should be knocked off the bill and that it is the same?

A.—The bill is not the same. Surely you can understand the letter sent out of my office. Here is the carbon copy. It has not been

In the
Superior Court

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Oct. 6th, 1932.
(continued)

touched, and then I was asked to revise that, including only the parts that were applicable to this work. I did so, and started at December, 1928, which gave an amount of \$8,500.00.

BY MR. SCOTT:

Q.—Instead of \$15,000.00?

10 A.—Instead of \$15,000.00. That is under letter dated April 12th, 1932.

BY MR. KER:

Q.—I quite admit that, but if you will just answer my question which is quite simple. The original account which you sent, and which was produced as Exhibit P-71, whether it came from you or from somebody else, was an account for services of \$8,500.00, including the years from 1926 to 1927, was it not?

A.—It did not include those years.

20 Q.—When did you knock those two years off? Why did you knock those two years off just now?

A.—Oh, I put those marks on just now.

Q.—But up to the present time we are entitled to believe your \$8,000.00 of fees represents the years from 1926

A.—That might be so. I never saw that until now.

Q.—Now, we find that in April, 1932, you rendered another account leaving off the years 1926 and 1927?

A.—And most of 1928, up to December, 1928.

30 Q.—Oh, part of 1928, but the account is exactly for the sum of \$8,500.00?

A.—No, it is the amount included from 1928 on, is \$8,500.00.

Q.—It was 1926 before?

A.—No. I have explained the fact to you and that is all there is to it.

Q.—With regard to the services which you actually rendered, you say you are charging us on the basis of \$100.00 a day and \$50.00 a day respectively, whether you are out of town or remaining in Ottawa?

A.—Yes.

40 Q.—And that is the amount you would charge for similar work?

A.—And what I have charged for similar work.

Q.—When did you charge it?

A.—In Ottawa. I have charged J. R. Booth that. My work for McLarens worked out at more than that, and these arbitrations I have handled have worked out on the same basis.

Q.—You have charged McLarens at that rate?

A.—It worked out at considerably more than that.

In the
Superior Court

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Oct. 6th, 1932.
(continued)

Q.—You were on a different basis with McLaren?

A.—I was on a piece work basis. I put it on that, but arriving on that piece work basis I take into account these rates as the minimum rates.

Q.—I think you said your services with Mr. Cross began in 1926?

A.—March, 1926.

Q.—When did you first render the account?

10 A.—I have not rendered an account yet. He has paid me, I think, the sum of \$800.00. I have it in the cash book, on account of out of pocket expenses. I have received nothing.

Q.—So between the year 1926, when you presumably began the work for Mr. Cross, and the year 1932, and in the year 1932, not until after this special Bill had been passed, did you render any account whatever?

A.—No.

20 Q.—After the special Bill was passed in which it was indicated that the Company might have to pay an allowance, your account was rendered to Mr. Cross.

A.—It would have been the same in any case, as I informed Mr. Cross before the passage of that Bill a good while, which he will bear out.

Q.—It did not strike you as a professional man to render a bill in 1926 to 1932?

A.—No. I knew it was no use. He had to wait until this case was settled. I got certain small sums, \$300.00 and \$500.00, a couple of times for out of pocket expenses. That is all I have got.

30 Q.—Even though, according to the declaration made in this case, Mr. Cross was making something like \$28,000.00 a year, you did not think it worth while to render him a bill?

A.—I do not think he has been making that this last year or two.

Q.—He alleges he was in 1926?

A.—I did not start until late in 1926. As I said then, he paid my out-of-pocket expenses, and another thing, I usually reserve my bills till the work is over, as you should know.

Q.—As we should know.

40 A.—As you should know. Any work with which I have been connected in cases for the Gatineau Company, it has been when the work has been finally completed that I got paid for it.

Q.—Have you any financial interest with Mr. Cross?

A.—Absolutely none.

Q.—None at all?

A.—Absolutely none. I did not know Mr. Cross when he came into my office in 1926. He was a perfect stranger to me.

Q.—You had never done anything for him?

A.—No, absolutely. He was a perfect stranger to me.

*In the
Superior Court*
No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Oct. 6th, 1932.
(continued)

Q.—And when did your connection begin with him?

A.—In March, 1926.

Q.—What was he going to consult you about at that time?

A.—He said he wanted an estimate on what he could do with the Cascades Development and then it switched from that to the Meach Creek proposition. I spent a lot of time in 1926 and the early part of 1927 on the Meach Creek proposition.

Q.—He was consulting you in your capacity as an engineer at that time?

10 A.—Yes.

Q.—And at that time I suppose you were pretty familiar with what was going on in the company?

A.—I knew there was work going on there.

Q.—You knew there was work going on there, and the plans for this development had then been filed in the Registry Office, in March, 1926?

A.—I did not know they had been filed till sometime after.

Q.—You knew there was a development under way for the Gatineau Company?

20 A.—It was contemplated.

Q.—What advice did you give to Mr. Cross at that time in 1926 about the possibilities of a development of his own?

Mr. St. Laurent: I submit, this does not arise out of examination-in-chief.

BY MR. KER:

30 Q.—When did you begin? During 1928, for instance, had you gone to advise him regarding a possible development at Cascades?

A.—The matter then was in the hands of his solicitors, and the information which I was preparing was all at the request of the solicitors. The late Mr. Lafleur asked me about a great number of different possible developments; he wanted to know what it would cost, for instance, starting with a minimum flow, a reasonable minimum flow of 3,000 cubic feet, and working that up from three, six and up to ten, and also for various heads, and I had to do all that work.

40 Q.—At that time, of course, the water had been up in the Gatineau River for more than a year.

A.—It came up in March, 1927.

Q.—I understand the 12th March?

A.—The 12th March.

Q.—The water was then up over the property?

A.—Yes.

Q.—And in connection with Mr. Lafleur's enquiries you gave

*In the
Superior Court*

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Oct. 6th, 1932.
(continued)

him some professional advice as to possibilities of development then?

A.—Yes.

Q.—Of course, you knew that no such development could, as a matter of fact, take place?

A.—I did not know what might take place.

10 Q.—At any rate, if such a development did take place, something would have to happen to the present Gatineau Power Company development: You could not make over to them at the same time, could you?

A.—No.

Q.—And, of course, Mr. Lafleur who was, I understand, counsel at that time for Mr. Cross, laid the matter of the indemnity which he should receive, before the Quebec Public Service Commission?

Mr. St. Laurent: I object to this as not being cross-examination.

20 A.—Anything that may have taken place is of record.

Mr. St. Laurent: I object to this evidence as not arising from the examination-in-chief and as not arising from the issues which are now before your Lordship.

(The Court reserves the objection.)

A.—All I can say is, I heard it had been laid before the Quebec Public Service Commission.

30 BY MR. KER:

Q.—Are you prepared to say definitely that you do not know whether there was an instance before the Quebec Public Service Commission?

A.—I know, yes.

Q.—And you know that a great deal of the preparation which you made in 1928 and 1929 was for that case, don't you, and in 1930?

A.—And 1930, no.

40 Q.—Do you know when the case was desisted from?

A.—No, I cannot tell you.

Q.—If I tell you that it was in December, 1930, and January, 1931, three days before it was to be heard?

A.—Perhaps I can sum it up in this way. I have included, as I stated, from December, 1928, the work which I have used, the material which I have used in presentation of the case which was heard last down here, and this present one.

*In the
Superior Court*
No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Oct. 6th, 1932.
(continued)

Q.—All of which material, or practically the same material was originally drilled up for the Public Service Commission case?

A.—No, not by any means.

Q.—How do you account for the fact that you were preparing for this case in 1928, 1929 and 1930 when the case itself was only instituted in March, 1931?

A.—I was getting the information asked for by Mr. Cross' legal advisers.

10 Q.—To be used in connection with the case that is now before this Court?

A.—I won't say what they were going to use it for.

Q.—At any rate this case was not started, as far as you know, till March, 1931?

A.—No, I cannot say when it was started.

Q.—Were you practicing alone when Mr. Cross first consulted you?

A.—I was in partnership with Mr. Lewis for a short time.

Q.—Were you ever in partnership with Mr. McRae?

20 A.—No. I have handled this work entirely myself since its inception.

Q.—In the beginning of your testimony, you were asked about this level of 321.5. You are aware, of course, that this Act which governs this case provides for compensation for property taken and affected by, let us say, a theoretical water level of 321.5?

A.—Yes.

Q.—And you have seen fit in preparing the Plaintiff's case to assume that with that theoretical level of 321.5 there would be affected above that level to three and a half feet of altitude?

30 A.—Three to three and a half.

Q.—And your whole case, insofar as damage is concerned, very largely hinges on that point, does it not?

A.—The extra three feet?

Q.—I mean the theory of three extra feet?

A.—Oh, no.

Q.—Am I to understand you to say then that the valuations you have made of these various buildings and of the lands and acreage, and your piling ground affected and all this, are not based on a level of 325?

40 A.—Where is Exhibit P-94 of P-95? I have considered the damage which will be caused by holding the water at the controlled elevation of 321.5, and I have based my claims and my estimates of damage on that, the holding of the water at the controlled elevation of 321.5.

Q.—Then, do you agree or not with this statement which was made by the Plaintiff in his declaration, that the maintenance of the water on the Plaintiff's property, as set out in the next preceding

*In the
Superior Court*
No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Oct. 6th, 1932.
(continued)

paragraph, that is, at 321.5, has had the effect of injuriously affecting and completely destroying the use of the adjoining property up to elevation 325. Do you agree with that or do you not?

A.—I would say it affects it.

Q.—As a matter of fact, has not your entire evidence been based upon the rise of land really included within the contour 325?

A.—Yes, I have included up to 325.

Q.—In all cases?

A.—Yes.

10 Q.—And all your valuations of every kind made in this case, are on an assumed effect up to 325.

A.—On a known effect to 325.

Q.—As to how you know it, I will come to that, but that is on an effect up to 325?

A.—Yes.

Q.—That is correct?

A.—Yes.

20 Q.—Of course, you realize that is made in reference to the direct statement in the Act, that the level is a controlled level and it is only to 321.5?

A.—They may have a controlled elevation of 321.5 of which the effect goes beyond.

Q.—What did you understand by the words "Controlled elevation", is not that the word the Act uses?

A.—I would say the water would be held at 321.5 at pleasure of the Company. They have the right to hold it there at all times.

30 Q.—Applying that theory to the Development as it stands, at Chelsea, you would not think that that 321.5 elevation was a permanent level all the time, would you?

A.—In a power development there is no permanent elevation. It is up high at night and in the morning it goes down, varying with the load.

Q.—As a matter of fact, do you know the highest elevation at which normally this water at Chelsea has ever been put, so far?

A.—At what particular point?

Q.—At Farm Point. I am not speaking of excessive high water; I am speaking of the normal?

40 A.—The highest point in 1927 was 319.4, I think, and in 1928 it came to, except that high time when there was trouble up above, the highest water that has ever come has been just to the power house floor, just within about an inch of the power house floor.

Q.—319?

A.—And in 1928 it was up to about 320.

Q.—You have never known it to come normally, except in most extraordinary high water periods, and of flooding due to heavy seasons and freshets, to go much above 319 and 320?

In the
Superior Court

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Oct. 6th, 1932.
(continued)

A.—That is no criterion possibly of what you may use.

Q.—I am not asking you that. I am asking you, as an engineer, who is familiar with the Gatineau, and familiar particularly with this great development at Chelsea, just what normally is a controlled level?

A.—I will give you the actual elevations.

Q.—I don't want you to do that.

A.—I have that.

10 Q.—I am sure you know, and that is why I am asking you. It runs between 318 and 319 and a half?

A.—318, 319 up to 320. The other day, last week, it was a little over 320. It came just to the top of the rails.

Q.—There had been very heavy rains?

A.—That has nothing to do with that there.

Q.—You would not normally expect that the word "controlled" level meant that for every hour of the day we were going to keep that water up?

A.—No water power is worked that way.

20 Q.—As a matter of fact, would it not be fair to say the idea of putting that level at 321.5 was to put such an extreme level in this case as would prevent any higher effect by the normal operation of the water?

A.—No, my interpretation of that is that the Company has the right to hold it up to 321.5 for as long as they see fit, and that is the line to which the water will come long enough to create a permanent damage, and then the three feet goes beyond that.

Q.—How do you account, then, for the Legislature, in its wisdom, not putting this level to 325 instead of to 321.5?

30 A.—That was the controlled elevation of 321.5.

Q.—If you are right in assuming that it is an absolute rule, invariable that the water level at 321.5 will affect to 325, why should they not say, "We are going to make you take everything up to 325?"

A.—They have included that in the statement.

Q.—And it is your pretension as a leading engineer that a water level of 321.5 must of necessity affect the land up to the level 325?

A.—Approximately 325.

40 Q.—Is that opinion based on your own knowledge of the matter, or is it a general rule, or where did you get that idea?

A.—It is not only a general rule, but it is based upon my knowledge of the Gatineau district and observations of five or six years, and a great number of cases; I can cite too many cases where it has affected up to that.

Q.—That is an invariable rule, according to you?

A.—In this area, yes.

Q.—Would it not be an invariable rule in any area?

In the
Superior Court
No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Oct. 6th, 1932.
(continued)

A.—If you are in a rock proposition, no.

Q.—There are circumstances, then, under which that rule would not apply?

A.—Sure, when it is all rock, but for a piling ground, you cannot have piling ground with water over it and then put your lumber right down on top of it.

Q.—Would not the designation, the purpose for which the land is to be used, influence you in connection with that? For instance, if you were going to use the place as a skating rink, you would not worry about seepage?

A.—No.

Q.—And if you were going to use it for, say, an amusement park, unless you were going to put in a foundation or a cellar

A.—For an amusement park you would have to put it up far enough so you would not have moisture.

Q.—How high would that be?

A.—I would say around three feet.

Q.—You think, then, that for the piling ground you would need those three feet?

A.—Absolutely. I think you would have to have more.

Q.—And is the nature of the soil about here such as would give rise to that capillary action for three feet above at any level.

A.—What are you proposing to fill it in with?

Q.—I am not asking you that. Is the nature of the ground around this piling ground such as would give rise to that capillary action?

A.—There is not any ground there.

Q.—I am not speaking of the ground above 321. I am speaking of the general nature in the vicinity of this piling ground. Is it rock or such as we may assume would have seepage to it?

A.—It varies. In some places it comes up against the rock and in other places it is up against the clay.

Q.—Where does it come up against the rock?

A.—South of the road leading to the power house, or east of the road, I should say.

Q.—There is no rock around Meach Creek, is there?

A.—Lots of it on the upper reaches.

Q.—How should there be any seepage in the piling ground in that case?

A.—The piling ground is below. The hill is very broad. It is quite severe and slopes down to this level land which is below which presumably has been in there for ages. The rock comes down quite broadly and the lower plateau is all approximately level. When this lower level is all flooded out you immediately come to the high land.

Q.—Perhaps I have not made myself clear. Am I to understand that, supposing the water in the Gatineau River was at 310

*In the
Superior Court*
No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Oct. 6th, 1932.
(continued)

feet, that the nature of the soil about Meach Creek would affect it, that there would be three feet of seepage?

A.—Absolutely.

Q.—And consequently three feet above the water would be no use as a piling ground, is that right?

A.—Yes, well

Q.—Well, is it or not.

A.—At approximately three feet your damage would cease.

10 got to 315?

A.—Yes.

Q.—And the same thing would result when we got to 318?

A.—In general terms.

Q.—There would be no possibility of using that land above 318 for a piling ground?

A.—You would have to treat it in some way.

20 Q.—I wonder if you feel that your client, Mr. Cross, is right then, when in his examination on discovery he is asked these questions: At page 68 of his examination on discovery last week he was asked?

“ Q.—How much of that would be affected by the raising of the water to elevation 318?

A.—None at all. It never came out of the banks of Meach Creek. That is to my knowledge, of course. The engineer has been over the ground. Speaking of the levels at Farm Point, it never came out of the banks of Meach Creek coming up to the mill, at 318.

Q.—Out of what banks.

30 A.—The straight banks of Meach Creek. It is straight up, and then it goes out level. That is the condition at Farm Point.

Q.—In other words, at elevation 318 the water will not flood any of your piling ground?

A.—I would have no trouble. There is none of my piling ground affected at 318, that I have piled lumber on. At 318 I was in no way affected with what I used as my piling ground.

Q.—In other words, there was no land that you were using as a piling ground which was affected by the 318 level?

A.—That I was using as a piling ground, no.

40 Q.—Or that you wanted to use as a piling ground?

A.—I did not want to.

Q.—You never had occasion to use it?

A.—No.

Q.—Therefore, I take it it was the raising of the water between levels 318 and 321.5 that is causing the alleged destruction of your piling ground?

In the
Superior Court

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Oct. 6th, 1932.
(continued)

A.—Yes. After you go over the banks it goes out perfectly level.”

Then, we turn to page 75, in order to make him positive of that, and he says—this question was put to him:

“ Q.—Then, it is not an ideal piling ground?”

10 and he answers:

“ A.—If it was dry it would be a lovely piling ground.

Q.—You say it would not be affected with the water in Meach Creek at elevation 318?

A.—Not my piling ground. It had a good hard surface on the top.

Q.—You say above level 318 your piling ground is not affected?

A.—318 does not affect my piling ground.

20 Q.—Either by seepage or otherwise?

A.—No.”

Q.—How do you account for that?

A.—I do not account for it. I stated in my previous evidence that the water at 318 would necessitate some slight improvement to his piling ground. That is in my evidence before, and I still say the same thing.

30 Q.—Then, according to your statement, while your client does not claim for damage which would result from the water at 318, you think he should?

A.—What is your question?

Q.—In your theory of the three feet, invariable three feet of seepage, although he says it is not effective against him for his piling ground, you do not believe him, you think he should claim something?

A.—Oh, most certainly.

Q.—You would say then that the level of 318 would affect him up to 321?

A.—It would affect him, approximately, yes.

40 Q.—To 321?

A.—Yes

Q.—So his own development which was only to go to 318 and which he alleges in his declaration would not affect his piling ground you state it would be affected up to 321.5 according to you?

A.—My statement previously was that at 318 he would certainly have to do a certain amount of improvement to his piling ground.

Q.—Although he denies it?

*In the
Superior Court*

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Oct. 6th, 1932.
(continued)

A.—I am telling you what I said, not what he said. I say that now when you raise the water three feet higher than 318, that is, to 321.5, that the same remedial measures cannot be taken.

Q.—You are avoiding what I am trying to get at?

A.—I am not avoiding it.

Q.—I was asking you a definite question whether, in your opinion, that piling ground with the water level at 318 would affect the property?

10 A.—I gave it as my opinion, and I still say it. I am giving my opinion.

Q.—But he is the fellow who runs the piling ground?

A.—His employees.

Q.—If he does not think he is affected I suppose that is really his lookout?

A.—I am not responsible for what he says.

Q.—Then he is making the claim here?

A.—Yes.

20 Q.—So if he is not affected by seepage at 318, what reason would you have for believing he would be affected by seepage at 325?

A.—He is affected at 318. I am giving the evidence. I am not basing my evidence on Mr. Cross' statements. I am basing it on my own and what I know to be the fact irrespective of what Mr. Cross may say.

Q.—And irrespective of whether Mr. Cross states definitely he is not affected by seepage?

A.—Absolutely.

Q.—You still ram it down his throat

A.—I don't ram it down his throat. I state it here as my opinion.

30 Q.—Pursuing your opinion, whether it is right or wrong, it is clearly your honest opinion that if Mr. Cross, as has been stated in his declaration, had the intention of making a theoretical development at Cascades and to raise the water at Farm Point to 318, his piling ground would be affected to 321.5?

A.—321 I have told you. Not 321.5. 321.5 if you like.

Q.—I am speaking of the odd three feet. That is directly in contradiction of what he states in his action?

A.—I am telling you what I am saying.

40 BY THE COURT:

Q.—Is Mr. Cross a civil engineer?

A.—No.

BY MR. KER:

Q.—So as I say, if his proposed development at Cascades was

In the
Superior Court

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Oct. 6th, 1932.
(continued)

Cross-examination
(continued)
Oct. 7th, 1932.

put on the basis of 318 at Farm Point and to Meach Creek, according to you it would affect his land up to 321?

A.—Well, he would have to take remedial measures on that area.

Q.—In spite of the fact that he alleges in his declaration he would not?

A.—I have said that before. I have not seen his evidence.

10 BY MR. KER:

Q.—Mr. MacRostie, when we adjourned yesterday afternoon we were discussing the question of seepage and the effect upon land by capillary action, which land in itself might be higher than the water level?

A.—Yes.

Q.—And in that connection I think you stated that as a general rule any given water level would affect the adjoining land to an additional height of 3 to 3½ feet by reason of seepage?

20 A.—That might vary slightly with different types of material encountered.

Q.—I understood you to say that would depend somewhat on the nature of the soil?

A.—In general terms that is the reasonable rule.

30 Q.—And I also understood you to say that in making your estimates for the purposes of this case, and for the valuations which you made in connection with this case, that you assumed in every case that the controlled water level not in excess of 321.5 as mentioned in the Act, would render useless, or affect adversely the land up to the level of 325?

A.—Yes, with the same provisos as I stated before.

Q.—I take it that seeing you have made it absolutely uniform all over at 325, that you have not encountered rock or other conditions which would in any particular case cause you to change that opinion?

A.—I did not say that.

Q.—Are there any places on the property where rock would be encountered in such a way?

A.—Yes.

40 Q.—Where would that be?

A.—Where the 321.5 countour approaches very closely to the 325, therefore, you are up against rock; you will find that on the north side of the tracks. There are several outcroppings of rock there that rise quite broadly, very broadly in fact.

Q.—But broad and large, I think you answered to Mr. St. Laurent's question to the effect that in general this locality would be affected by that seepage?

*In the
Superior Court*

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Oct. 7th, 1932.
(continued)

A.—With those reservations as stated.

Q.—And your estimate of valuation here is based on that principle that in a general way the level 325 would be the level?

A.—Yes.

Q.—I suppose you are familiar are you not, with the actual physical power development at Chelsea, which is the big power development of the Gatineau Power Company?

A.—In a general way, not in detail.

10 Q.—Do you know for instance that that development has been operated now since 1927?

A.—Yes.

Q.—And you know that it has been impounding the water behind the dam practically since it began to work?

A.—Yes.

Q.—And I suppose that it has been pushing the water back into Meach Creek during that time?

A.—From time to time, yes.

20 Q.—As an engineer would you consider that that five-year period could be taken as fairly representative of what that development would do in the future in the way of impounding water? I am speaking now just in the normal run year after year. It might be up and it might be down, but it would not be much more than it is now?

A.—Oh, I would not say that.

Q.—What reason have you to believe it would?

A.—I have this reason to believe, that it is the intention to utilize it to 321.5 as the controlled elevation.

Q.—On this particular development at Chelsea?

30 A.—On this particular development at Chelsea, and that our first hearing that we had before the Quebec Public Service Commission, Mr. Gale said himself that it was their intention ultimately to hold it at 321, either 321.3 or 321.4

Q.—I don't remember any such thing.

A.—It is there if you look at it.

Q.—Do you know, as a matter of fact, what the height of the crest of the dam at Chelsea is. I am speaking as to physical possibilities?

A.—I could not say without looking at the plan?

40 Q.—Would you, as an engineer, consider that the operations which have taken place in the Chelsea Power over this period of five years should be representative of what normally should be carried on in the business of any new development?

A.—I would say they do not necessarily indicate the maximum height to which you will go. You can bring it up another foot or two feet, something like that, on a development like that. I won't say

*In the
Superior Court*

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Oct. 7th, 1932.
(continued)

materially, but it is not in a very large degree altering the general operating conditions.

Q.—Perhaps you have not quite got the idea I meant to convey. Do you think, as an engineer, that five years of operation of this kind should, in a great development of that kind, normally represent what it would be, averaged year to year in the future?

A.—If there were no circumstances developing to change it.

10 Q.—In other words, you would suppose, as any business man, that for the last five years the Gatineau Power Company has been getting as much as they possibly can out of the Chelsea dam in the way of power?

A.—I would not say that. At the last hearing we had, they said they had more power to spare than they could sell.

Q.—I do not remember anybody having said that.

A.—Mr. Simpson said it.

Q.—The dam is at present fully loaded insofar as it can be under the plans which have been made for its construction?

A.—I would not say that. I don't know.

20 Q.—You could not put any more units in, could you?

A.—Oh, no. The units are there.

Q.—The units are all there that could be there?

A.—Yes.

Q.—And broad and large, the power development is in a position to work to capacity at the present time, is in a physical condition?

A.—It is in a physical condition provided they can use their maximum head.

30 Q.—That being the case, as I think you said, as far as you are aware at the present time, the water impounded by that dam at Chelsea had averaged as a working average somewhere between, as I think you said, from 318 to 319.3, something over 319 at the highest, perhaps 320 at high water, is that right?

A.—Take this summer for instance, for quite a long period the water was very low. It was away down. I should judge about 312 or 314.

Q.—Perhaps it is only fair to tell you that that was a very abnormal state of affairs due to repairs on the dam?

A.—I know that.

40 Q.—That would not really be an average.

A.—No. It is in the ordinary operation of the power plant, and I also know that last week, this past week end, it was up to about 320.4 or 320.5.

Q.—Of course, we have had very very high water?

A.—That has nothing to do with the elevation at Farm Point.

Q.—Normally, would you think the broad and large average throughout the year—I am speaking now of the average, leaving

*In the
Superior Court*

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Oct. 7th, 1932.
(continued)

aside any question of being down to 312 for repairs?

A.—It is a matter that is controlled by the needs of the company, and I have no control over the operating of that plant.

Q.—Then, your knowledge, or your information as an engineer, does not give you any inkling as to about what average that water has been held at during five years of operation? Perhaps I was wrong; I thought you mentioned yesterday that you thought it ran in the neighbourhood of 318 or 319 or 319½?

A.—I would say that is what has taken place in the past.

10 Q.—In the past five years?

A.—With other periods, week-ends, and other week-ends, the water was held over 320, and that was not caused by abnormal rains or anything like that. That is why I say the operation is controlled by the needs of the plant, and by the wishes of the operating man, so I have no indication of what they will do in the future. It is a policy resting entirely with the Company itself.

20 Q.—But you would think that normally as the average operating level which might be brought about at Farm Point would be within the range that you speak of, 318 to 319½?

A.—I would say it is very probable that we go higher than that.

Q.—I am speaking now of general average. Do you know, or do you not know, whether, during the five years of operation of that dam, the yearly average has, or has not been, of the water above 318?

A.—I could not say. I have not got the yearly average. You would have to specify places.

30 Q.—Leaving that aside for the moment, what would you, as an engineer, reading over this Special Act which has been passed (and I think I questioned you on this point, although I have not the exact last words of your examination of yesterday) how would you, as an engineer knowing that certainly the water is not going to remain at 321.5, interpret the words, "Controlled elevation not in excess of 321.5"?

Mr. St. Laurent: I submit that this is not a proper question. I don't think it will do any harm, but it is for the Court to interpret it.

(The Court reserves the objection.)

40

A.—I would say that my understanding, not only in this case, but in all cases, that the controlled elevation, whatever that may be decided upon, is the elevation to which the water may be held at the discretion of the operating engineer, and at such times that there will be a total damage up to that point. It may be held there for two or three days; it may be held there over week-ends, but it is up and down, and there is no possibility of the utilization of that area.

*In the
Superior Court*
—
No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Oct. 7th, 1932.
(continued)

Q.—That is perhaps a matter of opinion, and that is my own idea, that “ controlled ” means that that is the excess, that there may be a variation below that?

A.—It is bound to be.

Q.—And going beyond that, I would suggest to you that if you admit that interpretation, then after a dam has been in normal operation for five years, and has not consistently touched that level, that the idea would be that that was an excess level above which you might not go to, that that high level was always consistent with the
10 normal operations that had been carried on in the past?

A.—That interpretation is not consistent with the evidence that has gone in previously. Your own witnesses have given the evidence, as I stated before, that it was the intention when Mr. Cross was settled with to hold it at a controlled elevation of 321.

Q.—I must insist that you do not make these wild statements?

A.—I am not making wild statements.

Q.—It was never intended to hold the water at 321. We could not possibly do it.

A.—Not all the time, no. I consider if there is a permanent
20 damage due to holding the water up there at 321.5, and you have a right to hold it there.

Q.—Would you be prepared to say, following the interpretation you have given of this controlled level, not in excess of 321.5, that the effect of seepage should take place up to 325, on the interpretation you have given?

A.—With the reservations stated previously.

Q.—In other words, you think seepage would take place up to
30 325 even if the 321 level was only reached perhaps once in two months or once in three months?

A.—It is more than once in two months. The probability is that it will reach it much more often than that, much more than once or twice a week.

Q.—Perhaps I might put the question in a different form. Can you give any estimate, in your opinion, of how long it will be necessary to hold the water at 321.5 in order to destroy the sub-soil by seepage up to 325?

A.—If it was utilized a couple or three times a week and over a week-end, it certainly would, or maybe possibly less than that.

40 Q.—How long would it take to set up each time?

A.—I would not say that. It is a matter of experiment. My experience of the conditions along the river—I examined a good many properties, and my experience leads me to believe that that moisture cannot get away. I know of one case in particular where the cellar of a proposition I examined, a garage, the elevation of that garage is 322.4, and we made tests below that, and the moisture below that under the conditions which you have been mentioning brought the

*In the
Superior Court*

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Oct. 7th, 1932.
(continued)

moisture right up to that, and you could go down eight inches below it and it would just be simply as soft as dough. Now, that is under lower operations than this Bill gives you the right to operate.

Q.—Yesterday you spoke of having examined this piling ground and of having made certain borings down into the ground?

A.—I did.

Q.—Was that on the piling ground?

10 A.—It was just on the front of the piling ground. I went down as far as I could on the piling ground. You are apt to encounter sticks and things like that sunken down.

Q.—I wonder if you could, by reference to any plan that you have produced, show me in a general way where you made those borings?

A.—Will you give me Exhibit P-93?

Q.—I am asking you to put your pencil on the exact spot. Perhaps you can show me just the localities in which you made those borings?

20 A.—I will mark those on the plan and explain them to his Lordship.

I indicate by a cross in red pencil the approximate location of the borings.

BY MR. SCOTT:

Q.—That is approximately, I suppose?

A.—Yes. I have a number of other smaller ones indicated by a cross without a circle.

30 I now show your Lordship P-29, a photograph showing the power house, a little white building. It rises. You see how abruptly the hill goes up, the same way all along around this side. A tailrace is out to the left, when you are looking northwest, and the surface water comes down through another passage to the east of the first one.

I mark on the plan Exhibit P-29 the location of the power house, and I also mark location of the top of the dam and the sawmill.

I mark on the plan the dam runs from point 1 around to point 2.

The test pits were made directly out from the house to the left of the power house.

40 The area in the foreground is the level land belonging to Mr. Cross which has been submerged.

Q.—When were those borings made?

A.—They were made this summer.

Q.—Do you know what dates?

A.—Around the middle of July.

Q.—Could you give me the exact dates?

*In the
Superior Court*

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Oct. 7th, 1932.
(continued)

A.—When the water was low—when the water was down off the property.

Q.—When you say the water is down, what level was the water at?

A.—Well, I don't know. It was away down, about 313 or 314.

Q.—How long had it been down there?

A.—It was down approximately a week, when it was up the first day, it went down, but it certainly was down there, because we walked out. It was over a week, we had reports in the office about it.

10 Q.—Were all those borings made at that time?

A.—One and two were made at that time and three was made—it is above the 318, and it was made; one of them at location three was made then, and I have had two made since that time, and the others over on the 321 contour, I have not the dates.

Q.—What was the level of the water at the time those on the 321 contour were made?

A.—And the 321 contour I should judge around 317 or 318.

Q.—When were they made?

20 A.—Most of them were made this summer.

In addition to that, I would say that I have information, although I did not see it myself, the ones who have the information can be produced later on, at the power house, as to the foundation at the power house, and there is also the information as to the depth of poles at the C.P.R. culvert.

Q.—I want to ask you just a question or two about those borings: did you say July, of this summer?

A.—Those things were dated July 18th. They were down for a couple or three days around that time.

30 Q.—That was not the time you made the borings at the 321 level?

A.—No.

Q.—It was in July when you made those borings that the water was down at 314, you say?

A.—Around that.

Q.—When you made borings on the piling ground about the 321 level, where was the water then?

A.—The water, as I said then, was around 317.

Q.—317 or 318?

40 A.—Yes. It was not as high as ordinarily.

Q.—What were the results of the borings that you made?

A.—I went down to groups 1 and 2. Group No. 1, we went down 36 feet 8 inches, and group No. 2 we went down 33 feet 2 inches. At both those depths we were unable to continue further. There were five men working on them and using a winch to draw the auger up. It got down to a point where they could barely get it up, so we simply stopped.

*In the
Superior Court*

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Oct. 7th, 1932.
(continued)

Q.—What did you encounter on the way down?

A.—First, as I stated, the top, approximately five feet was beginning to soften up quite perceptibly, the top crust. It was a sort of clay with a little bit of sand mixed in with it.

10 And when you got below that crust it was simply a form of clay for cementing material with the sand in it. As you got down to the bottom the last shovelful that came up did not contain any; when the augur came up from the very bottom, it was that soft it would hardly hold in the augur at all, and just as soon as it got to the surface it just spread right out.

Q.—I see by your evidence yesterday in referring to this matter, that you say: "I had a series of test pits made fairly well covering the piling ground to find out what material was underlying it," and the question was asked you: "And what did you find?" and your answer is: "I found the top of the material underlying the piling ground is, first on the surface there are five to six feet of a crust, which is consolidated. It is hard. It is ordinary clay, with a little bit of loam mixed in with it."

20 A.—The surface part is a sort of clay. It is a surface that has become subject to the action of the air, has hardened down.

Q.—They went down perhaps five feet or so?

A.—Around about five feet. That five feet was the condition prior to the flooding. It shows indications now.

Q.—How do you know that was the condition previous to the flooding?

30 A.—Because when you get below that even at the present time you get into this very much softer soil, and the top part in comparison which I dug through, when the water had gone down, and it had been submerged for a period of approximately five years, was considerably softer than the soil which was above that elevation, and which had not been submerged.

Q.—What I would like to ask you, and I would like you to consider it very carefully, that with the water at 317, as you say . . .

A.—Where?

Q.—Where you took these borings?

A.—I did not say that. When I was talking about 321, I was talking about groups 1 and 2, if you refer to the evidence.

Q.—You took certain borings?

40 A.—I did.

Q.—When the level was at 317?

A.—I did. As I say, those borings did not go down very deep, because I encountered slab wood and things like that, and I could not work with the augur.

Q.—You said you found, broad and large, in your borings, a five-foot crust?

A.—Yes.

*In the
Superior Court*

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Oct. 7th, 1932.
(continued)

Q.—And if your theory about the three feet of seepage is correct, with the water level at 317, you would only have been able to get down six inches or a foot?

A.—I do not follow your argument at all.

Q.—I will try to make it clear. The crust of five feet would indicate that below the level at which you were boring, below the surface level there was no effect of seepage down to five feet.

BY MR. SCOTT:

10

Q.—Was there boring?

BY MR. KER:

Q.—What is it you are saying?

A.—I say there is in this area before you ever came there at all, approximately those five feet of crust, that is very hard as you go through the edges.

Q.—But we have been there for five years with the water at 318?

20 A.—What I am trying to tell you now is that this crust is beginning to soften down very materially.

Q.—But it has not softened down in five years.

A.—Not completely, no.

Q.—Its capillary action is not so quick?

A.—Capillary action does not affect it when it is all covered with water.

Q.—I am not speaking of that.

A.—You certainly should. I understand the English language as well as you do.

30 Q.—You told me yesterday there would be capillary action rendering the ground damp and soft up to 321, three feet more than 318?

A.—I said beginning at 318 and being eliminated at 321.

Q.—Where this level of water has been notably held up and down for five years at 318 to 319, even to 320, as you say last summer, you made borings about this piling ground, and you find a hard crust?

A.—I did not say a hard crust.

Q.—You said yesterday that there was five feet of crust which is consolidated. It is hard. It is ordinary clay with a little loam?

40 A.—That had not reference down under where the water had been submerged. That does not have reference to where it was submerged.

Q.—Mr. MacRostie, I am not speaking about anything being submerged. I am trying to get you to explain to me why, if the water has been maintained at 318 or 320 for five years, you should, when boring at level 320, have to go five feet, which is two feet below the level of the water itself, to find this effect you speak of?

*In the
Superior Court*

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Oct. 7th, 1932.
(continued)

10 A.—No, I may explain it in this way, that normally in this area the flat land, which is the foreground shown on Exhibit P-29, the whole area, and part of it, including Mr. Cross' piling ground, the top surface has become consolidated, and was consolidated. I walked over it before the water was ever raised, and I know it was consolidated. When the water is over that portion for a period of years—I don't know how many, maybe two, three, four, five, six or seven, but through time the top crust will become soft the same as the lower part and its bearing strength will be gradually reduced over a period of years.

Q.—While that is very interesting, it does not really answer my question.

A.—It is the information I am trying to give you.

Q.—What I am asking you is this: Let us presume that this water has been at 318 or thereabouts for five years; where were your borings made?

A.—They were made at the points indicated on the plan.

20 Q.—You found out after five years that water at 318, when you began to bore, you had to go down five feet before you found any effect of seepage. How do you account for it?

A.—I did not say it had any effect of seepage.

Q.—Then the effect of seepage is not to render the ground soft because you say

30 A.—Mr. Ker, either my command of the English language is very limited or some other result, but the fact remains that when the water is over this crust, it is gradually softening, and as I stated previously, and I state now, that those five feet which I referred to is becoming softened, the part which is becoming submerged below 318 is becoming softened.

Q.—I am not speaking about what is consolidated underneath the water. I ask you a simple question. You are basing your entire case on three feet seepage, and I say to you this piling ground is going to be affected by three feet seepage, although your client does not say so. You say that if the water is at 318 there is no way that it cannot be affected to 321, is not that right? Did you not tell me that yesterday?

A.—That what?

40 Q.—That if the water is at 318 you are going to get the seepage effect at 321?

A.—Well, it will be eliminated at 321.

Q.—Now you have been making your borings which were made on top of ground at 321, you go down five feet. You say your borings showed five feet of crust?

Mr. St. Laurent: The witness does not agree with you that

*In the
Superior Court*

No. 55.

Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Oct. 7th, 1932.
(continued)

he said so. If you have it in writing you may convince the Judge that he said this.

Witness: Borings 1, 2 and 3 all indicated that there was a harder material at the top, and that when you got below that depth there was a perceptible change, becoming very much softer, and there was moisture in that right from the top down.

BY MR. KER:

10 Q.—That is what I understood you to say; you began your borings at 321 and found a hard crust at five feet?

A.—I am talking of 1 and 2. You are bound to jump around. You cannot lead me that way. I specifically stated 1 and 2. The elevation of those two were around about 316.

Q.—At 316 your borings went down five feet, down to 311?

A.—I did not say that. I said that crust was there, but I am telling you that that crust was water-soaked and showed indications of disintegrating.

20 Q.—Did you ever examine that crust in any way before the water came up?

A.—Well, in a general way.

Q.—Did you ever take any borings?

A.—No. I drove a stick down. I started to drive a stick down.

Q.—I will leave this matter with just one question. I take it from what you have stated that you made borings on the piling ground?

A.—Yes.

30 Q.—And that the level at which you made those borings varied from 321 downward?

A.—Downward to about 316.

Q.—And that you found a crust ranging from five to six feet, as you say, which is consolidated, and that it is hard; is that correct?

A.—It is hard. But there is moisture as well in that today.

Q.—It is hard?

A.—It is hard.

Q.—And even at 316 there is still a hard sort of crust there?

A.—As I stated before, it is gradually showing signs of softening. It takes time to soften.

40 Q.—How do you know it was not soft? How do you know there has not been any change?

A.—Because I have traversed that area, walking over it, and I know it was very much softer at the time.

Q.—All your levels were taken when the water was at the normal elevation?

A.—When you say the normal elevation it would be about 309 of the river.

*In the
Superior Court*
No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Oct. 7th, 1932.
(continued)

Q.—I mean by reason of our development?

A.—Yes, at 316. I took 1 and 2 when the water was down at that period in July.

Q.—And you took them at level 316?

A.—Yes.

Q.—And that water happened to be down exceptionally on account of repairs to the work?

Normally that water would have been 318 at that point?

A.—Yes.

10 Q.—So there would have been two feet of water over that still?

A.—Yes.

Q.—And that has been the case for five years?

A.—Approximately five years.

Q.—And still there is a pretty good crust underneath?

A.—It is harder than the underpart, but shows signs of softening.

Q.—And where you made your borings at 321, it would have been high and dry if the water had been at 318—at 321 you still found this crust?

20 A.—Yes.

Q.—That would seem to indicate that the unscientific mind of your client was not so far wrong when he said he was not suffering from any effects of seepage?

A.—There are no effects of that at all. I said there was moisture underneath that. It was quite wet, but there are different degrees of hardness that you should bear in mind, from absolute bone dry to the absolute stuff that you can wash your hand over.

30 Q.—As to this claim of the Plaintiff (I am speaking now somewhat perhaps in generalities to get some preliminary idea about it) is based on two claims, one in respect of the power development and the other in respect of the lumber industry?

A.—Yes.

Q.—That is in general?

A.—In general.

Q.—Taking first the lumber industry, I would like to get into the record as clear a picture as I can of just what the layout of this lumber industry is. First of all, you have the Gatineau River running down from north to south into the Ottawa?

40 A.—Yes.

Q.—And perhaps a mile back the Cascades property, you have Meach Creek running after?

A.—Yes.

Q.—It runs in on the west side of the Gatineau River?

A.—Yes.

Q.—This Creek does not run out of the Gatineau River, it runs into the Gatineau River?

*In the
Superior Court*

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Oct. 7th, 1932.
(continued)

A.—It runs into the Gatineau River.

Q.—And then this source of water is on the high land immediately behind the Farm Point plant?

A.—Yes, it runs back and is fed by Meach Lake, Harrington Lake and Phillips Lake and numerous other smaller lakes.

Q.—Meach Lake is 100 feet above the Gatineau River?

A.—Meach Lake, yes.

Q.—Meach Lake would be approximately about 100 feet above the Gatineau River?

10 A.—It is more than that.

Q.—In any event, Mr. Cross' dam at the top of the hill is at least 100 feet above the Gatineau River?

A.—The elevation at the top of the dam is I think 389, speaking from memory.

Q.—It is 72 feet above the Gatineau River?

A.—Yes.

Q.—Then, the water comes down from that dam, down the 72 feet?

20 A.—Down the 72 feet, then through a penstock.

Q.—Then, through a penstock or iron pipes which leads it down?

A.—Yes.

Q.—When it gets down, let us say half way, generally speaking, a hole is let into that penstock, a T and the water is permitted to run into the machinery which motivates the mill?

A.—Yes, that is right.

Q.—That is part way up the hill?

A.—Yes.

30 Q.—And it falls out of that into the Creek?

A.—Yes.

Q.—The balance of the penstock water goes down to the bottom of the hill and runs to the power house?

A.—Yes.

Q.—And motivates the wheel?

A.—Yes.

Q.—Grouping about on this sloping hill behind the base of the creek are the various cottages and places where Mr. Cross' men lived?

40 A.—Yes.

Q.—And also at the top up over the dam you have a rollway that you spoke of?

A.—Yes.

Q.—For allowing the logs to roll into the mill by gravity, or with as little possible difficulty as can be arranged?

A.—On the east face of the earth fill of the dam.

In the
Superior Court

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Oct. 7th, 1932.
(continued)

Q.—Then, as you get down, you have certain houses which are on a level with the Creek proper?

A.—Four groups.

Q.—And at that lower level you also have the piling ground?

A.—Yes, and the siding.

Q.—And the piling ground is served by the siding to the C.P.R.?

A.—Yes.

Q.—It is built upon the piling ground?

A.—Yes.

10 Q.—So that the lumber is taken down from the mill which is half way up the hill? Does the siding run right up into the mill?

A.—It runs right up to the mill.

Q.—It is placed practically on the cars on that siding and taken out?

A.—There are three storeys to the mill and it runs under the under one.

Q.—That is the chief part of Mr. Cross' lumber mill?

A.—Yes.

20 Q.—Farm Point was the chief lumber industry?

A.—Yes.

Q.—And you think it has been affected because of the loss of piling ground by submersion or from the effect of seepage?

A.—I am not a lumber man, but I do know that any lumber mills that I have ever seen require a substantial piling ground, and I would say that it is an essential part of any lumber industry.

30 Q.—There is one more question I would like to ask you with regard to this claim of Mr. Cross: insofar as the Farm Point Lumber Industry concern, does the claim arise from any other reason than loss of piling ground?

A.—At Farm Point?

Q.—Yes.

A.—I would think the loss of piling ground was the main reason?

Q.—The main and only reason?

A.—As far as I know.

Q.—Then, if that is the case, we have gone through this piling ground matter, made plans of it pretty well, what in your opinion is the area of piling ground of which he will be deprived?

40 A.—Might I have Exhibit P-95? First of all, Mr. Ker, it will be necessary for me to find out one thing, whether you are admitting that Mr. Cross can develop to 318 or not.

Q.—Let us not work at cross purposes. Leaving aside any question of any development, what is the amount of piling ground which is going to be affected, because he says there is nothing affected up to 318: what is the amount of piling ground which, in your opinion, having made plan P-93 as to the area of piling ground, which would

In the
Superior Court

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Oct. 7th, 1932.
(continued)

be destroyed by the operations of the company at 321?

A.—Mr. Cross' property which he owns at that point between—the part I should say between the railway and the hill which will be affected by your development to the said elevation contains about 17 acres. Now, he will be deprived of the use of all of that. How much of that is absolutely necessary for him I am not prepared to say.

10 Q.—Do you know how much of those seventeen acres are above the 321.5 level? You have told me that insofar as the item of lumber business is concerned, the only adverse effect to it which the Gatineau Power Company has made, is loss of piling ground?

A.—Yes.

Q.—And you built up quite a large sum of money, \$200,000 against us on that item, and I would ask you, as it seems to me rather important, to know exactly what area it is we are affecting of piling ground, because that is the whole question?

A.—That was why I was asking you which way you wanted the answer given. Are you admitting the development up to 318?

20 Q.—I am talking about this level that started at 321.5, how many acres, in your opinion, of piling ground has been affected?

A.—I am telling you one thing first, that I do not know exactly the area that Mr. Cross has used or contemplates using for a piling ground, so I am saying that all the area below the 321.5 will be submerged by water and rendered useless, and that area according to your own plan, and that is why I used it, is around 17.6 acres.

Q.—I wish you would be more careful about that statement, because I do not see any reference to the level 321 on our plan, which you say is 17 acres?

30 A.—If you superimposed plan P-95 on any of the contour tracings you will find that he utilizes to the area or the portion between the C.P.R. and the base of the hill, substantially corresponds to the 325, but 321, as a matter of fact, will be in. It is only on the brow of a steep hill, where there is a hill.

Q.—You say that up to 325 there are seventeen acres of piling ground affected?

A.—Seventeen acres of land available for him for use. I won't say he is using all that piling ground, because I don't know.

Q.—Seventeen acres of piling ground available?

40 A.—Seventeen acres of land for piling grounds, or in use.

Q.—I would like to know what would be affected between 321.5?

A.—There is very little between 321.5 and 325. They are quite close together. I have taken off the area.

Q.—You don't know whether those seventeen acres have ever been used by Mr. Cross as a piling ground?

A.—I would think it had not all been used.

Q.—How many acres would you think had been used?

In the
Superior Court

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Oct. 7th, 1932.
(continued)

A.—I could not say, because I never saw Mr. Cross in operation, nor examined it critically during his big years.

Q.—Could you tell me how much land would be required for the piling ground?

A.—I could not.

Q.—I suppose there is a good deal of land which is taken in the vicinity of the mill?

A.—On the side of the hill, but not suitable for piling ground. If you refer to the plan P-96 you will see how abruptly it goes up.

10 Q.—But it is not hill behind. There is plenty of other ground in front. What about Muluva Hill Road?

A.—Across the Muluva Hill Road there is practically nothing left to amount to anything.

Exhibit P-94 will indicate the contours of the ground, whether it is level or not. It will show it.

Q.—Mr. Cross seems to think that 318 would not affect his lumber business?

20 A.—I am not in any way responsible for what Mr. Cross may say.

Q.—Have you any idea what the area would be between level 318 and 321.5?

A.—I would like the privilege of calculating it.

BY MR. KER:

Q.—You could not give me a rough idea of it? Would it be three acres?

30 A.—I should say some place within 318 and 321, possibly about four acres. Don't hold me to that as an absolute figure.

Q.—But as Mr. Cross definitely says, not only in his deposition, but in his declaration, his lumber business would not be affected by a level of 318?

A.—I don't care what he says.

Q.—If the Gatineau Company is to compensate Mr. Cross to 321.5 we ought to compensate him for those four acres, should we not?

A.—If you can.

Q.—What makes you think we cannot?

40 A.—It depends upon you to define compensation, then I will answer your question. Is it a monetary compensation or reproduction of equivalent area?

Q.—Let me come out baldly and say that I conclude that those three or four acres, instead of having to pay you \$265,000 for the value of your whole industry, including timber limits which are miles away, that Mr. Cross should be given enough money to properly

*In the
Superior Court*
No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Oct. 7th, 1932.
(continued)

place that ground in a condition to make it available as a piling ground?

A.—If you can give him enough money to properly replace it, I think it would be fair compensation.

Q.—In other words, you would agree that a just and fair compensation both to me and to you would be arrived at, if I could give him the necessary money to replace his piling ground?

10 A.—If you can produce for him the necessary money to give him a piling ground that would be satisfactory.

Q.—And in that case you would think he would be justified in desisting from all these enormous claims for timber limits?

A.—Now, you are getting into the legal side.

Q.—But if we restored to him his piling ground, you believe that being the underlying claim, the balance of the claims for the whole of this advanced industry should vanish?

A.—If you put it in as good a condition as it was before.

Q.—We have only to restore to him his piling ground, in your opinion?

20 A.—Of course, there are certain houses—leaving those outside.

His Lordship: You are now cross-examining the witness on the item mentioned in Exhibit P-66 with regard to the lumber business?

Mr. Ker: Yes, my Lord.

BY THE COURT:

30 Q.—Do you swear, Mr. MacRostie, that the item mentioned in the Exhibit P-66 is a fair value for the damages suffered by the Plaintiff?

A.—Going over the items, item by item—I have my own valuation. This valuation as put in here is not all my own figuring.

BY THE COURT:

Q.—In P-66?

40 A.—In P-66. I have my own details for the items which I placed in myself. For instance, there is the land which I put in yesterday, which corresponds with the land here. The item for service pipes is out on my suggestion. The item, storage dam, in Meach Creek, I do not know what the lawyers have decided to do about that. That is not my item either.

BY THE COURT:

*In the
Superior Court*

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Oct. 7th, 1932.
(continued)

Q.—What figure do you arrive at? Is there any difference between the \$165,000?

A.—My estimate is less than that. There are certain depreciations to go in, as stated yesterday, and if your Lordship wishes I will figure them all up and present them to you in a lump sum to be inserted in the evidence.

BY THE COURT:

10 Q.—What about the good will?

A.—I have nothing to say about that.

You will understand that in the preparation of this there was certain information which I did not have and that was embodied in this at the time. There was just a short time to make it up, and I used the information of one of the other witnesses who will speak as to their own valuation. That \$88,000 is the contractor and architect.

BY MR. KER:

20 Q.—Following along the lines of what his Lordship has asked you, and referring to this Exhibit P-66 to which his Lordship has referred, I understand the items in this exhibit are intended to represent the value of everything connected with Mr. Cross' lumber industry in a general way, are they not?

A.—In a general way. Of course, it is questionable whether this land across the river would be considered as lumber business or the hotel; that was discussed yesterday.

30 Q.—And therefore if it were shown that Mr. Cross' piling ground could be restored to him, that entire Bill would be of little value in this case?

A.—Not the entire Bill.

Q.—Because we keep going back, there are items on which we agree

His Lordship: What item are you referring to, Mr. Ker?

40 Mr. Ker: To the \$165,000 in Exhibit P-66, but as I say, his whole case is built up on the question of this piling ground, and all those items which we submit are very remote. They are indirect. They are not physically affected.

BY MR. KER:

Q.—And also the limits at \$100,000 and the goodwill would vanish?

A.—I had nothing to do with them.

*In the
Superior Court*

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Oct. 7th, 1932.
(continued)

Q.—As a matter of fact, when I tell you that \$265,000 is the claim, that is, \$100,000 for goodwill and \$165,000 for the piling ground, that whole total sum would, in your opinion, have to be relinquished, if this Company could return to Mr. Cross his piling ground?

A.—No, I would not say that, because my understanding of that \$100,000 is there is some relation in connection with Mileage 12 and Alcove.

Q.—So far as the Farm Point lumber business is concerned?

10 A.—So far as the Farm Point lumber business is concerned.

Q.—Do you think it would cost anything like \$165,000 to put this piling ground in order?

A.—I have not made an estimate. It is my opinion you cannot produce a piling ground there that would be satisfactory on that sub-soil.

Q.—It is just on that opinion that you think Mr. Cross should get \$165,000?

A.—That is my result.

20 Q.—You have not said anything much about the timber limits, except to give a general idea?

A.—I plotted them as purely a piece of clerical work.

Q.—The Defendant has pleaded that that is altogether irrelevant to the issue, but under reserve of the plea, these timber limits are three or four miles away from the site of the property?

A.—The plan shows their location.

Q.—They are all, of course, nowhere near the Gatineau River?

A.—I said before the plan shows them in relation to the Gatineau River.

30 Q.—But they are not on the river; they are not affected physically by water?

A.—No.

Q.—So it is not on account of physical effects at 321.5 that we are asked to pay some \$75,000 for timber limits?

A.—They are all above that.

Q.—We are asked to pay that, because we are alleged to have destroyed his lumber business?

A.—I believe so.

Q.—You have not testified regarding that?

40 A.—No.

Q.—Taking his lumber business at Farm Point, there is no earthly reason why, with the water level at 321.5, Mr. Cross' saw mill itself should not motivate?

A.—It should run just as well.

Q.—It can run just as well now as it ever could and will always be able to run so far as the level of the water of 321.5 is concerned?

A.—Absolutely.

In the
Superior Court

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Oct. 7th, 1932.
(continued)

Q.—And there is no interference whatever with the supply of water that motivates his mill?

A.—I won't say that. I would say the Meach Creek Association have put a dam across. You asked me if there would be any interference.

Q.—I am asking you if at level 321.5 there is absolutely no interference with the source of the water?

A.—The source of the water comes from above.

10 Q.—The saw mill and the water is there and is physically capable of operating?

A.—Yes.

Q.—And his timber limits are there and he is able to operate as far as that is concerned, and it is only because he has no piling ground there?

A.—Yes.

Q.—And because he has no piling ground his claim is that his saw mill is useless?

20 A.—In other words, I say a piling ground is an absolute necessity to a lumber mill. If you take his mill away and you cannot replace the mill, the rest is useless.

Q.—Upon that piling ground there hangs this claim, the saw mill, forty houses, thirty-five of which are not affected in any way by water; \$75,000 alleged damage to timber limits?

A.—A part of that goes into Mileage 12 and Alcove.

Q.—And the dams and the water and everything else on this area of land which you spoke of yesterday is all included in that?

A.—That is included.

Q.—And that is all hanging on the piling ground?

30 A.—As I say, with the exception of the timber limits, are part of Alcove and part of Mileage 12.

Q.—Let us deal for a moment with Alcove and Mileage 12 mills. You gave his Lordship yesterday a plan which showed a mill site at Alcove and a mill site at Mileage 12?

A.—Yes.

Q.—I do not think you wanted his Lordship to believe there were three mills owned by Mr. Cross, did you?

A.—There are three sites owned by him.

40 Q.—Because the declaration perhaps is a little ambiguous there, inasmuch as it speaks of three lumber industries?

A.—Will you let me explain: as I understand it, and this is partially hearsay and partially from my own observation. A permanent mill operated by water power is situated at Farm Point; and at Mileage 12, a few miles below, Mr. Cross had this site, the buildings, stables, bunk houses for the men, and a building for the portable mill which he operated at Mileage 12. He also had a duplicate plant of the Mileage 12, or approximately so, at Alcove, above Wake-

In the
Superior Court

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Oct. 7th, 1932.
(continued)

field. The machinery for Alcove and Mileage 12, as I understand it, was the same machinery, moved from Alcove to Mileage 12 and back and forward, and the power for which was supplied from the electric power house at Farm Point.

Q.—That is exactly as I understand it.

A.—That is my understanding of it.

Q.—In other words, the Mileage 12 mill was a piece of land with an overhead place that you could use this portable mill and operate it?

10 A.—And stables, bunk houses and sheds.

Q.—That was the Mileage 12 sawmill?

A.—And the siding there.

Q.—The Alcove was another piece of land with a place that he could push this portable mill into?

A.—Yes, situated similarly.

Q.—But you cannot operate Alcove and Mileage 12 at the same time?

A.—And not use the same machinery.

20 Q.—At Farm Point it is a stationary mill operated under its own power, and this portable mill which was moved back to Mileage 12 as the spirit moved Mr. Cross?

A.—Or as necessity required.

Q.—So this business of three lumber industries is a bit thick when you think of Alcove and Mileage 12 as a mill?

A.—I am just stating how they were.

Q.—You don't know when they began to do business at Mileage 12?

A.—I cannot say.

30 Q.—On his examination on discovery Mr. Cross stated that he started there in 1922 or 1923, and that previous to that time this portable mill had been up at Alcove, and that after 1923 he moved it back once or twice, and that in 1924 he moved it from Alcove down to Mileage 12 and that he never moved back?

A.—I don't know anything about that.

Mr. St. Laurent: I object to this as not cross-examination.

(The Court reserves the objection.)

40 Witness: All I can say definitely is, that the Mileage 12 mill was in operation during the winter of 1926 or 1927, at Mileage 12.

BY MR. KER:

Q.—Are you sure of that?

A.—That is my recollection that it was there because it was

*In the
Superior Court*

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Oct. 7th, 1932.
(continued)

difficult getting the lumber out when the water was raised, in March, 1927. It is not material. I will withdraw the statement so far as that goes.

Q.—What I was coming to is, that at Mileage 12 this mill was really there in 1926; water was never put up in 1927; the mill was moved bodily away in 1926 long before the water was raised.

Mr. Scott: That is not the evidence.

10 Witness: I won't say anything about that.

BY MR. KER:

Q.—You do not know anything about that?

A.—No, I do not know anything about that.

Q.—In any event, this was a portable mill at Mileage 12?

A.—As I stated previously.

Q.—Do you know what happened to it?

20 A.—No.

Q.—Do you know what was the area of land that he owned at Mileage 12?

A.—The Deed is there. My recollection is, about five acres.

Q.—And there was a siding on it, the C.P.R. siding under the old regime?

A.—Yes.

Q.—And he had current for the running of the mill from the Meach Creek plant?

A.—Yes.

30 Q.—He had current at Alcove for the running of the mill that was up there for the Meach Creek plant?

A.—Yes.

Q.—You have not any idea how the industry was carried on either at Alcove or at Mileage 12?

A.—No.

Q.—You have not any idea of the value of that part of the business?

A.—No.

40 Q.—Have you been doing anything in the way of keeping Mr. Cross' accounts for the lumber business at all?

A.—Nothing.

Q.—You don't know anything about his revenues or expenditures?

A.—No. Our connection is limited to keeping the books and sending out the accounts.

Q.—You do not know the amount of lumber he cut or anything of the kind?

In the
Superior Court

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Oct. 7th, 1932.
(continued)

A.—No.

Q.—That is as far as the lumber business is concerned; now, let us have word or two as to this power business. I understand the situation to be that the power business with the backing up of water into Meach Creek affects the tailrace and the little power property at Farm Point?

A.—Well, of course at 321.5 it will practically affect the power house, because the elevation of the power house floor is 321.4, 7 or 8, I think.

10 Q.—In any event, the claim in respect of loss of the power development is that it has caused a reduction in the potential power output by reason of reduction in the tailwater?

A.—I say it is due to interference with it.

Q.—Can you tell me what percentage of reduction in power has been occasioned by this raising of the water?

A.—No.

Q.—Take the elevation of 321.5?

A.—It puts the power practically out of commission at 321.5.

20 Q.—Is it impossible to operate the power house at 321.5?

A.—To operate economically. You could let the water run through the wheel but you cannot go in there with water practically on the floor of the power house.

Q.—Could you tell me what reduction of power that is, total?

A.—Power is made up of two factors, head, that is the height the water falls through, and the amount of water falling, the power reduction is directly proportional to the reduction on either one of those two factors.

30 Q.—The Company is not responsible for any reduction in the amount of water coming in?

A.—No.

Q.—What percentage of reduction in head does that level 321.5 bring?

A.—About ten and a half feet.

Q.—Ten per cent?

40 A.—Ten and a half feet; 311 to 321.5 is ten point five feet and the total head. Now, I am speaking from memory again. I have not got the information with me. I say the top of the dam is 389. The head is roughly 72 or 73 feet so it will be 10.5 over 73. That is the reduction of the head for which they are responsible.

Q.—What height of tailwater were you using to arrive at this?

A.—311. You are using 313.

Q.—So it is really a reduction in the head caused by the raising of the water back in the tailrace?

A.—That is a theoretic power that he is using.

Q.—And the result of that is a reduction in his head, according to your statement, by ten feet?

*In the
Superior Court*

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Oct. 7th, 1932.
(continued)

A.—Ten and a half feet.

Q.—In addition to that I understand you to say the level at 321.5 would inconvenience him in the operation of his little power house because it would be close to the floor?

A.—It would go right to the floor.

Q.—Apart from this question of the loss of the ten feet of head and the consequent loss of power, do you see any difficulty in remedying the slight inconvenience caused by having the water so near the floor of the power house?

10 A.—As far as the power house is concerned, it would be practically almost useless.

Q.—I am asking you whether that condition could be remedied without a great deal of fuss?

A.—You can rearrange the power house if you so wish.

Q.—You would think it would be possible to rearrange it in such a way that there would be no effect on the power house at all apart from the effect of reduction in head? I know you are not an hydraulic engineer, but you are a civil engineer and perhaps you can say?

20 A.—It would necessitate changing the penstock and changing the roof, I would think, raising it up.

Q.—That is not a very pretentious building, this little power house?

A.—It is a concrete building.

Q.—Eight by ten by twelve?

A.—I cannot swear to the item of measurements but it is twenty-seven by twenty, something like that.

Q.—By how high?

30 A.—Ten or twelve feet high.

Q.—Twenty feet one way and twenty-seven feet the other way and twelve feet high?

A.—Well, and then the foundation of course goes down quite deep.

Q.—If it were found that remedial work could be made which would take away this inconvenience in the use of the power house, there would on then be left the reduction in this percentage of power by reason of the reduction in head?

40 A.—In addition to that there is the effect on his electric distribution system?

Q.—Why.

A.—If he is using every bit of power he has, and may be a little bit more than he has at times, if he has an overload it may seriously affect the business.

Q.—I was wanting to get at the mechanical operation of the power house?

A.—The mechanical operation of the power house is, as I say,

*In the
Superior Court*

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Oct. 7th, 1932.
(continued)

the reduction of so much head. Those are the two factors that go to make up the power.

Q.—Why then do you think Mr. Cross should abandon that power house?

A.—He was ordered to do so.

Q.—By whom was he ordered to do so?

A.—I believe the order is in there.

Q.—By the Public Service Commission?

10 BY MR. SCOTT:

Q.—After the flooding?

A.—After the flooding.

BY MR. KER:

Q.—Is there any reason at all from a scientific point of view why that power house should not be working now?

20 A.—You can run the water through it.

Q.—And you could generate electricity.

A.—Yes.

Q.—And there is just as much electricity as was produced before, with the exception of that which is taken away by reason of this rise in Meach Creek tailrace?

A.—Yes.

Q.—Attached to this power house was the distribution system?

A.—Yes.

30 Q.—In considering the distribution system, Mr. Cross had lines running out from the power house, which served Wakefield, which is some miles up the river?

A.—Yes.

Q.—And it served down the river as far as Kirk's Ferry?

A.—Kirk's Ferry.

Q.—And going about in various other places, making a net work in all of about thirty-one miles?

A.—There was Alcove as well, and back into the Farming community and the west side of the river, and some on the east side of the river.

40 Q.—I understand that part of the distribution system from Cascades down to Kirk's Ferry was submerged?

A.—Yes.

Q.—How long was that?

A.—I don't know definitely. I never measured it.

Q.—Have you any idea how many miles that would be?

A.—From Cascades down it is somewhere around four and a half miles on a straight line. It may be a little bit more.

In the
Superior Court

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Oct. 7th, 1932.
(continued)

Q.—There were poles and wires on those four and a half miles?

A.—Yes.

Q.—I understand they were built on the road?

A.—They were built on the edge of the road.

Q.—Do you know what the value of that particular part of the line would be?

A.—As I say, my basis of valuation has been on account of the material that was there, given to me by Mr. Frederick who made the count.

10 Q.—And what was the amount you figured it at? \$5,000 or \$3,000?

A.—On the general basis it figured out about \$1,000 a mile.

Q.—About \$4,500?

A.—That is on the average, yes.

Q.—Was that the replacement value?

A.—That was the replacement value.

Q.—And the depreciation was how much?

A.—I informed his Lordship that part had just been put up a few years before. I believe it was the newest part of the line.

20 Q.—What depreciation was there from that \$4,500?

A.—The count given to me by Mr. Frederick, using my own prices, gives the replacement value of the portion below Cascades, that is, the Kirk's Ferry section, \$9,060. Of course, not only would he have the main portion of it down the road, but there would be loops into the private dwellings and back on to the side roads.

Q.—That is, over \$2,000 a mile?

A.—I am just taking the four miles.

30 Q.—At any rate, that part of the line between Cascades and Kirk's Ferry was absolutely submerged, and his road was submerged?

A.—Yes.

Q.—And I understand you to say that that line served approximately twenty-five customers in that vicinity?

A.—There were altogether sixty buildings according to the count given to me by Mr. Frederick.

Q.—Naturally when the line was submerged, those customers were not served any longer?

A.—No.

40 Q.—Of course, the large part of those properties that represented those customers were properties which had been purchased by the Gatineau Power Company.

A.—A number of them. A number of them were submerged properties.

Q.—And they have been paid for by the Gatineau Power Company to the people who had owned them?

A.—I presume so.

*In the
Superior Court*
No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Oct. 7th, 1932.
(continued)

Q.—And naturally after there was not any current, because the houses were moved away, so you could hardly charge the Gatineau Power Company with the loss of those customers, could you?

A.—All I am charging here is for the physical portions that are there, no matter whether he is responsible, or whoever is responsible for the customers is a legal point that I do not care to discuss.

Q.—As a matter of fact, that is all you think the Company should pay him for the physical effect on that land?

10 Mr. St. Laurent: I object to this question.

The Court will decide what we are entitled to.

BY MR. KER:

Q.—In any event, all you have done is you have valued the physical line which the company admits has been submerged in that vicinity?

20 A.—Throughout the whole thing.

BY THE COURT:

Q.—What amount do you arrive at?

Witness: On the Kirk's Ferry area?

BY THE COURT:

30 Q.—Yes, according to your statement?

A.—The statement for the Kirk's Ferry portion was \$7,060.44, of which I stated yesterday I allowed an average depreciation of thirty-five per cent. That would be sixty-five per cent on \$9,060, around \$6,000.

BY MR. KER:

Q.—That is pretty high per mile?

40 A.—You cannot put it on a mileage basis on the four and a half miles, because there are a lot of other loops going in, and that includes the transformers. There were nine transformers that are included in that. There is \$1,214.00 for transformers included in that.

Q.—There seems to be no difference of opinion between the Plaintiff and Defendant as to the fact that the Company may pay for that line, and the Company offers \$4,500 for it, and you say it should be \$6,000?

A.—Yes.

*In the
Superior Court*
No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Oct. 7th, 1932.
(continued)

Q.—I was not so much concerned with that, but what I wanted to get at was this, that out of the whole distribution system as it existed before the Company came on the river, the only part which has been destroyed by the Company is that part between Cascades and Kirk's Ferry?

A.—Yes.

Q.—And the balance of the system is still operating and has been operating continuously ever since?

A.—Since then.

10 Q.—But still we are asked to pay \$100,000 for the goodwill of the system?

A.—Again, I have nothing to say about the goodwill.

Q.—And we are asked to pay for \$50,000 of physical assets in addition?

A.—What item is that?

Q.—We are asked to pay for the power house, and to pay for everything.

A.—As I told you, I valued the physical assets.

20 Q.—P-65 shows the physical assets of the electric power business are \$50,000, and goodwill of \$100,000; now, because we have submerged this little piece down to Kirk's Ferry, which you admit is the only part of the distribution system which is at all affected by us, we are asked to pay all this, is that correct?

A.—The statement speaks for itself.

Mr. St. Laurent: I object to this line of evidence.

(The Court reserves the objection.)

30 BY MR. KER:

Q.—The plant is still operating; it has not been physically affected?

A.—Below Cascades has been physically affected. The power house has been physically affected to the extent that we have for the last two years or more been buying power in order to supply our customers; we have been buying power from the Gatineau Power Company.

40 Q.—You have been carrying on?

A.—Yes.

Q.—And this item of \$100,000 of goodwill for the business has been going on during all this time?

A.—As I told you before, I have nothing to do with that.

Q.—Why were you buying power from the Gatineau Power Company?

A.—To supply our customers.

*In the
Superior Court*
No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Oct. 7th, 1932.
(continued)

Q.—You did not have enough power of your own?

A.—No.

Q.—Was that on the Order of the Quebec Public Service Commission?

A.—I believe the Order has been produced.

Q.—And what did that Order say?

A.—It speaks for itself.

Q.—It did not say the Gatineau Power Company was responsible for that?

10 A.—It speaks for itself.

Q.—Do you know anything about the service which was being given by Mr. Cross on that line up to 1926?

A.—Nothing specifically.

Q.—You do not know anything about complaints, or whether the service is good or bad?

A.—The only complaints I can speak of were complaints since 1930, and there have been quite a number.

Q.—There have been complaints?

20 A.—There certainly have.

Q.—On what ground?

A.—Because the power was shut off very often. People would want the power, for instance, for cooking meals at noon, and it would be shut off for some reason or other.

Q.—Whose power is that?

A.—The Gatineau Power Company's power.

Q.—These are not complaints, then, which are in issue in this case at all, are they?

A.—No.

30 Q.—How many of those were faults of the distribution system itself?

A.—Not very many.

Q.—Have you been operating this plant since 1930?

A.—Since July, 1930. At the end of June our office took it over.

Q.—The water had then been up three years?

A.—From March, 1927. There was a period in 1929, four months that I think power was supplied by the Gatineau Power Company as well.

40 Q.—In any event, before 1926 you do not know anything about how much money was being made on it?

A.—No, nothing at all, not since 1930.

BY THE COURT:

Q.—What month did you say?

A.—At the end of June, 1930. The books of the Electric Light Plant and all the work connected with sending out the accounts,

In the
Superior Court

No. 55.

Plaintiff's

Evidence.

(Supp. Hearing)

N. B. MacRostie,

Cross-examination

Oct. 7th, 1932.

(continued)

collections of the same and answering complaints and trying to keep things in operating condition have rested with our office.

BY MR. KER:

Q.—I understood you to state in your examination that you were paying \$600.00 a year for a clerk and \$300.00 more for something else?

10 A.—\$25.00 a month for meter reader.

Q.—And \$50.00 a month for clerk?

A.—For the stenographer. The customers come in; the accounts have to be collected and they come in all the time at intermittent times and the rest of us are out.

Q.—How do you keep the lines controlled?

20 A.—A man by the name of Mr. Fredericks does that. I have gone over the line myself. I have gone over the line myself with Mr. Lariviere, of Quebec, who is now a member of the Quebec Public Service Commission, and saw that the line was in shape to meet with his approval, and any complaints since then, either Mr. White of my office or myself investigated them, and have tried to keep things in as good shape as we could.

Q.—But there were a series of complaints about the condition of the line brought before the Quebec Public Service Commission?

A.—They will speak for themselves.

Q.—In any event you find it necessary now to operate with a girl at \$600.00 a year and another clerk at \$300.00? How do you do about line maintenance?

A.—I would say

30 Q.—I do not want to prolong the examination

A.—You are creating an impression there that is not correct. If I was running that from Farm Point, the meter reading could be done much more economically, but when the people are away twenty-six or twenty-eight miles, and they come into Ottawa, it is necessary for us to have someone on the job all the time.

Q.—You are not running it in the most economical way in which it can be run?

40 A.—No, most certainly not, but we are running it in the only way we can under present conditions. We cannot keep an office at Farm Point.

Q.—You don't know anything about the revenues of that system in 1926?

A.—No.

Q.—What are the gross revenues now?

A.—In the neighbourhood of \$3,800.00 a year.

Q.—And that is at the present time? How many customers?

A.—190. Of course, you understand customers will vary. Some-

*In the
Superior Court*
No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Oct. 7th, 1932.
(continued)

times there will be more summer cottages, sometimes people will move out. Sometimes we have to cut off quite a number of them who have not been able to pay the bills.

Q.—That is not the fault of the Gatineau Power Company?

A.—No. It is not our fault either.

Q.—You are operating with 190 customers now?

A.—Yes.

Q.—And what is your gross revenue?

A.—\$3,800.00.

10 Q.—That is the same gross revenue that Mr. Cross normally should have been getting from that system, except from those customers at Kirk's Ferry?

A.—I won't say anything about that. I am only telling you what I know about from 1930. That is what I am getting. What it may have been before I don't know—he may have had more customers. I am led to believe he had more customers. I am only telling you what I know.

20 Q.—The distribution system is operating at every point that it operated on in 1926, except at Kirk's Ferry?

A.—I cannot say that. There may have been a number of loops cut off.

Q.—It is operating at Wakefield, at Alcove and generally at all points?

A.—But there are lots of people between Cascades and Wakefield, cottages that have been flooded out and a lot of those, and for that reason I would not say this would be a fair criterion of what had taken place before.

30 Q.—In any event the revenue for the 190 customers is about \$3,800.00 a year?

A.—Yes.

Q.—That is gross revenue?

A.—Gross revenue.

Q.—The Plaintiff states in his declaration that he was getting a net revenue of \$8,000.00 a year out of that distribution system?

A.—As I say, I don't know anything about it.

Mr. St. Laurent: I submit this is not cross-examination of this witness.

40 BY MR. KER:

Q.—However, you know nothing about what he was earning?

A.—No.

Q.—How do you keep your lines in order and patrol, and repair?

Mr. St. Laurent: I object to this question as irrelevant.

In the
Superior Court

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Oct. 7th, 1932.
(continued)

Witness: I may say there is more outgo than what is coming in.

BY MR. KER:

Q.—I would like to find out what the outgo is?

A.—I cannot give you all the details, but if you want it I will bring them down the first of the week. There were repairs, putting up transformers and having them repaired. We had to have a transformer put down the road. In addition, any time that there is any
10 line trouble or a fuse blows out, if it is after nine o'clock at night, we have to send a man to Ottawa or to Hull to try to get someone of the Gatineau Power Company to unlock that, and then lock the transformers, and to fix things up.

BY MR. SCOTT:

Q.—And the bill from the Defendant?

A.—And the bill from the Defendant.

20 BY MR. KER:

Q.—And in addition to these two clerks you have a considerable sum to pay out for the repairs and maintenance for the line?

A.—We have a certain sum.

Q.—Thirty-one miles of line is something to look after when there is ice in the air?

A.—But as you say yourself, there is part of that gone off at Kirk's Ferry, and in addition to that the loops from the cottages that have been flooded out from Cascades up to Wakefield.

30 In addition to that there is the reduction of customers who were purchased out by yourselves, or who left the area. All I can say at the present time is, there are 190 customers as opposed to some 300 before.

Q.—And you are managing the matter for Mr. Cross?

A.—I am looking after the books.

Q.—Have you any financial interest in it?

A.—Absolutely not.

Q.—What is the Farm Point electric plant?

A.—That is Mr. Cross' electric plant. He is the sole owner.

40 Q.—The bills are sent out

A.—In the name of the Farm Point Electric, from our office.

Q.—It is not registered?

A.—I don't know.

Q.—Do you know if it is registered?

A.—I cannot tell you. There is a trust account in the Bank of Montreal in the name of the Farm Point Electric office and the books are in our office.

*In the
Superior Court*
No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Oct. 7th, 1932.
(continued)

Q.—I notice in Exhibit P-65 there is an item of \$36,589.71 for thirty-one miles of transmission line with poles and transformers?

A.—As of 1926.

Q.—The only portion of those thirty-one miles, so far as you know, which is not in operation is the part between Cascades and Kirk's Ferry?

A.—And the areas for these people who have been purchased by yourself.

10 Q.—Inssofar as you are aware, the only damage, on your valuation, which has occurred to those thirty-one miles, is a damage of \$6,000.00 on the Kirk's Ferry line?

A.—I would not say it is a damage. I would say that that is the replacement value of those physical assets as of 1926, and since that time the physical damage has been done to the section between Cascades and Kirk's Ferry.

Q.—All those thirty odd miles except this line down to Kirk's Ferry, whatever it may be, is all in operation, is it not, now?

A.—And as I say, with the exception of this.

20 Q.—Will you tell me as to this item of thirty-one miles of transmission line for which we are charged \$36,589, how much of that in value has been put out of business by this 321 level?

A.—I cannot tell you. I would say the Kirk's Ferry area, and in addition to that there are the loops for the customers who have been flooded out above Cascades. I have no record of those.

Q.—You do not know?

A.—I have no record of those.

Q.—Are those loops included in those thirty-one miles?

A.—Absolutely, and transformers.

30 Q.—How many miles altogether would there be in that? You said about four or five miles down to Kirk's Ferry. How many would the other loops make up?

A.—I would not like to say.

Q.—Would they make up another two miles?

A.—More than that.

Q.—Three miles?

40 A.—I would say there would be possibly, at least, ten miles of ordinary loop, four and a half miles as the crow flies down to Kirk's Ferry from Cascades, then, in addition to that there are loops—I would say there would easily be ten miles.

Q.—So that even if you took ten miles off it would still leave 21 miles.

Q.—Why should we be asked to pay for twenty-one miles?

A.—It is in the statement.

Q.—In other words, we are asked to pay for twenty-one miles, although thirty-one miles is in operation and has never been out of operation?

In the
Superior Court
No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Oct. 7th, 1932.
(continued)

A.—How are you going to operate if you have not the power to operate?

Q.—Is it not operating at the present time?

A.—With purchased power.

Q.—It is operating as a distribution system, and you are asking us to pay for it?

A.—Yes.

Q.—Is that your statement? Did you make that up?

A.—I made the detail of each of those separate items.

10 Q.—In addition to that, you are asking us to pay for the power house as well?

A.—Sure.

Q.—Referring again to this Exhibit P-66, we are charged in this exhibit with \$88,401.00 for buildings?

A.—Yes.

Q.—Those buildings are set out here as buildings numbers 1 to 40?

A.—Yes.

20 Q.—Some of the buildings numbers 1 to 40 are physically affected by the water?

A.—I gave you a list of those.

Q.—I understood you to state numbers 5, 6, 9 and 10?

A.—Yes, and the hotel, 30, 27 and 31.

Q.—How many altogether?

A.—Seven.

Q.—Take, for instance, building number 27, for which you charge up \$2,000. Where is that building located?

A.—It is shown on the exhibit.

30 Mr. St. Laurent: I object to this question. The witness did not speak as to these figures at all. Those are the figures of the other valuator.

BY MR. KER:

Q.—Where is building number 27 located?

A.—It is shown on the plan P-97, building number 27.

Q.—Does Mr. Cross own the property that that is built on?

40 A.—I understand so.

Q.—Do you know.

A.—I understand he does.

Q.—Have you any idea whether he has a title to that property or not?

A.—I understand he has a title.

Q.—If he had not you would not expect him to charge us with that?

*In the
Superior Court*
No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Oct. 7th, 1932.
(continued)

A.—He is only entitled to property he owns. If you can prove he does not own it, well, then, it is all right.

Q.—I don't know that we should prove he has not.

A.—I am not proving that he does.

Q.—From 1931 you are charging us \$11,560.00, fair value; that is depreciated value, \$7,514.00?

A.—Yes.

Q.—The declaration asks \$14,000 for this building?

A.—That is not mine.

10 Q.—You do not think it is worth \$14,000.00?

A.—If I had thought it was worth that I would have put it in there.

Q.—Why have you got it in at all?

A.—It is part of the property which Mr. Cross owns at Farm Point.

Q.—You just put it in because it is part of the property at Farm Point, so you think we ought to buy everything he has out there?

A.—And the cellar is also flooded.

20 Q.—How large a piece of property is that building, with the area around it, that was included in that Deed? It is quite a considerable stretch, is it not?

A.—Yes. I forget what the frontage is.

Q.—Do you know how much Mr. Cross paid for the whole property, including the hotel built upon it?

A.—No.

Q.—You did not consider that in making your estimate of value?

A.—No.

30 Q.—Let us see for the moment just exactly what damage has been caused to these buildings. What is the level of that cellar?

A.—Unfortunately, I have not that level book with me. It is the one book I forgot when I was leaving. I can speak from memory. I think it is around 324.

Q.—And why do you think it is going to be affected?

A.—I examined the property there, and the cellar was in very bad condition.

Q.—What was the condition?

A.—There was a lot of slime and earth that had evidently come up from the bottom in the cellar, and was very wet.

40 Q.—When did you examine it?

A.—I examined it this summer. I examined it two or three times.

Q.—How was the water then?

A.—The level I have in the book, but it was around, I think, 319.5 at the time I examined it. I am informed it had been higher than that.

*In the
Superior Court*

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Oct. 7th, 1932.
(continued)

Q.—At the time you examined it, the water was 319.5, which is pretty high for the water to be in the river?

A.—Not as high as it has been.

Q.—The cellar being 324, your seepage is now working up to five feet, if that is the case?

A.—I do not say it is entirely seepage that is the cause of it.

Q.—Well, what is it?

A.—My reason for thinking there is damage is, there was an under-drain out to the river, and in crossing the saturation line has
10 broken down.

Q.—So that, as far as the hotel is concerned, you think it is a breakdown in the drain that is causing this?

A.—Yes, caused by the raising of the water.

Q.—Do you not think that drain could be repaired?

A.—I believe it functioned satisfactorily before. As to the damage to that hotel, I do not want to state anything particularly about this, as there will be witnesses brought to prove that part of it.

Q.—In any event, the drain is broken and you contend we should
20 pay for the whole thing?

A.—I cannot say the drain is broken, because I have not seen it.

Q.—Can you account for any other reason why the water should be at 319?

A.—You did not ask me anything about that.

Q.—It is mentioned in the list?

A.—I mention it in the list.

Witness: There were certain figures his Lordship asked me to get.

30 BY MR. SCOTT:

Q.—That is, with reference to Exhibit P-65?

A.—P-65 and P-66. I have totalled it during the lunch hour, my Lord.

My total fair value for Exhibit P-65 is \$33,127.60. There are four items in that.

BY MR. KER:

40 Q.—I will just make that clear by one question: that is the exhibit which refers to \$50,000.00?

A.—Whatever P-65 is.

BY THE COURT:

Q.—That refers to P-65?

A.—It refers to P-65. My fair value for Exhibit P-66 is \$113,799.64.

*In the
Superior Court*

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Oct. 7th, 1932.
(continued)

BY MR. KER:

Q.—That exhibit as filed in the record calls for \$165,000?

A.—Yes. That is the replacement value.

Q.—So your evidence is that it is a little less than the amounts of the exhibit, as filed?

A.—Yes.

Q.—In Exhibit P-66, the first item is for buildings, and as a summary of your valuation of those buildings for which \$88,000.00 is claimed, you have produced Exhibit P-96?

A.—Yes.

Q.—Which shows that you value these buildings at \$45,654.50, instead of the Exhibit's valuation of \$88,000.00?

A.—To that \$45,654.50 should be added the valuation of the mill. That is exclusive of the mill as stated in my evidence.

Q.—Exhibit P-66 is also exclusive of the mill, is it not?

A.—No, it includes the mill.

Q.—I do not think so.

A.—I am sure it does.

Q.—It only refers to forty buildings and so does yours?

A.—There are not forty buildings. My fair value for that first item is \$52,500.00.

BY THE COURT:

Q.—That is, in P-96?

A.—I have not that in P-96. I gave it verbally. Unfortunately, I have lost the details of that, and I am only giving you that from my memory.

BY MR. MONTGOMERY:

Q.—It is \$45,000.00 exclusive of the mill, and some \$7,000.00 for the mill, is it not?

A.—Yes.

BY THE COURT:

Q.—You stated you valued it at \$45,000.00 so that should be added to?

A.—To that should be added an item of about \$7,000.00 to make the total of \$52,500.00.

BY MR. KER:

Q.—Of the forty buildings which are referred to in your estimate that you have just given, apart from the mill, how many of

*In the
Superior Court*

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Oct. 7th, 1932.
(continued)

those forty buildings are actually physically affected by the water at 321?

A.—Show me the plan showing the numbers of the buildings.

Q.—I do not want the numbers. How many buildings are there?

A.—I want to check the groups. I am looking at Exhibit P-99 and your question is as to physical effect.

Q.—By physical contact with the water to 321.5 of the forty buildings?

A.—That is forty Groups, Mr. Ker.

10 Q.—Call them Groups.

Q.—Because there are many more buildings than that, Group 5, Group 6, Group 10 and Group 9; the power house of course which is Group 11 I am taking otherwise; Group 27 and Group 31.

Q.—So that out of forty Groups there are seven which are physically affected by the water?

A.—Yes, whatever that is.

Q.—Well, say eight.

A.—There are eight.

20 Q.—And the balance of the forty buildings will not be affected by the water at that level?

A.—No.

Q.—Am I right in saying that the only reason you think they should be charged to the Company is because of the fact that the industry is, in your opinion, being destroyed by loss of piling ground?

30 A.—I would once for all like to make an explanation to the Court; I think perhaps it will sum up what I have been attempting to say during the past and that is, that when any industry is interfered with—a man is making his living by certain endeavours which he may carry on: he is making his living there, and if parts of that are interfered with, then the whole structure may fall, like picking out one leg of a foundation when there are four legs as in a chair, you pick out one leg and in this case Mr. Cross' power house has been removed. We say his piling ground has been taken: the section at Kirk's Ferry has been taken from him, and I have included the total physical assets.

Q.—In other words, everything he has got?

A.—Not everything he has got, but everything at Farm Point.

Q.—It is really because of the loss of the piling ground?

40 A.—No.

Q.—So far as the lumber business is concerned?

A.—I won't go that far. I will say that his power, his whole livelihood is there. You cannot simply say a man is carrying on the lumber business and exclude the other. It takes the whole to make it a paying concern, and when you affect any one part of the integral parts of that endeavour, you are simply affecting the whole thing.

Q.—In other words, we are affecting his whole lumber industry,

*In the
Superior Court*

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Oct. 7th, 1932.
(continued)

and you are asking us to pay for it, on account of the effect on the piling ground?

A.—You are affecting his whole livelihood; you are not only taking his piling ground, but you are interfering with his Electric proposition, drowning out his power line; you are affecting his power house. The whole thing together is his industry. I do not think I can make myself any plainer than that. That is what I have been trying to explain all the way through, both yesterday and today.

10 Q.—In any event, there are only eight of these buildings which are physically affected by the water at 321.

A.—Yes.

Q.—And what area of land would be affected roughly?

A.—I have not added up the area. That is the general basis of your expropriation proceedings.

BY MR. SCOTT:

Q.—P-95.

20 A.—P-95.

BY MR. KER:

Q.—You spoke this morning, in connection with this valuation of buildings and lands, of the hotel property?

A.—Yes.

Q.—That small property is across the road and on a plot by itself, is it not?

30 A.—There is part of the hotel property which is adjacent to the river, and where he had a pump house. I cannot say when that pump house was first placed there. There is a shack and a platform for boats. I do not know the year that they went there, but the portion between the road and the river is part of the hotel property.

Q.—The only building upon that property is the hotel?

A.—There is the hotel, the sheds to the rear and the stable.

Q.—The accessories?

A.—Yes.

Q.—And on that property you ask us to consider the question of subdivided lots?

40 A.—No, that is by itself.

Q.—That is a part of the same property that Mr. Cross purchased for the hotel?

A.—I have excluded a certain portion. I have excluded the hotel lot.

Q.—Would you look at this plan Exhibit P-17 which is the Plaintiff's witness, Mr. Papineau's plan produced, as P-17 which I think shows the hotel property quite clearly, does it not?

In the
Superior Court

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Oct. 7th, 1932.
(continued)

A.—I would want to see the description of the hotel property itself.

Q.—Do you know from whom the hotel property was purchased?

A.—No.

Q.—Do you know the extent of it when it was purchased?

A.—No.

Q.—How much do you claim for Mr. Cross in respect of that hotel property?

10 A.—There is a general plan of the possible subdivision. On Exhibit P-100 I have shown the portion of Mr. Cross' property which I would leave with the hotel.

Q.—And you have subdivided the balance of that section?

A.—I have merely made a suggested lay-out for it.

Q.—What did you value the little piece you have left there as the hotel property at?

A.—I allowed \$1,200.00 for the hotel lot.

Q.—And how much for the building?

20 A.—It is shown on Exhibit P-96.

Q.—\$1,200.00 for the lot, and how much for the hotel?

A.—\$7,514.00 for the hotel, and stables and barns.

Q.—And \$1,200.00 for the land?

A.—Yes.

Q.—How old a building is that?

A.—I don't know.

Q.—At any rate, it is the same building that Exhibit P-66 claims \$14,000.00 for, is it not?

A.—The same building.

30 Q.—And then, for the subdivided portion you speak of, or the possible subdivided portion, how much do you make out the value of that to be on that basis for the whole of the subdivision?

A.—I included in my total the hotel site, a total of 15.5 acres, including the river front.

Q.—But how much did you give in respect of lots, apart from the hotel?

A.—And river front, including river front?

Q.—Including the river front and all.

A.—It would be \$12,030.

40 Q.—\$12,030 for the subdivision part?

A.—Yes. That, of course, includes the two residential lots, that is, the Comet and Mr. Morrison's residence.

Q.—So the total for the little section around the hotel, of the subdivision, is \$20,744 in your opinion?

Witness: Are you talking of land or buildings?

In the
Superior Court

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Oct. 7th, 1932.
(continued)

Counsel: Land and buildings.

A.—You have to add to that \$20,000 the value of his residence, where he is at the present time, the buildings accessory to that and the Morrison residence. You have to add Group 40 and Group 30 to them.

Q.—This land shown as belonging to Mr. Cross, on Mr. Papineau's plan?

10 A.—Well, if he does not own them he should not get paid for them.

Q.—Taking the portion in yellow on Mr. Papineau's plan, that portion includes the hotel you have spoken of and the subdivision you have spoken of, does it not?

A.—Part of it.

Q.—And for that you think the fair value, taking into consideration the hotel and the subdivision, and the land and buildings, is about \$20,750? In that \$20,000 you have included the land marked green on the plan P-17 and also the property upon which Mr. Cross' residence is situated?

20 A.—Yes, and also the one on which Mr. Morrison's property is situated.

Q.—Can you separate them?

A.—I will do my best.

Q.—Can you tell me how much you allow in respect of the subdivision?

A.—My proposed subdivision includes land. You want me to exclude—I have to figure them out. I will figure it out if you wish.

Q.—Do you know when he purchased that property?

30 A.—No, I do not.

Q.—Will you look at the Deed produced as Exhibit P-8, which is a Deed in 1923 from Mrs. Bertha Hamilton to Mr. Cross, and see if you find that to be the property, including the total, and a large piece, at least, of the subdivision shown coloured in yellow?

A.—No, I do not think this includes the whole thing.

Q.—Will you look at the plan filed by Mr. Papineau. I see on the part of the plan P-17, the yellow part, there is a note made by Mr. Papineau that this property was purchased from Dame Bertha Hamilton by Deed of the 10th December, 1923?

40 A.—Yes.

Q.—You see that?

A.—Yes.

Q.—Will you look at that Deed and indicate exactly what it was Mr. Cross paid for this hotel and all the property, most of which you have added to this subdivision in 1923?

A.—Its consideration is \$4,000.

Q.—The hotel was then on it, and had been on it, for how long?

In the
Superior Court

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Oct. 7th, 1932.
(continued)

A.—I don't know how long.

Q.—And it included infinitely a greater extent than the amount you have shown for the hotel, on this Exhibit P-102?

A.—Well, of course that has no reference to any Deed.

Q.—But it included a greater portion of land than you show as hotel property?

A.—Yes.

Q.—And it included the hotel and all the land surrounding the hotel?

10 A.—Yes.

Q.—And the consideration was \$4,000?

A.—\$4,000 was the consideration.

Q.—With the hotel and everything?

A.—Yes.

Q.—In 1923?

A.—Yes.

Q.—How do you think that hotel is affected by the water?

20 A.—I stated this morning that the evidence on that would be given by other people.

Q.—You are not deposing as to that?

A.—No. I just told you as to the condition of the cellar, that was all, and the elevation of the cellar.

Q.—And you told me you thought the elevation was about 425?

A.—No, 324.

Q.—And the water was somewhere about 318 or 319?

A.—The day I was there it was about 319 or 319.5.

Q.—So you would expect, if there was any result of seepage at that time, that that seepage would probably stop at 322?

30 A.—The water had been up higher than that before. It goes up and down.

Q.—How do you account for the water in the cellar if the river water is five feet below?

A.—I told you it was my opinion that there was a drain which at the frost line of the raised elevation was affected.

Q.—That is a matter which could be fixed without a great deal of difficulty?

40 A.—If the foundation of the house would stand, it would be all right. The foundations at the present time are certainly falling. The verandah is very badly gone too.

Q.—Your building No. 27 is the only other building I wanted to ask you about, Group No. 27, for which you charge \$1,822.00 depreciated. What lot is that on?

A.—It is right adjacent to the lot owned by Mrs. Cross.

Q.—Could you mark its location on Mr. Papineau's plan P-17?

A.—I mark "27".

Q.—You have marked "27" on Mr. Papineau's plan?

In the
Superior Court

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Oct. 7th, 1932.
(continued)

A.—Yes.

Q.—Mr. Papineau does not show that property as belonging to Mr. Cross?

A.—I am not guaranteeing the title. I know Mr. Cross has lived on that area that is shown outside there, and has lived on it for a good many years.

Q.—But Mr. Papineau who made the plan apparently does not include that as belonging to Mr. Cross?

A.—The Deed must cover it, that is all I know.

10 Q.—How is that building physically affected?

A.—The water goes up all across the front of it.

Q.—How is the building affected?

A.—The building is affected in this way. It is not a desirable residence with the water in the front yard and the well is affected as well.

Q.—Do you know what the level is?

A.—There is a third basement in that house, which does not amount to anything. It is just a little dug-out floor.

20 Q.—What is the level of the land?

A.—I shall mark on Exhibit P-95 the location of the house No. 27.

Q.—It is not shown even on our plan as being affected at 325, is it?

A.—The whole front of the yard is shown as being affected.

Q.—I am speaking of the building.

A.—The only effect on the building is that it is rendered not as desirable a residence because no one wants to live in a front yard all full of water.

30 Q.—In giving your enumerations from various deeds on which you based your estimate of value, you did not refer to any Deeds of Acquisition of Mr. Cross, did you?

A.—No.

Q.—Do you not think that is a fair index?

40 A.—No. A man buys a thing as cheaply as he can get it for. I, myself, have bought, and have acted for agents buying property; I bought one property in 1927, or acted as agent for it, for \$500.00. I sold off that property myself somewhere in the neighbourhood of \$3,000 worth of property and he has today another \$3,000.00 worth of property which he proposes to sell. I myself bought one property at \$750.00, and I have already sold, three months after I purchased it, \$1,500.00 worth of it, and I have since then sold \$2,000.00 worth of it, and I am going to sell a good many more thousand dollars' worth of it yet.

Q.—You are one of the lucky real estate dealers.

A.—It is a question of knowing values, and when to buy and when not to buy.

*In the
Superior Court*

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Oct. 7th, 1932.
(continued)

BY THE COURT:

Q.—Is that on the Gatineau?

A.—That is on the Ottawa River, just the opposite way to this. It is about 28 miles from Ottawa. It is a little further from Ottawa than Farm Point, and the values I have put upon those are compatible with the values which I have received up to this other area.

10 BY MR. ST. LAURENT:

Q.—Is it used for the same purposes?

A.—Substantially the same purposes, for summer cottages.

BY MR. KER:

Q.—Among one of the Deeds you cited, I notice you referred to a Deed to Mrs. Cross?

A.—Yes.

20 Q.—For an area of land, for \$1,000?

A.—Yes.

Q.—You included in that sale the buildings as well?

A.—What buildings do you refer to?

Q.—The buildings on the property.

A.—It carried any buildings that were on it. There were two old sheds on it.

BY MR. MONTGOMERY:

30 Q.—Will you give the replacement value of those?

A.—I will give them to you.

BY MR. KER:

Q.—We may say that in all the Deeds you cited in which you figured out land values at so much an acre, some quite large areas, those would have included buildings in every case, if there had been any buildings?

40 A.—I quoted where there were buildings. To the best of my knowledge, there was only one had a building on it. It was a garage, and I took \$75.00 off. To be perfectly fair about this, I should have taken the value of those two buildings off. Two sheds off. The sheds are there yet, you can see them.

Q.—Going over on to the east side of the river, you valued a piece of property called the gravel pit?

A.—I did not value the gravel pit, just the land on the front.

Q.—How much did you value the lots on the front?

In the
Superior Court

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Oct. 7th, 1932.
(continued)

A.—At \$300.00.

Q.—Each.

A.—\$300.00 for a one hundred foot lot.

Q.—I notice in P-66 you take in those five lots as the last item?

A.—Yes.

Q.—For \$1,500.00?

A.—\$1,500.00.

Q.—And they form part of the gravel pit?

A.—Yes, according to the Deed.

10 Q.—And that gravel property on the east side of the river is a part of lot 23-B referred to in paragraph 1 of the Declaration?

A.—I believe so.

Q.—For which the Declaration charges for the whole property \$3,000.00?

A.—I think the understanding was that it was the gravel pit itself. It is not the lower portion adjacent to the river, although I believe the description includes it.

20 Q.—In other words, while we are asked to pay \$3,000 for the whole lot, we are again to pay \$1,500 for five lots which form part of the lots which are \$3,000?

A.—I believe there is an overlapping there.

Q.—Those lots are not physically affected by the water?

A.—The front is affected, similar to the lots that are further north; they are all affected in the same way that is, the McAuliffe division.

Q.—There is no building on this land?

A.—Oh, no, certainly.

Q.—But the buildings are not affected?

30 A.—They are just close to the 325 line.

Q.—They are not affected?

A.—No.

Q.—They are not affected in any way?

A.—No.

BY MR. SCOTT:

Q.—You mean, physically?

40 A.—Physically, no. Of course, that is part of the proposition where he says his whole living is affected.

BY MR. KER:

Q.—This is part of the whole business?

A.—But the front of these lots is affected.

Q.—The second item of your exhibit is the dam at Meach Creek, the value of which as shown in Exhibit P-66 is \$24,000; you reduced that, I understand, to \$22,000.00?

*In the
Superior Court*

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Oct. 7th, 1932.
(continued)

A.—From ten to twelve per cent.

Q.—Of course, that dam is not in any way affected by the water?

A.—No, not physically.

Q.—Not more than the thirty-five buildings making up the \$88,000?

A.—Eight from forty is thirty-two.

Q.—And the penstock and wheels are not in any way affected by the water, are they?

A.—The penstock is above—all of it is above elevation 325.

10 Q.—All the penstock and wheels are above elevation 325?

A.—Yes.

Q.—So they are not affected by the level of the river?

A.—No, not physically.

Q.—The equipment in the saw mill, \$18,000; is any portion of that physically affected by the river?

A.—No.

Q.—And the C.P.R. siding to the mill is affected?

A.—It is affected.

20 Q.—The private road around the yard, \$2,000.00, is that affected?

A.—Not altogether, part.

Q.—Of the four walls two are affected?

A.—Two of them are affected.

Q.—The crib work, \$300.00 altogether; the crib work and the log rollway are not affected?

A.—No.

30 Q.—The storage dam and improvements in Meach Creek and the reaches above are in the back country, one hundred feet higher than the river?

A.—That is not my item.

Q.—You would not think there is any reason for charging us with that?

A.—I am not saying that.

Q.—The service pipe lines for water?

A.—Was eliminated.

Q.—The land, exclusive of the mill part, and two residential lots at \$2,000.00?

A.—That has been referred to previously by me.

40 Q.—Are those items physically affected?

A.—Those two lots?

Q.—Yes.

A.—They form part of this portion which you say Mr. Cross does not own.

Q.—That is a matter of title, is it not?

A.—They are physically affected because the water comes up on the front.

*In the
Superior Court*

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Oct. 7th, 1932.
(continued)

Q.—And this word “lots” getting down near the end of the exhibit, \$6,534, is the so-called subdivision?

A.—Yes, according to Exhibit P-100.

Q.—And when was that Exhibit P-100 made up?

A.—It was made last year.

Q.—That is, four years after the water was up?

A.—The water did not affect the making of that.

Q.—It does not affect the selling of it?

10 A.—The making of Exhibit P-100 is just to show what might be done with it, how he could sell it.

Q.—And he still has it?

A.—What is still above water.

Q.—Because he may have gone out of the lumber business

A.—It is part of it.

Q.—It is the whole business?

A.—Part of that is flooded.

Q.—Is there a creek running right through, and which always did run through that subdivision?

20 A.—No.

Q.—I think your plan shows that?

A.—I think my plan does not show it.

Q.—Are you quite sure?

A.—Absolutely sure.

Q.—But at any rate the lots that he had there he still has, according to you?

A.—What is left of them, either under water or above.

Q.—He still has the hotel site?

30 A.—Yes, except the frontage along the river. There is a damage along the river.

Q.—That is on the other side of the highway?

A.—Yes.

Q.—And that hotel has been rented up to this year or last year?

A.—I have had nothing to do with that. Other evidence will be given as to that.

Q.—In any event he is carrying on as usual?

A.—I would not say as usual.

Q.—At any rate it is occupied?

A.—It was occupied the last time I was up.

40 Q.—Why, then, should you think we should have to pay for the whole of that?

A.—I have told you.

Q.—You say you don't know of any reason why you should?

A.—I say the evidence of that will be produced.

Q.—I am sorry, that is quite true. You don't say anything about that. These five lots on the east side have already been spoken of?

A.—They have already been spoken of.

*In the
Superior Court*
No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Oct. 7th, 1932.
(continued)

Q.—That makes a total of \$165,000.00 and which you reduce to \$113,000.00?

A.—Yes.

Q.—But of that \$113,000.00 the only items physically affected by the water as shown by P-66 is the C.P.R. siding, the private roads around the yard, two of the four walls, two residential lots, if he owns them?

A.—Yes.

10 Q.—Part of the lots under the heading of “lots”?

A.—Yes, and the 540 feet frontage on the east side of the river.

Q.—Do you know anything about those twenty acres on the hill?

BY THE COURT:

Q.—And part of the buildings?

A.—And part of the buildings, twelve buildings.

20 BY MR. KER:

Q.—Eight groups of buildings?

A.—Eight groups of buildings.

Q.—Do you know anything about the twenty acres on the hill?

A.—No. I know where the property is, as far as that is concerned.

Q.—It certainly is not affected by the water?

30 A.—No, only to this extent, that the water goes up along near there, and it is right back of where the water will back in, on Exhibit P-100.

I may say in connection with those twenty acres I have asked to have a survey made, and that will be produced, and if he has not the twenty acres, then my amount would be reduced to whatever he may have.

Q.—The mill which Mr. Cross had at Farm Point in 1926 was burned down in 1928, was it not?

A.—Yes.

Q.—And was rebuilt immediately after?

A.—Yes.

40 Q.—Although the water was then up practically as high as it has been since he rebuilt the mill?

A.—Yes.

Q.—Do you know anything about the insurance on it?

A.—I cannot tell you anything about that.

Q.—Referring for a moment to Exhibit P-65, power house and draft tubes, \$4,110: you have made a reduction on that, have you not?

*In the
Superior Court*
No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Oct. 7th, 1932.
(continued)

A.—That reduction is shown on P-65. The total of that amount I gave to his Lordship.

Q.—\$33,127?

A.—\$33,127.

Q.—The power house is not a very pretentious place?

A.—It speaks for itself.

Q.—Three thousand and some dollars?

A.—Yes.

Q.—The penstock and concrete saddles are not affected?

10 A.—That is the part that brings the water down to the power house. If the power house is affected and has to be moved, those are of no use.

Q.—They are not physically affected by the water?

A.—No.

Q.—The power house equipment is not affected, because the water does not get into the power house?

A.—I would not say that. I think it is part of it because the draft tube goes down and the exciters are at about elevation 321.4 or .5.

20 Q.—That would all be remedied in the manner we were discussing this morning, by raising the power house up?

A.—If you raise them they will be beyond that area.

Q.—The only other item left on that exhibit is thirty-one miles of transmission line of which I understand you are still operating about twenty-one miles?

30 A.—Approximately I should think. As I told you this morning, I could not say definitely what deduction should come off those thirty-one miles. Those are the figures given to me by Mr. Fredericks.

Q.—Twenty-one of the thirty-one miles are still in the physical possession of Mr. Cross?

A.—Yes, there is a considerable part.

Q.—Why do you think we should have to pay for that?

A.—My answer to that is embodied entirely in what I explained to his Lordship a while ago, that when you remove the source of power supply, that system cannot purchase power at \$40.00 to \$45.00 a horsepower as we are doing today, and carry on economically.

40 Q.—The fact that you are purchasing power is not altogether due to the reduction of ten per cent in your output?

A.—I would say many a concern has gone bankrupt for a difference of ten per cent.

Q.—Do you mean to tell me that 190 customers, and only a reduction of ten per cent in your power house, of your power, that you could not

Mr. Scott: That is not the evidence.

*In the
Superior Court*
No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Oct. 7th, 1932.
(continued)

· Witness: That is not the evidence. My reduction is more than that.

BY MR. KER:

Q.—What percentage was it?

A.—I said it was ten point five from seventy-two.

Q.—Let us say fifteen per cent?

A.—If you like.

10 Q.—Fifteen per cent. Do you mean to say by reason of the fact that he is only able to produce eighty-five per cent of the power that he produced before, with his Meach Creek Power House, that he carry on with his one hundred and ninety customers?

A.—He has to purchase power.

Q.—But I am asking you if that fact is due to the fault of the Gatineau Power Company?

A.—I believe so.

20 Q.—Why do you believe so, if he is only reduced fifteen per cent in his power?

A.—The fact is, you have flooded and interfered with his business in such a way that I do not see how he, or any other man, can carry on. You have interfered with the lumber business, you have interfered with the transmission lines, you have interfered with the power house all the way through.

Q.—You say that what we have done to the power production of his property is to reduce its output by fifteen per cent?

A.—Theoretically, yes.

30 Q.—In other words, he is only able to operate at eighty-five per cent of his previous capacity, is that right?

A.—Theoretically, yes.

Q.—And you tell me that that eighty-five per cent of capacity is not capable of looking after one hundred and ninety customers? You knew what his power was before?

A.—I did not know.

Q.—You did not know?

A.—No.

Q.—In other words, you came on the scene when he was buying power from the Gatineau Power Company?

40 A.—I came on after.

Q.—When he was buying

A.—That question has not been decided. We spent about three weeks down here trying to decide it, and you have not been able to arrive at a definite conclusion yet.

Q.—Do you know how many customers he had in 1926?

A.—I believe about three hundred.

Q.—If one hundred per cent represented the power he was

*In the
Superior Court*

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Oct. 7th, 1932.
(continued)

using, he was using that one hundred per cent to supply three hundred customers, is that right?

A.—He was.

Q.—Then his power has since been reduced to eighty-five per cent, and his customers have been reduced to one hundred and ninety?

A.—Yes, to one hundred and ninety.

Q.—Is there any reason why he cannot supply those one hundred and ninety customers with eighty-five per cent of his power?

10 A.—The Quebec Public Service Commission seemed to think not.

Q.—The Quebec Public Service Commission seemed to think his power was never capable of doing its job.

A.—The past speaks for itself.

Q.—And the Quebec Public Service Commission required that his power speaks for itself?

A.—Speaks for itself entirely.

20 Q.—So, if he has to buy power from the Gatineau Power Company, that is not in any way due to the flooding?

A.—I am not saying that.

Q.—Still, he is trying to sell his whole power works on the strength of that statement? Was the part of the system below Cascades (I am speaking now of the distribution system that we have flooded below Cascades) of the same general character as the other part of his distribution system?

A.—I cannot say.

Q.—You don't know?

A.—No.

30 Q.—You never examined as to that?

A.—No.

Q.—You don't know the number of poles or anything of that kind?

A.—No. I have taken that from Mr. Fredericks' count. He will have to speak as to that.

Q.—Have you ever built a transmission line yourself?

40 A.—No. I have secured estimates. During the past summer I have been consulted as to a proposition about getting a transmission line and have prepared an estimate and got prices on it, on that Machin proposition, and they ran in the neighbourhood of \$900.00 a mile.

Q.—\$900.00 a mile is about the usual amount?

A.—About that.

Q.—You think it would be fair to say insofar as any transmission line that we have submerged, as to the number of miles, that \$900.00 would be the fair value per mile for that line? I am not speaking of the goodwill.

*In the
Superior Court*

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Oct. 7th, 1932.
(continued)

A.—As a physical value, \$900.00 to \$1,000.00 per mile.

Q.—Do you know what happened to this portable mill eventually which was at Mileage 12?

A.—No, I do not.

Q.—You don't know that it was burned up in the fire at Farm Point?

A.—There was a fire, but I don't know what burned it.

Q.—According to Mr. Cross' evidence on discovery, it was stored in the basement?

10 A.—I have not gone over his evidence on discovery, so I don't know what he said.

Q.—Would it not be easy enough to operate the saw mill by steam?

A.—Steam has been used. Of course, with steam it is not by any means as flexible as with electric power.

Q.—What about gasoline?

A.—I believe gasoline is used quite a bit.

20 Q.—There is no reason why Mr. Cross should have to go out of the lumber business because he could not operate electrically?

A.—I don't know. I could not give you any record as to costs for that.

Q.—As a matter of fact, is it not true? I am speaking now from general personal knowledge, is it not true that the greater number of saw mills in this Province are operated either by gasoline engine or by steam?

30 A.—I have not run across any of the gasoline-operated ones. There are not any in the Ottawa district. I have run across a good many that are run by steam. They are permanent mills. I only know of one and that was a portable steam mill that was hauled from place to place.

Q.—And what was the other portable mill run by?

A.—That was electrical. Practically all the portable ones I know of around there are those owned by Mr. Cross.

Q.—Those are the only ones you know of and they are his mills, and they were operated electrically?

A.—Yes.

Q.—There are many hundreds of mills where there is no electricity?

40 A.—I cannot just say how economical they would be, how they would compare in operation with the electrical energy. I think they would be more. If you have to buy power on a proposition like this, it puts you out of business. We had to buy it.

Q.—With regard to the dam at the top of the hill at Meach Creek I would like to ask you how you get the quantities of the various earth fill, rock fill, cement and that sort of thing?

A.—We have cross sections throughout, and in taking out those

*In the
Superior Court*

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Oct. 7th, 1932.
(continued)

quantities I have an agreement to do that when the water is down in the summer of—I just forget which, but one summer the water was down.

Q.—There is no water in it at all?

A.—No, there was a dam at Meach Lake and it supplied the water.

Q.—You did not give any depreciation on that, did you?

A.—I gave ten or twelve per cent.

Q.—The dam is not in very good shape at the present time, is it?

10 A.—The door of the spillway is not in very good shape. It should be fixed up.

Q.—That, of course, is not our fault.

A.—As of 1926 that was not done. It was in good shape in 1926.

Q.—Have you the cross sections with you?

A.—I have. I have not the large one, but I have a photostatic reduction.

20 Q.—Could you let me know in a general way what you have expended for maintenance yearly since you have been operating the electrical system for Mr. Cross?

A.—I could not tell you.

Q.—That is a very important item?

A.—If you wish, when I go back to my office, I will give you the detail of every item expended.

Q.—I wish you would.

30 A.—I would be pleased to do it. I may say in that connection that my stenographer looks after the entering up of everything. The trust account is in the name of Farm Electric and Mr. White, who is in my office, is the proxy. I cannot sign the cheques or do anything, but any matters for decision are referred to me. That is why I cannot tell you offhand. The detail is looked after by my staff.

Re-examination

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

Q.—You said that what was left of this electrical distribution system could not be operated profitably by buying power at \$42.00 to \$45.00 a horsepower. Why did you mention those figures?

40 A.—I said \$40.00 to \$45.00, because the monthly bills run at that rate.

Q.—That is what you are actually being charged for power by the Gatineau Power Company?

A.—By the Gatineau Power Company. I thought I had some of the bills with me, but I telephoned home during the lunch hour to get one of the bills, and the October bill had just come in.

Q.—And it will work out at the rate of about \$40.00 to \$45.00 a horsepower?

In the
Superior Court

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Re-examination
Oct. 7th, 1932.
(continued)

A.—Yes.

Q.—You said that reducing the head of Meach Creek by taking ten and a half feet off the draft tube would theoretically reduce the capacity by fifteen per cent?

A.—Yes.

Q.—How, in fact, does it affect that plant as made out?

A.—It has ceased to operate.

10 Q.—Is it possible with that plant as laid out, after taking ten and a half feet off the draft tube, to get eighty-five per cent efficiency out of the machinery?

A.—No, I would think not.

Q.—Do those wheels operate effectively in direct proportion to the length of the column of water going through them, or are they designed to give their greatest efficiency at a certain head?

A.—They are designed for a specific head, and if you change that, it will not operate as efficiently.

Q.—And is that a general rule with respect to all water wheels?

A.—That is a general rule with all water wheels.

20 Q.—You spoke of there having been on the land available for use as a piling ground a hard crust over a soft bottom, about four or five feet in thickness?

A.—I do not think I used the word "hard". I said it was a crust over much harder crust.

Q.—What would be the condition of that in the summer of 1932?

A.—The condition of that was that the part I called a harder crust was soft, and as I stated in my cross-examination it was water-soaked, and it was softer.

30 Q.—Was there anything done in your presence that showed in what physical condition it was?

A.—I know I went myself around in the clay and you could poke the stick down eight or ten inches into the ground without any difficulty. That was just an ordinary stick I grabbed up and shoved it with my hand.

Q.—Did you see the end of the board or plank being shoved in?

A.—Well, those of us that were there tried it that way.

Q.—Were there places where boards were laid down to protect your feet while going over it?

40 A.—Yes, we had to walk over it.

Q.—You said that Mr. Cross rebuilt his mill in 1928 after it had burned. Do you know if he had any logs on hand at the time the mill was burned?

A.—I know he had a lot of logs. Quite a heavy cut that had been brought down, and that had accumulated there over some time.

Q.—In speaking of the manner in which the Chelsea plant had been operated for the last five years, Mr. Ker asked you if the situa-

*In the
Superior Court*

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Re-examination
Oct. 7th, 1932.
(continued)

tion was not such that no change in the physical layout would be required to use the water at a greater elevation, and you said, provided they can utilize the maximum head. Does that mean a change in the layout, or did it refer to, provided they could use the power developed by using it at the maximum head?

A.—I meant by that proviso there was no raising up above, to prevent it raising the water higher than 320 to 321.

Q.—In operating that kind of plant with a controlled elevation, what is the factor that determines at what elevation you use it?

10 A.—The design of your plant.

Q.—And then, after it is designed, what factor do you take into account to have the water at the maximum or lower than maximum head?

A.—Your load factor, and your demand for power.

Q.—To your knowledge, to what elevation have the contours been obtained around that Chelsea pond?

A.—I could not say around the Chelsea pond.

Q.—In that locality of the Cascades?

20 A.—At Farm Point

Q.—To what elevation has the Gatineau Power Company acquired the borders?

A.—Under expropriation, 325. I have been on many cases where the expropriation has been to 325.

Q.—And have you yourself made settlements, or other clients, owning lots in that vicinity?

A.—Many of them.

Q.—To what elevation?

30 Mr. Ker: I object to this as immaterial.

(The Court reserves the objection.)

40 A.—Perhaps I could answer that question this way, that any adjustments we have made with private individuals have been on the basis of holding the water at the controlled elevation of 321.5. In arriving at the damage caused by holding the water at that elevation, we have taken the damages that would be caused up to from 325 to 325. Many of those are cellars wherein you have a water-proof floor and you have to treat each one individually according to the condition of the material you are working with, whether the cellar is concrete or just ordinary earth floor. They all vary.

Q.—Will you over the week-end take Exhibit P-67 and revise the \$53,000 to make it fit the revised figures you have given us for Exhibits P-65 and P-66?

A.—I will do that.

Q.—I understand that P-67 was made up on the same basis as

In the
Superior Court

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Re-examination
Oct. 7th, 1932.
(continued)

the former figures as P-65 and P-66, so having revised the two former, will you revise P-67 to put it on the same basis?

Q.—Will you file as P-107 the revision you made of the figures with respect to the items in P-65 and P-66 showing the totals arrived at for the power value as being those you gave?

A.—For the depreciation which I stated has been deducted.

Q.—And P-107 shows how much you have taken over for depreciation in each instance from your replacement value, does it not?

Re-cross-
examination

10

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

Q.—I am not sure if we spoke about soundings that were made. I think you stated peviously you had sent certain samples from some of these soundings to Mr. Beaubien and to Mr. Robertson?

A.—I showed them to them.

Q.—Out of which of the holes did you take the ones you sent?

A.—I took some out of each.

20

Q.—Some out of each one?

A.—Yes. Mr. Robertson was present when one of the tests was being made. When the second hole at number 3 was being made, Mr. Robertson was present and saw it.

Q.—Did you give them some of those you took on the 321 contour, too?

A.—No, I have not got any of those samples.

Q.—You spoke of the Company buying up land to 325?

A.—No, I did not—oh, you mean under expropriation?

Q.—Yes.

30

A.—Yes.

Q.—And I gathered that it is your suggestion that they took up to 325, with the probability or possibility that they might desire to go up to that height?

A.—I did not say that. I just made up a statement from the expropriation with which I have been connected that they expropriate it to 325.

Q.—As a matter of fact, I think you are pretty familiar with the power companies operated on a non-navigable river?

A.—Yes, I have had a little bit of experience.

40

Q.—And it is their usual custom to take above their flooding level to provide for riparian ownership?

A.—That question has been raised, but I do not know the decision.

Q.—You do not know the policy of the Gatineau Power Company for having bought up to 325?

A.—I think I know part of it. I know their policy has been to buy up to 325 in this stretch.

*In the
Superior Court*
No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Re-cross-
examination
Oct. 7th, 1932.
(continued)

Q.—You don't know the reason for this policy?

A.—One reason is to clear this up as to any future damages that might arise.

Q.—And to secure riparian rights for the future?

A.—That question has not been referred to before.

Q.—I am asking you whether that is not the very reason for buying above their flooding level?

10 A.—To my knowledge, it has never been taken in the awards, because, if I was an owner of property and I thought I was relinquishing my right to the river bank, I would very strenuously oppose any expropriation. I would want the right to go to the river because the use of the river and water and things like that is invariable.

Q.—And this right is guaranteed to every citizen?

A.—But your river is widened out.

Q.—I am speaking of ownership?

A.—As long as I can go. I don't know whose property I may have to use to get there.

20 Q.—Do you know what the head of Mr. Cross' wheel was designed for?

A.—No.

Q.—So you cannot say whether it worked efficiently at eighty-five per cent or not?

A.—No, I cannot say. I presume the Barton people would look after that.

Q.—As a matter of fact, that fifteen per cent is perhaps an estimate out of the clear blue sky on your part, is it not?

30 A.—No. You suggested that, and I said that for the sake of argument.

Q.—What I am getting at is, you say that was based on a ten and a half foot head?

A.—Yes.

Q.—That is perhaps a matter of opinion whether there is a ten and a half foot head.

A.—Well, I beg your pardon. When I said yes, I referred to your fifteen per cent. The ten and a half foot head is, in my opinion, what has been reduced, 311 to 321.5.

Q.—You are taking a fixed rate of 311?

40 A.—No, I am taking the fixed bottom of the tailrace.

Q.—What about the water level?

A.—Your water level is 321.5.

Q.—The tail water level?

A.—Yes.

Q.—Before the flooding took place?

A.—311 is the bottom of the draft tube.

*In the
Superior Court*

No. 55.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Re-cross-
examination
Oct. 7th, 1932.
(continued)

Q.—What was the level in Meach Creek before this Company touched this water?

A.—I could not tell you.

Q.—On that depends this reduction in head as far as the Gatineau is concerned?

A.—It depends on the condition of the end of the draft tube. I would have no hesitation in stating that the physical loss in head is the difference between the water under Mr. Cross' operating conditions, correct operating conditions and the 321.5.

10 Q.—What was that difference?

A.—I checked it around 312.5, I think, between 312.4 or .5, if my memory serves me.

Q.—It could not be lower than the base of the culvert shown on Exhibit P-103, could it?

A.—You do not see the base of the culvert there. That is the top. 311 is the base of it.

BY MR. SCOTT:

20 Q.—311 is the base of what?

A.—The base of the draft tube on Mr. Cross' property.

BY MR. KER:

Q.—At any rate, it is the difference whatever it was?

A.—Of course, there would be water above that, too.

Q.—Whatever the difference could be, it is the difference between the water level before the Company came to the 321 level?

30 A.—Well, when they are both operating under proper conditions, if you have something tumbling in there to raise the water.

Q.—Naturally, that would be higher than 311?

A.—It would be a little bit higher.

Q.—And it would probably be higher than 312?

A.—It might be. I have checked it around 312.4 or .5.

Q.—You have taken it about as low as possible, in fact, lower than is possible?

A.—No, not lower than is possible. I was talking about the tail-race, 311 to 321.

40 (And it now being 4.30 P.M., the further examination of the witness was adjourned until Tuesday next, the eleventh day of October instant, at Ten-thirty A.M.)

(And further for the present deponent saith not.)

*In the
Superior Court*

No. 56.
Plaintiff's
Evidence.
(Supp. Hearing)
Frank Perry,
Examination
Oct. 7th, 1932.

DEPOSITION OF FRANK PERRY, A WITNESS PRODUCED
ON BEHALF OF PLAINTIFF

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

10 FRANK PERRY,

of the City of Ottawa, in the Province of Ontario, agent, aged 50 years, a witness produced on behalf of the Plaintiff, who, being duly sworn, doth depose and say as follows:

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

20 Q.—Mr. Perry, were you ever in Mr. Freeman T. Cross' employ?

A.—Yes.

Q.—From when?

A.—From June, 1920, to April, 1921.

Q.—In what capacity?

A.—I went with Mr. Cross in the capacity of bookkeeper and general assistant.

Q.—Did you buy any books when you came there?

A.—No, I did not.

Q.—Did you keep any books while you were there?

A.—I tried to.

30 Q.—Have you got them?

A.—I have some records.

Q.—When you left his employ, did you leave those books in Mr. Cross' possession, or did you take them with you?

A.—I took charge of them for about four or five months.

Q.—You have them here?

A.—Yes.

Q.—Will you please show them to us?

A.—Yes.

40 Q.—You now show me a book which appears to be written up from page 2 to page 33. Will you file this book as Exhibit P-104?

Mr. Ker: I do not know what is contained in this book, but this witness states he was only employed for a short time in the years 1920 and 1921. If we are to examine as to the value of this property as of 1926, and these entries concern the year 1926, I cannot see what relevancy there may be.

*In the
Superior Court*
No. 56.
Plaintiff's
Evidence.
(Supp. Hearing)
Frank Perry,
Examination
Oct. 7th, 1932.
(continued)

Mr. St. Laurent: It refers to the period mentioned by Mr. Perry from June, 1920, to April, 1921, and is offered in support of our allegation that, for several years prior to 1926, Mr. Cross had been carrying on a profitable lumber business at Farm Point.

Mr. Ker: If he was not carrying on a profitable lumber business, can that be the case?

10 Mr. St. Laurent: It is a part of the case and the books were kept by this witness during this period.

His Lordship: Have you alleged that fact, Mr. St. Laurent?

Mr. St. Laurent: Yes, my Lord. We allege that for several years prior to the raising of the water he was carrying on a lumbering business and electrical business at Farm Point.

20 His Lordship: I will reserve the objection, but it is pretty far from the case.

BY MR. ST. LAURENT:

Q.—In whose handwriting is this?

A.—My own personal handwriting.

Q.—And when was that book written?

A.—At the time of the various dates and the occasions pertaining thereto.

30 Q.—They are the contemporaneous entries you made in the course of your employment during those months?

A.—Yes.

BY THE COURT:

Q.—From 1920 to 1921?

A.—Yes.

BY MR. MONTGOMERY:

40 Q.—From June, 1920, to April, 1921?

A.—Yes.

BY MR. ST. LAURENT:

Q.—That appears to be a cash book?

A.—A single entry cash account.

Q.—The pages bearing the even numbers, the receipts, and on the pages bearing the odd numbers?

*In the
Superior Court*
No. 56.
Plaintiff's
Evidence.
(Supp. Hearing)
Frank Perry,
Examination
Oct. 7th, 1932.
(continued)

A.—Debts.
Q.—The outgoing?
A.—Yes.

BY THE COURT:

Q.—Do you call it a cash book?
A.—Yes.

10 BY MR. ST. LAURENT:

Q.—Have you any other book that you kept during that same period?

A.—Yes.

Q.—You show me another book which I will ask you to file as P-105 for the same period. What is this one?

A.—Extended cash book.

Q.—By whom was it written?

20 A.—By myself.

Q.—At the same time?

A.—Yes.

Q.—And what does it contain?

A.—The extensions of the cash receipts and disbursements under the various headings to which they pertained.

Q.—The names of the people, for instance, to whom cheques were issued or to whom payments were made?

A.—Yes.

30 Q.—Have you any other books that you kept during that period?

A.—This is a file of the copies of the outgoing invoices.

Q.—Were they then entered in the books?

A.—They were entered into a ledger, but I have not been able to discover the ledger.

Q.—You have here a file containing

A.—Two copies of invoices.

Q.—Some carbon copies or ink copies of invoices?

A.—Yes, sir.

40 Q.—And you have not been able to find the ledger in which these were entered?

A.—No.

Q.—I am afraid it will be rather difficult to make anything out of these copies without that. You used to make out invoices for the shipments?

A.—Yes.

Q.—And keep copies of those invoices on this file?

A.—Yes. According to the folios I see at the bottom of them

*In the
Superior Court*

No. 56.
Plaintiff's
Evidence.
(Supp. Hearing)
Frank Perry,
Examination
Oct. 7th, 1932.
(continued)

they have been duly posted in the ledger account, but I do not know what has happened to the ledger.

Q.—You have not been able to find out?

A.—No.

Q.—You also have

A.—One of the camp's time book.

Q.—Is that in your handwriting or in somebody else's handwriting?

10 A.—It is not in my handwriting. It was handed into my custody, though, at the time.

Q.—It came into your custody?

A.—Yes.

Q.—But personally you don't know anything else about it, but the fact that it came into your custody?

A.—And that I prepared the cheques for payment of wages from that book.

Q.—But those cheques would be listed in the extension cash book?

20 A.—Yes.

Q.—Did you have anything to do with the electrical business?

A.—Quite a bit.

Q.—Who read the meters during that period?

A.—I did.

Q.—Have you been able to find any records of meter readings?

A.—I handed over to you the summary of the part of 1922. They were, I think, 1922 and January, 1921, of the sundries, but I am unable to find any other records or the actual readings.

30 Q.—Did you continue to read the meters even after you left Mr. Cross' employ?

A.—I read them for about a year and a half, and then my son read them following me for a matter of two years.

Q.—These six sheets are the only ones you have been able to find?

A.—Yes, sir.

Q.—Did you make a search?

A.—I made a very religious search.

Q.—And you have only been able to find these six sheets?

A.—Yes.

40 Q.—Will you file them together as P-106?

A.—Yes.

Q.—Are these also in your handwriting?

A.—Yes, sir.

Q.—What have you to say as to the accuracy of the copies you made when these sheets were made up?

A.—That actual readings of the meters were taken off another slip. I did the work for about two years and a half, and I do not

In the
Superior Court

No. 56.
Plaintiff's
Evidence.
(Supp. Hearing)
Frank Perry,
Examination
Oct. 7th, 1932.
(continued)

remember having had a consumer complain that I ever made a mistake.

Q.—This was done at the time?

A.—Absolutely.

Q.—In the ordinary course of your duties?

A.—In the ordinary course of my duties.

Q.—And to the best of your knowledge you made correct entries on these sheets?

A.—Absolutely.

10 Q.—Did you make the additions on these sheets?

A.—Yes.

Q.—Also to the best of your ability?

A.—Yes.

Q.—And as far as you know they are correct?

A.—So far as I know they are correct.

Q.—When you left Mr. Cross' employ in April, 1921, did you leave that locality?

20 A.—I did not leave the locality at the moment. I was living at the extreme end of Mr. Cross' operations at Pickonock.

Q.—Do you know if you were replaced by anyone as bookkeeper?

A.—I do not think so.

Q.—Do you know whether Mr. Cross employed a bookkeeper after you left?

A.—Not to my knowledge.

Q.—Would you have known if he had had one?

A.—I think I would.

Q.—What records were being kept when you came there?

30 A.—None whatever.

Q.—Do you know if any records were kept after you left? From time to time when you were doing this meter reading, did you have occasion to go back to the place of business?

A.—I had occasion many times to express opinions to Mr. Cross when he wanted information.

Q.—When he wanted information about what?

A.—About his business.

Q.—What opinions did you express?

40 A.—I told him he ought to have another bookkeeper and that he would not have to bother me.

Q.—And he did not have at that time?

A.—No.

Q.—Do you know of any other records being kept but those you kept, and the records that were kept at the Bank?

A.—I don't know of any other records whatever.

In the
Superior Court

No. 56.
Plaintiff's
Evidence.
(Supp. Hearing)
Frank Perry,
Cross-examination
Oct. 7th, 1932.

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

Q.—Referring to those monthly accounts produced as Exhibit P-106, I see that one is dated January 3rd, 1921?

A.—Yes.

Q.—And another is dated January 15th, 1922?

A.—That may be so.

10 Q.—And another one is dated January 31st, 1921?

A.—Yes.

Q.—And another one is dated January 15th, 1922?

A.—Yes.

Q.—And two more of January 15th, so the only months you appear to have any record of are the months of January, 1921, and January, 1922?

A.—That can be accounted for by the fact that some of those are perforated as having been on the original file.

Q.—That is all you are able to produce?

20 A.—That is all I am able to produce. Those I found among the old papers in the office of Mr. Cross.

Q.—Taking this one that you filed, of January 3rd, 1921, I notice it says, "Current account". This is from Farm Point?

A.—Yes.

Q.—This is the electric lighting system?

A.—Yes.

Q.—The current account is \$82.00?

A.—Yes.

30 Q.—And areas at Farm Point are taken in at \$229.00?

A.—That may be if it says so there.

Q.—Am I right in inferring (I may be right and I may be wrong) that seeing this statement is made up some time after the end of the year, that those arrears would probably be arrears right up to the end of the year at Farm Point?

A.—They would be arrears taken off a previous account after reaching approximately December 3rd.

Q.—The current account for that month was \$82.00?

A.—It would be the true reading of the meter.

40 Q.—Again, I refer you to one of the others which you have filed under date of January 31st, 1921, and that refers to Cascades; I take that to be the Cascade Kirk's Ferry division, is that right?

A.—At that time there was no Kirk's Ferry.

Q.—It is all Cascades, beginning at Cascades anyway?

A.—It is practically the village of Cascades.

Q.—And I find the current account for that month, the whole amount on that division apparently is \$17.16?

A.—Well, at that period of the year there would only have been

*In the
Superior Court*

No. 56.
Plaintiff's
Evidence.
(Supp. Hearing)
Frank Perry,
Cross-examination
Oct. 7th, 1932.
(continued)

meters in the permanent homes. I could not get at the meters in the summer cottages.

Q.—And arrears of \$55.35?

A.—Arrears of \$55.35.

Q.—That might include probably arrears that had been in existence during the whole of the previous years?

A.—That might not be the total arrears at Cascades for electricity.

10 Q.—With regard to these books you have produced as Exhibits P-104 and P-105, are you a bookkeeper by profession?

A.—I have done considerable bookkeeping.

Q.—Are you a bookkeeper now?

A.—I am doing quite a lot at the present time.

Q.—Could you tell me whether or not either of those books would reflect the revenues and expenditures? With regard to the items which are referred to in there would they reflect the revenues and expenditures made entirely by Mr. Cross for that period?

A.—As near as possible.

20 Q.—The information which you put down in these books was naturally given to you by Mr. Cross, I suppose?

A.—No, on my own records.

Q.—Can you tell me from an examination of those books just how Mr. Cross stood at that time from the point of view of what might have been the surplus of his assets over his liabilities? Would those books indicate that? All I want to know is, whether these books would indicate that?

30 A.—If they were gone through thoroughly they would certainly indicate very closely the position Mr. Cross was in at that time.

BY MR. ST. LAURENT:

Q.—Capital assets are not entered in them, are they.

A.—No.

Q.—It is just the current transactions?

A.—Simple single entry records.

BY MR. KER:

40 Q.—There was a considerable amount owing to the Bank at the time? There was a considerable amount owing to the Dominion Bank at the time?

A.—There was a considerable amount owing to the Bank at the time. There was a considerable amount paid off during my time by Mr. Cross.

Q.—Does this book P-104 indicate, in your opinion, all the

In the
Superior Court

No. 56.
Plaintiff's
Evidence.
(Supp. Hearing)
Frank Perry,
Cross-examination
Oct. 7th, 1932.
(continued)

money that was spent by Mr. Cross on this system during the time you were there?

A.—Not at all. P-105 contains a record of all cheques issued.

Q.—P-105 contains a record of all cheques issued during the time you were there?

A.—Yes. The cash is written up and the cash and everything extended, included, to the various camps.

10 Q.—Was Mr. Cross engaged in the lumber business away up on the Pickonock River at that time?

A.—Very extensively.

Q.—That book would reflect those charges too?

A.—Yes.

Q.—It does not reflect Farm Point exclusively?

A.—It reflects absolutely his whole system.

Q.—A large part of which is in no way concerned with this case?

A.—I think it is very much concerned with Farm Point, because Farm Point had to supply the lumber for the camps and the equipment, and the original starting of the business.

20 Q.—I mean to say, a very considerable portion of Mr. Cross' lumber business was not carried on at Farm Point?

A.—It was carried on at Perras partly and partly Venosta.

Q.—How far is Venosta and Perras from Farm Point?

A.—Venosta would be about twenty-six miles and Perras about forty miles.

Q.—He was carrying on quite extensive operations at both places?

A.—Yes, also at Low.

Q.—How far from the river?

30 A.—Sixteen miles.

Q.—And this book would reflect as far as you could make it, all this business?

A.—Yes.

Q.—Would I be right in saying the same would apply to this book P-104?

A.—Yes.

Re-examination

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

40

Q.—What kind of business was being carried on at Low?

A.—Bush operations, taking out hard wood for ties; then, there was a mill there to saw the ties and the spur and for shipment and everything else?

Q.—What kind of business was being carried on at Pickowock?

A.—Mostly for float wood for the Gatineau. There was a large contract with Mr. Owens of Montebello.

*In the
Superior Court*
No. 56.
Plaintiff's
Evidence.
(Supp. Hearing)
Frank Perry,
Re-examination
Oct. 7th, 1932.
(continued)

Q.—Was that converting logs into sawn lumber, or making logs?

A.—Making logs and sawing them, and cull logs, and hemlock was at the Perras mill.

Q.—There was a permanent mill at Perras?

A.—There was a permanent mill at Perras; a permanent mill at Low; a permanent mill at Alcove; a permanent mill at Farm Point; a permanent mill at Chelsea and a portable mill at Venosta.

Q.—Is Chelsea the place that has been called here Mileage 12?

10 A.—No. Mileage 12 enters off on the left. It was a position more convenient for operating and he switched his Alcove mill to Mileage 12 and vice versa according to the demands of the district.

Q.—And while you were there Alcove was operated as a permanent mill?

A.—Yes.

Q.—And after you left it became a mill from which the machinery was taken out from time to time to Mileage 12, and used at Mileage 12 and then brought back?

A.—Yes.

20 Q.—And the Chelsea mill was operated some time after you left.

A.—Yes.

Q.—Was the Pickonock mill in existence when you came to Mr. Cross or at all while you were in his employ?

A.—It was built while I was in his employ.

Q.—During the months you were in his employ the Pickowock mill was being built?

A.—Yes.

BY MR. KER:

30

Q.—The Low mill was operating then?

A.—Well, the Low mill was then a fixture.

Q.—And Chelsea?

A.—And Chelsea.

Q.—And Venosta?

A.—Yes.

Q.—The Low mill being forty miles from Farm Point?

A.—The Low mill is sixteen miles.

40

(And further deponent saith not.)

Ce septième jour du mois d'octobre, de l'an mil neuf cent trente-deux,

A comparu:—

JEAN LEO CHABOT,

chirurgien, âgé de soixante-trois ans, demeurant à Ottawa, témoin produit de la part du demandeur.

10 Lequel après serment prêté sur les saints Evangiles, dépose et dit:—

INTERROGE PAR Me ST-LAURENT, C.R.,
PROCUREUR DU DEMANDEUR:

Q.—Vous venez de dire que vous demeurez à Ottawa?

R.—Oui, monsieur.

Q.—Depuis combien d'années y exercez-vous votre profession de médecin-chirurgien?

20 R.—Quarante (40) ans.

Q.—Connaissez-vous la région de la Gatineau?

R.—Oui, je la connais très bien.

Q.—Avez-vous jamais eu une propriété de campagne dans cette région?

R.—Oui, monsieur.

Q.—Quand avez-vous commencé à habiter une propriété de campagne dans cette région?

30 R.—En mil neuf cent seize (1916) j'avais une maison près de la rivière Gatineau, à Farm Point, et en mil neuf cent dix-neuf (1919) j'ai bâti une maison beaucoup plus grande et plus prétentieuse sur le sommet d'une colline, à trois cents (300) verges de la rivière, à peu près.

Q.—A Farm Point également?

R.—A Farm Point également.

Q.—C'était une maison de campagne que vous habitiez pendant quelle période de l'année?

R.—Ma femme et ma petite fille y allaient au commencement de mai jusqu'à la fin d'octobre.

Q.—Pour toute la saison?

40 R.—Cinq, six mois, oui.

Q.—Utilisiez-vous l'électricité dans cette maison?

R.—Oui monsieur, pour la lumière et pour la cuisine.

Q.—Par qui le courant électrique vous était-il fourni?

R.—Par M. Firmin Cross, de Farm Point.

Q.—Pendant combien de temps avez-vous habité cette maison plus prétentieuse que vous aviez construite en 1919?

R.—De mil neuf cent dix-neuf (1919) jusqu'en mil neuf cent

*In the
Superior Court*

No. 57.
Plaintiff's
Evidence.
(Supp. Hearing)
J. L. Chabot,
Examination
Oct. 7th, 1932.
(continued)

vingt-six (1926) lorsque ma femme est morte. A l'automne je l'ai abandonnée, je l'ai vendue dans ce temps-là.

Q.—Vous l'avez vendue après mil neuf cent vingt-six (1926)?

R.—Après mil neuf cent vingt-six (1926), oui, monsieur.

Q.—Et pendant ces sept années, de mil neuf cent dix-neuf (1919) à mil neuf cent vingt-six (1926), est-ce M. Cross qui vous a fourni l'électricité pour le service de cette maison?

R.—Pendant tout ce temps-là, oui.

10 Q.—Pouvez-vous nous dire, docteur, de la qualité du service électrique qui vous était fourni par M. Cross?

R.—Très satisfaisant, quant à la lumière et pour le poêle électrique.

Q.—Vous l'utilisiez à la fois pour l'éclairage de la maison et pour la cuisson?

R.—Pour la cuisine, oui.

Q.—Vous dites que le service était très satisfaisant pendant tout ce temps-là?

R.—Oui, monsieur.

20 Q.—Était-ce un service spécial que vous aviez, ou une partie du service d'éclairage de M. Cross?

R.—Système d'éclairage de M. Cross, il n'y avait rien de spécial.

Q.—Vous étiez sur le service ordinaire d'éclairage de M. Cross?

R.—Oui. Il a fallu qu'ils mettent des fils jusque chez moi.

Q.—Il y avait des fils de raccordement?

R.—Oui, certainement.

Q.—Mais c'était raccordé au système général?

R.—Au système général, oui.

30 Q.—Pouvez-vous nous dire à peu près combien vous payiez par année pour l'électricité qui vous était fournie de mil neuf cent dix-neuf (1919) à mil neuf cent vingt-six (1926)?

R.—En moyenne une centaine de dollars tous les six mois, chaque saison. En moyenne, quelques fois un peu plus, quelques fois un peu moins, mais en moyenne si je me rappelle bien c'était une centaine de dollars par saison.

Q.—Pour les deux services d'éclairage et de cuisine?

R.—Ensuite j'avais des lumières électriques de ma maison jusqu'au chemin du roi, j'avais une route là.

40 Q.—Pour toute l'électricité qu'il vous fournissait cela se montait à une centaine de dollars par année?

R.—A peu près, oui monsieur.

PAR LE JUGE:

Q.—Vous éclairiez le chemin?

R.—Non. Nous avons une petite route de la maison jusqu'au chemin du roi, qui se trouvait à peu près à trois cents verges de ma maison.

*In the
Superior Court*
No. 57.
Plaintiff's
Evidence.
(Supp. Hearing)
J. L. Chabot,
Examination
Oct. 7th, 1932.
(continued)

Q.—Vous éclairiez cette petite route-là à vos dépens?

R.—Oui, monsieur, à mes dépens.

Q.—C'était compris dans les cent dollars?

R.—Oui, monsieur.

PAR Me ST-LAURENT, C.R.:

Q.—Connaissiez-vous M. Cross auparavant?

10 R.—Très bien, oui. J'ai été le médecin même de sa famille.
C'était un homme très respecté dans cette région.

Q.—Il habite là depuis très longtemps?

R.—Très longtemps, oui.

Cross-examination

CONTRE-INTERROGE PAR Me KER, C.R.,
PROCUREUR DE LA DEFENDERESSE:

Q.—C'est une maison d'été que vous aviez là, docteur?

R.—Oui, monsieur.

20 Q.—Et vous l'avez vendue en l'année mil neuf cent vingt-six
(1926)?

R.—Non, je l'ai vendue seulement en mil neuf cent vingt-sept
(1927). Je l'ai louée en mil neuf cent vingt-sept (1927) et je l'ai
vendue dans l'automne de mil neuf cent vingt-sept (1927).

Q.—Jusqu'en mil neuf cent vingt-six (1926) vous l'aviez occu-
pée vous-même pendant l'été?

R.—Oui, monsieur.

30 Q.—Et c'est à ce temps-là que vous aviez le service de M.
Cross?

R.—Oui, monsieur.

Q.—Depuis ce temps-là à la maison est-elle occupée pendant
l'été?

R.—Oui, c'est une dame Patenaude.

Q.—Votre locataire?

R.—Son mari a acheté. Il est mort, c'est elle qui occupe la
maison.

Q.—Elle a encore le service de M. Cross?

R.—Cela, je ne pourrais pas vous le dire.

40 Q.—Si je me rappelle bien vous avez vous-même une réclama-
tion contre la compagnie défenderesse?

R.—Oui, monsieur, mais je donne mon témoignage sans préju-
dice, je vous assure.

Q.—Il y a une action devant la cour, dans laquelle vous êtes
demandeur, et la compagnie défenderesse?

R.—Cela fait longtemps que je suis demandeur, il y a plus de
quatre ans que j'attends.

*In the
Superior Court*

No. 57.

Plaintiff's
Evidence.
(Supp. Hearing)
J. L. Chabot,
Cross-examination
Oct. 7th, 1932.
(continued)

PAR Me ST-LAURENT, C.R.:

Q.—Il n'y a pas que M. Cross qui a des difficultés?

R.—Non, pas rien que M. Cross.

(Et le déposant ne dit rien de plus).

10

*In the
Superior Court*

No. 58.

Plaintiff's
Evidence.
(Supp. Hearing)
G. J. Papineau,
Examination
Oct. 7th, 1932.

Ce septième jour du mois d'octobre, de l'an mil neuf cent trente-deux,

A comparu:—

GUSTAVE JOSEPH PAPINEAU,

ingénieur-civil et arpenteur géomètre, âgé de quarante-deux ans, demeurant à Montréal, témoin produit de la part du demandeur.

20 Lequel après serment prêté sur les saints Evangiles, dépose et dit:—

INTERROGE PAR Me ST-LAURENT, C.R.,
PROCUREUR DU DEMANDEUR:

Q.—Vous êtes le M. Papineau qui avez été entendu en cette cause, et qui avez agi comme arpenteur dans la préparation de certains des exhibits qui ont été produits?

30 R.—Oui, monsieur.

Q.—Voulez-vous prendre connaissance de cette pièce qui a déjà été produite comme Exhibit 77 du demandeur et dire si c'est là le compte que vous avez envoyé pour vos déboursés et pour vos services professionnels?

R.—Oui, c'est bien cela.

Q.—Je vois que vos charges ont commencé du 6 décembre mil neuf cent trente (1930) et ont duré jusqu'au 13 novembre mil neuf cent trente-et-un (1931) inclusivement?

R.—Oui, monsieur.

40 Q.—Avez-vous réellement rendu les services qui sont énumérés dans le compte?

R.—Oui, monsieur.

Q.—Tous en rapport avec la présente cause?

R.—Oui, monsieur.

Q.—Et à quel taux avez-vous établi vos charges pour vos services professionnels?

R.—Au taux régulier que j'ai coutume de charger à mes clients.

In the
Superior Court

No. 58.
Plaintiff's
Evidence.
(Supp. Hearing)
G. J. Papineau,
Examination
Oct. 7th, 1932.
(continued)

Q.—Pour des services semblables?

R.—Pour des services semblables.

Q.—Ça été chargé absolument suivant le taux régulier?

R.—Oui, monsieur.

Q.—En deuxième page je vois qu'il y a un certain nombre d'item pour dépenses encourues jusqu'à concurrence de soixante et dix-neuf dollars et trente-huit cents (\$79.38)?

R.—Oui, monsieur.

Q.—Pourquoi ces dépenses ont-elles été encourues?

10 R.—Ce sont des dépenses de voyages à Ottawa, des téléphones d'Ottawa à Montréal pour préparer des entrevues, transport d'automobile de la gare aux hôtels et à l'ouvrage, et la pension de moi-même et de mes assistants. Là-dessus il y a des jours de pension qui n'ont pas été chargés, qui ont été payés par M. Cross, qui ne sont pas chargés dans ce compte.

Q.—Mais ce qui est chargé ce sont toutes des dépenses encourues régulièrement au cours du travail professionnel que vous avez fait?

R.—Oui, monsieur.

20 Q.—Ce compte s'élève à douze cent soixante-onze dollars (\$1271), sur lequel montant une somme de cent dollars (\$100) vous a été versé en acompte?

R.—Oui, monsieur.

Q.—Depuis combien d'années exercez-vous votre profession?

R.—Comme ingénieur civil depuis mil neuf douze (1912), et arpenteur depuis mil neuf cent quatorze (1914).

Q.—Pour vos charges durant ces cinq dernières années, est-ce que c'est absolument normal?

30 R.—Oui, monsieur.

Q.—Et cela représente comme maximum par jour combien?

R.—C'est variable. Il y a eu des journées très longues, alors cela varie.

Q.—Cela représente, pour une journée ordinaire, à peu près combien?

R.—Une quarantaine de dollars.

Q.—C'est établi sur une base d'une quarantaine de dollars pour une journée moyenne?

40 R.—Oui. C'est-à-dire il y a eu un tarif d'ingénieurs professionnels qui a été passé en mil neuf cent trente-deux (1932) qui établit les honoraires à cinquante dollars minimum par jour.

Q.—Si vous aviez établi ce tarif est-ce que votre compte aurait été plus élevé, ou moins élevé?

R.—Plus élevé.

Q.—Si vous l'aviez établi suivant le tarif de mil neuf cent trente-deux (1932) il aurait été plus élevé que le compte que vous avez fourni?

*In the
Superior Court*

No. 58.
Plaintiff's
Evidence.
(Supp. Hearing)
G. J. Papineau,
Examination
Oct. 7th, 1932.
(continued)

R.—Oui, suivant le tarif des ingénieurs professionnels de la province de Québec, qui a été approuvé par la législature au mois de mai mil neuf cent trente-deux (1932).

Q.—Ce tarif aurait donné un résultat plus élevé que celui que vous avez chargé?

R.—Oui.

PAR LE JUGE:

10 Q.—C'aurait donné dix dollars de plus que quarante?

R.—Mais il y a certaines journées où je n'ai chargé qu'une fraction de journée. Le tarif dit que si on s'occupe d'un travail d'une journée, ou fraction d'une journée on a droit à un honoraire de tant, mais lorsque je n'ai eu que quelques heures d'ouvrage je n'ai pas chargé plein tarif.

Q.—Est-ce que le tarif mentionne le nombre d'heures d'une journée?

R.—Six heures. Mais, nous avons travaillé plus que six heures de temps, quand nous étions sur l'arpentage proprement dit.

20 Q.—Dans cette affaire-ci?

R.—Dans cette affaire-là. Le 24 décembre, qui était la veille de Noël, nous avons commencé à sept heures du matin et nous avons travaillé jusqu'à la noirceur, et on a pris le train à Farm Point et on est arrivé à Montréal vers dix heures et demie, onze heures. Cela faisait une journée extraordinaire.

Cross-examination

CONTRE-INTERROGE PAR Me KER, C.R.,
PROCUREUR DE LA DEFENDERESSE:

30 Q.—Quand M. Cross est venu vous voir pour la première fois, ou ses représentants, est-ce que vous avez cité aucun tarif par jour que vous alliez charger pour l'ouvrage que vous deviez faire?

R.—Non, monsieur.

Q.—Et vous avez commencé votre ouvrage en décembre mil neuf cent trente (1930)?

R.—Oui, monsieur.

Q.—Et cela a continué jusqu'au mois de novembre mil neuf cent trente-et-un (1931)?

40 R.—Novembre 1931.

Q.—A peu près une année?

R.—Oui.

Q.—Est-ce que vous incluez dans votre compte aucune charge pour l'ouvrage que vous avez fait pour la rectification des titres de M. Cross?

R.—J'ai étudié les titres de M. Cross, c'est inclus.

Q.—Après que la compagnie eut discuté avec M. Cross la ques-

*In the
Superior Court*

No. 58.
Plaintiff's
Evidence.
(Supp. Hearing)
G. J. Papineau,
Cross-examination
Oct. 7th, 1932.
(continued)

tion de ses titres et les bornes de ses propriétés, c'est à ce moment-là que vous avez été consulté par M. Cross, n'est-ce pas?

R.—Je ne sais pas à quel temps la compagnie a discuté les titres de M. Cross. J'ai commencé le travail, on m'a demandé. Il y a du travail d'arpentage et du travail de génie civil là-dedans, la question de sondages, génie civil.

Q.—Et recherches au bureau d'enregistrement pour vérifier les titres de M. Cross?

R.—Oui.

10 Q.—Et les descriptions de ses propriétés?

R.—Oui.

Q.—Combien de fois êtes-vous allé à Ottawa?

R.—Trois ou quatre fois.

Q.—La balance des services, c'était pour les recherches ordinaires?

R.—Non, la mise en plan, la préparation d'un plan sur lequel mes renseignements ont été démontrés, placés.

Q.—Vous avez dressé les plans et tout cela ici à Montréal?

20 R.—A Montréal.

Q.—Vous avez commencé vos études en décembre mil neuf cent trente (1930)?

R.—Décembre mil neuf cent trente (1930) est la date à laquelle M. Cross a requis mes services.

Q.—Vous n'avez rendu aucun compte à M. Cross avant le 4 mars mil neuf cent trente-deux (1932)?

R.—Je ne saurais dire.

Q.—C'est le premier compte que vous avez rendu?

30 R.—Je ne saurais dire, je ne pourrais pas répondre. J'ai demandé s'il y avait moyen de régler ce compte-là, ou de donner des acomptes quelconques, nous avions besoin d'argent. S'il avait pu me donner un acompte avant, il est bien possible que j'ai pu en demander.

Q.—Le premier compte que je trouve pour vos services est daté du 4 mars, trois semaines après l'acte qui a été passé?

R.—Officiellement je n'ai pas lu la Gazette Officielle pour savoir quand l'acte a été passé, réellement je ne sais pas à quelle date le Bill a été passé.

40 Q.—Quant aux services rendus durant l'année mil neuf cent trente (1930), c'était avant que l'action pendante était devant la cour?

R.—Avant que j'aie été témoin à la cour, oui.

Q.—A ce temps-là l'affaire était devant la commission des services publics, si je comprends bien?

R.—D'après les renseignements que j'ai sus, non, ce n'était pas devant les utilités publiques. J'ai entendu parler que ç'avait été en cour suprême.

*In the
Superior Court*

No. 58.
Plaintiff's
Evidence.
(Supp. Hearing)
G. J. Papineau,
Cross-examination
Oct. 7th, 1932.
(continued)

PAR Me ST-LAURENT, C.R.:

Q.—Avez-vous été retenu par M. Cross personnellement, ou s'il était représenté par son avocat?

R.—Par son avocat.

Q.—C'est M. Scott qui vous en a parlé et qui vous a donné les instructions?

R.—Oui, monsieur.

Q.—M. Scott, du bureau de MacDougall & Cie?

10 R.—Le bureau m'avait déjà appelé, et il m'a appelé au sujet de cette affaire-là.

(Et le déposant ne dit rien de plus).

*In the
Superior Court*

No. 59.
Plaintiff's
Evidence.
(Supp. Hearing)
G. Hurtubise,
Examination
Oct. 7th, 1932.

Ce septième jour du mois d'octobre, de l'an mil neuf cent trent-deux,

20 A comparu:—

GABRIEL HURTUBISE,

ingénieur civil et arpenteur, âgé de quarante-neuf ans, demeurant à Montréal, témoin produit de la part du demandeur.

Lequel après serment prêté sur les saints Evangiles, dépose et dit:—

INTERROGE PAR Me ST-LAURENT, C.R.,
PROCUREUR DU DEMANDEUR:

30 Q.—Depuis combien de temps exercez-vous votre profession comme ingénieur civil et arpenteur?

R.—Mil neuf cent sept (1907).

Q.—Et depuis combien de temps connaissez-vous M. Papineau?

R.—Depuis le polytechnique, à peu près au même temps.

Q.—Avez-vous pris connaissance du compte qu'il a produit pour les services professionnels qu'il a rendus dans cette affaire-là?

R.—Oui, monsieur.

Q.—Et des montants qui ont été chargés pour ces services?

40 R.—Oui, monsieur.

Q.—Pouvez-vous nous dire s'ils sont exagérés ou ordinaires, pour des travaux semblables?

R.—Modestes.

Me Ker, C.R., procureur de la défenderesse, décline de contre-interroger le témoin.

(Et le déposant ne dit rien de plus).

In the
Superior Court

No. 60.
Plaintiff's
Evidence.
(Supp. Hearing)
Bertha Hamilton,
Examination
Oct. 11th, 1932.

DEPOSITION OF MRS. JOHN EDWARD COX, A WITNESS
PRODUCED ON BEHALF OF THE PLAINTIFF

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

10

BERTHA HAMILTON,
of the City of Ottawa, in the Province of Ontario, widow of John Edward Cox, a witness produced on behalf of the Plaintiff, who, being duly sworn, doth depose and say as follows:

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

Q.—How long have you been residing at Farm Point during
the summer?

20 A.—Since 1910.

Q.—And about how many months of the year do you reside there?

A.—In the beginning we only stayed two months, and then we went up the 1st of May and stayed on till the 1st of October.

Q.—And you have been doing that for several years now?

A.—Yes, all those years.

Q.—Did you use electric service for the summer home at Farm Point.

30 A.—Yes.

Q.—From whom did you get that electric service?

A.—From Mr. Cross.

Q.—For what purposes did you use it? Did you use it merely for lighting or did you use it for other things?

A.—We have a very large electric stove, a vacuum, irons, toaster and everything.

Q.—And you were supplied with current for all those appliances from Mr. Cross' system?

A.—Yes.

40 Q.—Have you been taking his current for a great many years?

A.—Yes. We own four houses there, and our tenants all took from Mr. Cross.

Q.—You had four houses besides your own?

A.—Besides the one we live in.

Q.—Were they also fitted out to use electricity for various purposes?

A.—Yes.

In the
Superior Court
No. 60.
Plaintiff's
Evidence.
(Supp. Hearing)
Bertha Hamilton,
Examination
Oct. 11th, 1932.
(continued)

Q.—Around 1926, about how much were you paying Mr. Cross annually for this service? What did it amount to annually?

A.—We paid anywhere from one hundred dollars to one hundred and fifty dollars.

Q.—That is, for the four houses?

A.—For each house, that is, we had stoves.

Q.—Did you have stoves during that period?

A.—Yes.

10 Q.—And it was from \$100.00 to \$150.00 per season?

A.—Yes.

Q.—For your own house?

A.—Yes.

Q.—And do you know how much it would be for the other three cottages that you own, that were leased?

A.—I know of one tenant who paid \$125.00. I do not remember about the others.

Q.—What have you to say about the kind of service that was supplied to that system?

20 A.—We had very good service. We were satisfied.

Cross-examination

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

Q.—You were occupying the house during the summer months only?

A.—Yes. We used to go up on the 1st of May.

Q.—From the 1st of May to the 1st of October?

A.—Yes.

30 Q.—Did you stay out there regularly during May and regularly during October?

A.—Yes. My children went to school on the train.

Q.—That is, six months?

A.—Five months.

Q.—And you say you consumed \$150.00 of current in that time?

A.—The first years we used it. Of course, it was expensive; it was a wonderful luxury.

Q.—How much have you been consuming latterly?

A.—We had meters. Mr. Cross took it on meters.

40 Q.—It was before the meters went in that you consumed that much?

A.—Yes.

Q.—As a matter of fact, I understand that Mr. Cross was compelled to put meters in at a certain time, was he not?

A.—I don't know. I don't know anything about that.

Q.—Anyway, you were not on a meter when you were consuming \$150.00 worth of current at that time?

*In the
Superior Court*

No. 60.
Plaintiff's
Evidence.
(Supp. Hearing)
Bertha Hamilton,
Cross-examination
Oct. 11th, 1932.
(continued)

- A.—I forget how many years we were without meters.
Q.—If you did not have a meter, I suppose you had a flat rate?
A.—As I say, in the beginning that is what we paid.
Q.—You paid that for the season?
A.—Yes, for the season.
Q.—\$100.00 for the season?
A.—Yes.
Q.—And you could burn as much as you liked?
A.—Yes, as much as we liked.
10 Q.—Did you ever pay \$150.00?
A.—Once it was \$150.00. Of course, we went up in the winter
for skiing?
Q.—How many cottages were there?
A.—We built four.
Q.—Did that flat rate not apply to all of them?
A.—Yes, it applied to them all.
Q.—That is, you say you heated the whole four?
A.—No, we did not heat them. Our tenants heated them them-
20 selves.
Q.—But you paid \$150.00?
A.—For our own house.
Q.—You supplied the current for all the cottages?
A.—No.
Q.—Only for your own house?
A.—Yes.
Q.—And do you know how much the others paid?
A.—I know that one man paid \$125.00, our next neighbour. He
had the same appliances as we had .
30 Q.—How many years did you pay \$100.00?
A.—I cannot remember.
Q.—Do you know how much you paid the first year you went
up for the year?
A.—The first year was \$150.00, I know. I thought it was an
awful lot. The first year we had electricity it was \$150.00. The next
year it ran to \$100.00.
Q.—What year was that?
A.—I do not just remember when Mr. Cross put in the elec-
40 tricity.
Q.—Around 1912?
A.—Somewhere around there.
Q.—You thought \$150.00 was a bit high?
A.—Yes.
Q.—When you got it down the next year, what was it?
A.—I do not remember. I did not pay the bills then. My hus-
band was alive then.
Q.—But it was a rate each year? It did not vary each year? It

In the
Superior Court
No. 60.
Plaintiff's
Evidence.
(Supp. Hearing)
Bertha Hamilton,
Cross-examination
Oct. 11th, 1932.
(continued)

was a flat rate each year, and when did you pay it? What time of the year?

A.—We paid in the fall.

Q.—Do you know how long the \$100.00 a year rate lasted?

A.—I don't remember.

Q.—Was that service going on for 24 hours?

A.—Sometimes it was cut off at twelve at night.

Q.—How many years did that last?

A.—I think that only lasted one year, as far as I remember.

10 Q.—And still, you were paying \$150.00 for twelve hours' service?

A.—Yes, and very glad to get service up in the woods.

Q.—You say that the first year you got it, it was \$150.00, and after that it came down to \$100.00?

A.—Yes.

Q.—And after that, how long did it continue at \$100.00?

A.—We thought it was an experiment?

Q.—How long did it continue at \$100.00?

20 A.—I don't really remember. I know the first year it was \$150.00, because my husband paid the bills.

Q.—Do you still go up there?

A.—Yes.

Q.—And you are on a meter?

A.—Yes.

Q.—How much do your bills come to now?

A.—Well, the least is \$15.00?

Q.—A month?

A.—No, a season.

30 Q.—So there has been a considerable drop from \$150.00 a season down to \$15.00 a season?

A.—Yes. Still, we paid it.

Q.—That was for the olden times in 1912?

A.—Yes.

BY THE COURT:

Q.—From whom do you get your electricity now?

40 A.—Mr. Cross, I think. I think so. I think it is the Company. I think it is the same Company.

BY MR. KER:

Q.—You are still a customer of Mr. Cross, are you not?

A.—Yes.

Q.—In 1912 was the first year that the power was put on, you paid \$150.00?

*In the
Superior Court*

No. 60.
Plaintiff's
Evidence.
(Supp. Hearing)
Bertha Hamilton,
Cross-examination
Oct. 11th, 1932.
(continued)

A.—Whatever the year was, we paid \$150.00. Then we paid \$100.00, and I don't know how many years we paid \$100.00. As I said, my husband did not object at all. He was quite pleased.

Q.—And then, after that you got a meter in?

A.—Yes, but we did not get it for \$15.00. It was a little more than that.

Q.—Now it is about \$15.00?

A.—If we do not run over. That is the minimum.

10 Q.—So you remember the first year was \$150.00 and after that it came down to \$100.00?

A.—Around \$100.00.

Q.—How is it you cannot remember anything about those bills?

A.—Because it was a new experiment, to get electricity up in the country. It was new to us.

Q.—And the flat rate kept coming down?

A.—I don't remember how flat it was.

Q.—Do you remember when you got the meter in?

A.—We thought it was very cheap when we got it for \$100.00.

20 Q.—Do you remember when you got it for \$100.00?

A.—I don't remember.

Q.—How long did the \$100.00 rate last?

A.—For a few years.

Q.—Half a dozen years?

A.—Really I cannot remember. We have been up there 23 years.

Q.—It was the year, anyway, that the construction was made that it was thought necessary to put it at \$150.00 for the year?

A.—What construction?

Q.—The construction of the line?

30 A.—I suppose we used it. We had every appliance under the sun.

Q.—In 1912 you had every appliance?

A.—We had a big electric stove and a vacuum, electric iron and toaster, and heaters for our bedroom.

Q.—In 1912?

A.—Yes.

Q.—Now, you have all those things, still?

A.—Yes, have all those things still.

Q.—What were you paying for current in 1926?

40 A.—I am a little bit careful of electricity now. We turn off the lights and all that sort of thing.

Q.—What were you paying in 1926?

A.—Our bills ran over \$30.00, \$30.00 or \$40.00.

Q.—A season?

A.—Yes.

Q.—And now, in 1932, they are about \$15.00?

A.—That is the minimum.

*In the
Superior Court*
No. 60.
Plaintiff's
Evidence.
(Supp. Hearing)
Bertha Hamilton,
Cross-examination
Oct. 11th, 1932.
(continued)

Q.—You yourself had some property which you sold to the Company?

A.—Yes.

His Lordship: When you say Company, what Company do you refer to?

Mr. Ker: I mean the Defendant Company, my Lord.

10 BY MR. KER:

Q.—Have you any claim outstanding against the Company now?

A.—I think I have. I am not sure.

Re-examination

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

20 Q.—When was it you commenced yourself to attend to the payment of these bills? When did your husband die?

A.—In 1922. In the fall of 1923 was the first time I paid.

Q.—Do you remember what it was that year?

A.—Well, I did not think to look up my papers. It was somewhere between \$30.00 and \$40.00.

Q.—When you say that \$15.00 is the minimum, do you mean that that is the minimum which you have actually paid, or that it is the minimum rate?

A.—Well, that is it. We have to pay for what we use.

30 Q.—But as a matter of fact, in 1931, was the amount you actually paid over the minimum, or was it just the minimum? Was what you actually paid above the minimum, or was it just the minimum?

A.—I just paid the minimum.

Q.—You just paid the minimum for 1931?

A.—Yes.

(And further deponent saith not.)

*In the
Superior Court*

No. 61.
Plaintiff's
Evidence.
(Supp. Hearing)
R. S. Chamberlin,
Examination
Oct. 11th, 1932.

DEPOSITION OF RUFUS S. CHAMBERLIN, A WITNESS
PRODUCED ON BEHALF OF THE PLAINTIFF

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

10 RUFUS S. CHAMBERLIN,
of Wakefield, in the Province of Quebec, merchant, aged 49 years, a witness produced on behalf of the Plaintiff, who being duly sworn doth depose and say as follows.

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

20 Q.—Mr. Chamberlin, how long have you been residing at Wakefield?

A.—About 25 years.

Q.—Do you know Mr. Cross?

A.—Yes.

Q.—Have you been using electricity at Wakefield?

A.—Yes.

Q.—By whom were you supplied that electricity?

A.—We were supplied by Mr. Cross, and latterly it is under another name.

Q.—Is it the Farm Point Electric Company?

30 A.—The Farm Point Electric Company.

Q.—We have been told in this case that that is just the name under which the same system is being operated by Mr. Cross?

A.—Yes.

Q.—How long have you been supplied with electricity by that system?

A.—I think it is in the neighbourhood of probably 15 or 16 years. I am not just sure what time we started.

Q.—You said you were a merchant?

A.—Yes.

40 Q.—Do you use it for your store as well as for your residence?

A.—Yes.

Q.—How much were you paying for electricity, say, around 1924, 1925 and 1926?

A.—I think \$48.00 a year. It was a flat rate.

Q.—You had a flat rate of \$48.00?

A.—Yes.

Q.—Was that for both the house and the store?

*In the
Superior Court*
No. 61.
Plaintiff's
Evidence.
(Supp. Hearing)
R. S. Chamberlin,
Examination
Oct. 11th, 1932.
(continued)

A.—Yes.

Q.—What have you to say with regard to the quality of the service?

A.—We had very good service.

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

Cross-examination

10 Q.—What do you mean by good service? Twenty-four hour a day service?

A.—We had twenty-four hour a day service most of the time.

Q.—Not all the time?

A.—Well, I think we did have it all the time, unless there was a storm, sometimes we did not have it.

Q.—As a matter of fact, was there ever a time when you used Mr. Cross' lines that you got service for twenty-four hours a day without interruptions?

A.—Yes.

20 Q.—Has there ever been a month you have not had interruption?

A.—You mean since?

Q.—I mean at any times since you are on Mr. Cross' lines, has there ever been a time when you have not had interruptions sometimes during a month?

A.—Oh, yes.

Q.—When?

A.—Of course, I cannot tell exactly just when?

Q.—Do you know of any interruptions during the year 1926?

30 A.—Not particularly.

Q.—Are you prepared to say there were not any?

A.—I do not think there were any long interruptions. There might have been after a storm.

Q.—How about the current? How about the lights? How was the voltage?

A.—It was very fair.

Q.—Was it not up and down some of the times?

A.—About the same as it is now.

Q.—That may be so, but I am asking you how is it now?

40 A.—I call it fair now.

Q.—It is only fair service?

A.—It is only a fair service now.

Q.—It is the same service that Mr. Cross has that he had in 1926?

A.—About the same I think.

(And further deponent saith not.)

DEPOSITION OF DONALD MORRISON, A WITNESS
PRODUCED ON BEHALF OF THE PLAINTIFF

*In the
Superior Court*
No. 62.
Plaintiff's
Evidence.
(Supp. Hearing)
D. Morrison,
Examination
Oct. 11th, 1932.

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

DONALD MORRISON,

10

of Wakefield, in the Province of Quebec, aged 77 years, a witness produced on behalf of the Plaintiff, who being duly sworn doth depose and say as follows:

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

Q.—How long have you lived in Wakefield?

A.—About fifty years.

20

Q.—Do you use electricity?

A.—Yes, sir.

Q.—Around 1924, 1925 and 1926, who was supplying you with electricity?

A.—Mr. Freeman Cross.

Q.—About how much a year were you paying for it?

A.—\$30.00.

Q.—What have you to say as to the quality of the service that you were getting?

30

A.—It was very good.

(No cross-examination.)

(And further deponent saith not.)

40

DEPOSITION OF GERALD A. POOLE, A WITNESS PRODUCED ON BEHALF OF THE PLAINTIFF

*In the
Superior Court*
No. 63.
Plaintiff's
Evidence.
(Supp. Hearing)
G. A. Poole,
Examination
Oct. 11th, 1932.

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

10

GERALD A. POOLE,

of Wakefield, in the Province of Quebec, Clerk, aged 48 years, a witness produced on behalf of the Plaintiff, who being duly sworn doth depose and say as follows:

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

20

Q.—Were do you live?

A.—Wakefield.

Q.—How long have you been living there?

A.—All my life.

Q.—Do you use electricity?

A.—Yes.

Q.—By whom were you being supplied in 1924, 1925 and 1926?

A.—F. T. Cross.

Q.—About how much a year were you paying for that service?

A.—About \$30.00.

Q.—What have you to say as to the quality of the service?

A.—Very good.

30

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

Q.—Did you have service from anybody else's line but from Mr. Cross?

A.—No.

Q.—And you still have service from his lines?

A.—Yes.

Q.—The service has been about the same ever since?

40

A.—I do not think it is quite as good as it used to be.

Q.—Did you ever sign any petition to the Quebec Public Service Commission about the poorness of Mr. Cross's service?

A.—No, I think not. I do not think I did.

Q.—Are you sure?

A.—I am not positive. I think not.

Q.—Did you ever have a talk with the Secretary of the Village of Wakefield about a representation that was made to the Council?

Cross-examination

*In the
Superior Court*

No. 63.
Plaintiff's
Evidence.
(Supp. Hearing)
G. A. Poole,
Cross-examination
Oct. 11th, 1932.
(continued)

A.—I am the Secretary.

Q.—Is it not true that you, as secretary, were obliged by the Council to make a complaint about the service which Mr. Cross was giving?

A.—I might have.

Q.—You are secretary of the Village?

A.—Yes.

10 Q.—And as part of your duties, you were called upon by the Municipal Council to make a complaint against the poor service which was being given on this line, to the Quebec Public Service Commission?

A.—I think so.

Re-examination

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

Q.—When was that?

A.—I am not sure of the date.

20 Q.—How many years ago?

A.—That would be some time since 1926. I think so.

BY THE COURT:

Q.—Who is furnishing you with the service now?

A.—Mr. F. T. Cross I guess.

BY MR. ST. LAURENT:

30 Q.—It is the Farm Point Electric Company?

A.—The Farm Point Electric Company.

Mr. Ker: It is stated to be Mr. Cross. Mr. Cross is the Farm Point Electric. He is merely using that name——

His Lordship: Is it a Joint Stock Company?

Mr. Ker: Apparently, it is not even a registered company. It is a sort of nondescript name. I imagine it is in order to keep
40 things in Mr. MacRostie's name, or something of that sort.

(And further deponent saith not.)

In the
Superior Court

No. 64.
Plaintiff's
Evidence.
(Supp. Hearing)
William Orme,
Examination
Oct. 11th, 1932.

DEPOSITION OF WILLIAM ORME, A WITNESS PRODUCED
ON BEHALF OF THE PLAINTIFF

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

10

WILLIAM ORME,

of Wakefield, in the Province of Quebec, baker, aged 60 years, a witness produced on behalf of the Plaintiff, who being duly sworn doth depose and say as follows:

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

20

Q.—You said you were a baker at Wakefield?

A.—At Wakefield.

Q.—Do you use electricity?

A.—Yes.

Q.—Were you using it from 1920 to 1926?

A.—Yes.

Q.—How much were you paying a year for it?

A.—On an average of \$60.00 a year.

Cross-examination

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

30

Q.—How much do you pay now?

A.—Well, somewhere about the same as I did then, although I do not consume quite so much, because I had two heaters in the shop and since I have had a furnace put it. It runs to about \$60.00 now.

Q.—You are still taking it from Mr. Cross?

A.—Oh, yes.

40

(And further deponent saith not.)

*In the
Superior Court*

No. 65.
Plaintiff's
Evidence.
(Supp. Hearing)
De Gaspé
Beaubien,
Examination
Oct. 11th, 1932.

DEPOSITION OF DE GASPE BEAUBIEN, A WITNESS
PRODUCED ON BEHALF OF THE PLAINTIFF

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

DE GASPE BEAUBIEN,

10 of the City of Montreal, Consulting Engineer, a witness produced on behalf of the Plaintiff, who, being duly sworn, doth depose and say as follows:

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

Q.—Mr. Beaubien, you were heard as one of the Plaintiff's experts in this matter before the filing of the supplementary declaration, were you not?

A.—Yes.

20 Q.—And you were required by Counsel for Plaintiff to do some work of preparation for the purpose of giving that expert evidence which you gave at that time?

A.—Yes.

Q.—Will you look at the Exhibit No. 70 and say if that is your account for the services you rendered in that connection?

A.—It is.

Q.—In that connection, did you render the services which are listed in the account?

A.—I did.

30 Q.—And did you devote to the matter the time which is mentioned in that account?

A.—Exactly.

Q.—How long have you been practising as a Consulting Engineer?

A.—Since 1908.

Q.—How do the charges on which the account is made up compare with your usual charges for like services to your general clientele?

A.—They are the same as I have charged for the last ten years.

40 Q.—Were all those services required for the purposes for which you had been retained?

A.—To the best of my knowledge, they were. Of course, if I had been doing the work backward I could cut something off.

Q.—Was it necessary, in order to carry out the request that has been made, to render the services and devote the time which is charged for in that account?

A.—Yes, it was.

*In the
Superior Court*

No. 65.

Plaintiff's
Evidence.
(Supp. Hearing)
De Gaspé
Beaubien,
Cross-examination
Oct. 11th, 1932.

CROSS-EXAMINED BY MR. MONTGOMERY, K.C.,
OF COUNSEL FOR DEFENDANT:

Q.—Mr. Beaubien, I see your account is made up on the basis of \$100.00 a day?

A.—Yes, it is.

Q.—Take your first trip to Ottawa, I suppose that was for the purpose of examining the ground?

A.—Yes, it was. I believe it was examining Cascades.

10 Q.—Perhaps you might tell us in a general way to what branch of the case you devoted yourself, because I see you spent some fifty-nine and a half days on the matter, of which fourteen days would appear to have been in Court and thirty-eight days in the office?

A.—Yes. When the case started and I was called to Ottawa, it was rather hazy as to what I was going to be called on to do. I was asked to go and advise upon a technical point of view. And I think on that trip to Ottawa, I left the day previous, probably at four o'clock or three o'clock, and came back the following day at seven o'clock or half-past six, according to the hour the train came in, and that is the time I devoted, and charged one day for it, and, as a matter of fact, the second trip to Ottawa was on the same basis. I was in Ottawa, or away from the office, over twenty-four hours. As the work progressed, it was mostly hydraulics.

20 Q.—Your time in the office you charged for at the same rate as for your time outside?

A.—Yes, I have.

30 Q.—I notice that Mr. MacRostie, when he was examined, fixed a different rate for his time, when he was in the office, for the reason that he was in touch with his general work in the office, whereas when he was out of the city, he was out of touch with it. What have you to say as to the propriety of that?

A.—I think it is a very good idea. I have never done it. Perhaps it was lax on my part. I think I should have charged more for my trip to Ottawa, as a matter of fact.

Q.—And less trips to the office?

A.—Just as a matter of information, my trips in the office, that is where I do most of my work, and that has been the basis for a long time.

40 Q.—Let us take your work in the office, to one day, November 26th, 1930, trip to Ottawa, looking over the ground, and then on November 28th you apparently started your work in the office; I am speaking of the year 1930.

A.—I have on this account exactly the days upon which the work was done, and I think the greater part of the work was in the latter part of the case. You have here, January 31st, work in the office, November 28th, half a day, and it jumps from there to De-

*In the
Superior Court*
No. 65.
Plaintiff's
Evidence.
(Supp. Hearing)
De Gaspé
Beaubien,
Cross-examination
Oct. 11th, 1932.
(continued)

ember 18th, half a day, and on the 19th, 20th; for instance, it then jumps from July 2nd, 3rd, 4th and 5th, and then to September 21st.

Q.—I was just going to point out these jumps, and to ask you to tell us in a general way what your work consisted of in these periods. For instance, as you have just pointed out, in December, 1930, you put in five and one-half days, and in January you put in two and a half days, and then did nothing until September, when you put in a day, and then on from November. Can you say in a general way what you were doing?

10 A.—I could not from memory. I might be able to look it up.

Q.—To what were you devoting your attention, or what was your office doing?

A.—My office, of course, did very little work in this case.

Q.—It is practically all your own personal work?

A.—It is practically all my own personal work. I have for the drafting and helping in the office, \$369.00.

Q.—The charge for the office work is independent of your \$100 a day, which covers your own personal services?

A.—Yes.

20 Q.—Tell us what you started out to do? You can give us some general idea of what your work consisted of?

A.—My work was to see what could be done first with Cascades, and then I had to find out what the conditions were, and I suppose the first thing is to ascertain what the conditions at Cascades were, and then with what information it was possible to get and what were the conditions existing at Cascades and on the river generally, to try and develop that and see what could be done with it.

30 Q.—Can I put it this way, before we come to the subdivision of your work; in a general way, what you were endeavouring to develop was a power plant, making use of the Pêche above, and developing these 15,000 horsepower?

A.—Or 20,000 horsepower. I looked at it. My client had looked at it, and to see what was practical to do with it.

Q.—Can I take it that your time in a general way consisted in the work of a hypothetical power plant at Cascades, and running up to the Paugan tailwater?

A.—I considered my work amounted to expressing an opinion as to the usefulness of Cascades and Paugan.

40 Q.—I would like you to answer my question?

A.—Well, I am trying to answer it. I may be off the track.

Q.—I would like your answers to be a little more specific. We quite know that your evidence related to the development of the power plant at Cascades. That was the main object of your enquiry, was it not?

A.—It was.

Q.—And for that purpose you were working out all the power

*In the
Superior Court*

No. 65.
Plaintiff's
Evidence.
(Supp. Hearing)
De Gaspé
Beaubien,
Cross-examination
Oct. 11th, 1932.
(continued)

that could be developed at Cascades on the assumption that Mr. Cross would have the right to use all the power, including La Pêche Rapids?

A.—Yes.

Q.—Up to the Pagan tailwater?

A.—Yes.

Q.—And all this work covered generally by your account, or the principal portion of it was spent in developing that hypothetical power site?

10 A.—Yes. The work in the office, of course, mostly—I cannot say it was all as I don't remember; there might have been other things.

Q.—So, if Mr. Cross did not have any rights in the upper stretches of the river, of course your work was more or less in vain?

A.—Oh, yes.

Q.—When you began your work, of course, it was no longer possible to develop such a power site as you worked out?

20 A.—No, it was not possible. The thing had been developed, and unless Chelsea would have been torn out Cross could not use it, that is, I did it with the idea of making up my mind as to whether Cascades was a practical development taken by itself.

Q.—What do you mean by taken by itself?

A.—I mean the possibilities of Cascades to the foot of Pagan as you described it before.

BY THE COURT:

Q.—What is the total amount of your account?

30 A.—\$6,369.00.

(And further deponent saith not.)

*In the
Superior Court*

No. 66.
Plaintiff's
Evidence.
(Supp. Hearing)
W. L. Scott,
Examination
Oct. 11th, 1932.

DEPOSITION OF WILLIAM LOUIS SCOTT, A WITNESS
PRODUCED ON BEHALF OF THE PLAINTIFF.

On this eleventh day of October, in the year of our Lord one thousand nine hundred and thirty-two, personally came and appeared

WILLIAM LOUIS SCOTT,

10

of the City of Ottawa, Province of Ontario, Barrister of the Ontario Bar, aged 70 years, a witness produced on behalf of the Plaintiff, who, being duly sworn, doth depose and say as follows:

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

Q.—Mr. Scott, you are a practicing Barrister and Solicitor of the Bar of the Province of Ontario?

20

A.—Yes.

Q.—How long have you been in practice?

A.—I was called to the Bar in 1887.

Q.—And where have you practiced?

A.—In Ottawa.

Q.—How long have you been the Ottawa correspondent of the firm as it then was, Lafleur, MacDougall, MacFarlane and Barclay?

A.—I should say at least thirty or thirty-five years.

Q.—Were you called upon by your correspondents, the firm of Lafleur, MacDougall, MacFarlane and Barclay, to do any professional work in connection with the preparation and conduct of the present case?

30

A.—I was.

Q.—Will you look at Plaintiff's Exhibit No. 74 filed with the Supplementary Demand in this case, and say if that is the bill for the services rendered in that connection both for the case, and then in connection with some legislation which was adopted by the Quebec Legislature during this last session.

A.—Yes, these two bills are what you have mentioned.

40 BY THE COURT:

Q.—What is the total amount?

A.—The total of one bill rendered to Lafleur, MacDougall, MacFarlane and Barclay is \$646.74. That is the first bill. The other bill in connection with the legislation is \$443.69.

Q.—Did you, in fact, render the services that are listed in those two bills?

*In the
Superior Court*
No. 66.
Plaintiff's
Evidence.
(Supp. Hearing)
W. L. Scott,
Examination
Oct. 11th, 1932.
(continued)

A.—I did.

Q.—And, of course, the expenses that are charged there?

A.—Yes.

Q.—How do the charges made for the services rendered compare with your usual charges to your general clientele for like services?

A.—They are exactly the same.

BY THE COURT:

10 Q.—Those are your usual charges?

A.—Yes.

BY MR. ST. LAURENT:

Q.—As a matter of fact, Mr. Scott, I understand you have been attending this case in Court while it has been in progress?

A.—Yes.

20 Q.—Are there any charges in the bill for these services?

A.—No, none at all.

Q.—Those have not been included in the accounts?

A.—Those have not been included.

Q.—The only services included in the accounts are for the services rendered as the Ottawa correspondent of Messrs. Lafleur, Mac-Dougall, MacFarlane and Barclay and in connection with your attendance in Quebec for the legislation was purely Legislature.

A.—Yes, sir.

Cross-examination

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

Q.—I take it from your answers that your services as charged for in this action are really agency fees, services for representation in Ottawa?

A.—That is one of the bills, yes, for the larger amount.

Q.—As a matter of fact, were you in any way interested in this case from the point of view of any other client than Lafleur and Company?

A.—Yes, I was.

40 Q.—Whose interests were you looking after?

A.—I was retained by Mr. F. X. Plante, who has a mortgage on the property.

Q.—Mr. Plante of Ottawa?

A.—Yes.

Q.—And I suppose, apart from any question of correspondence such as lawyers have one with another in other cities, that you were interested in watching the matter from Mr. Plante's point of view?

*In the
Superior Court*

No. 66.
Plaintiff's
Evidence.
(Supp. Hearing)
W. L. Scott,
Cross-examination
Oct. 11th, 1932.
(continued)

A.—That is my reason for attending in Court here.

Q.—And would that perhaps have been your reason for attending at the Quebec Legislature?

A.—That would have been my reason for attending at the Quebec Legislature. Mr. Cross and Mr. Plante together asked me to go down here, hence I rendered the account to Mr. Cross. Some of the detailed charges in that second bill were incurred, as the entries will show, at the request of Mr. Scott; as the Ottawa agent I rendered the account generally to Mr. Cross.

10 Q.—I see here, just referring to one or two items, one item of the 5th of February this year, attending Mr. Plante and reporting as to situation in Quebec?

A.—Yes.

Q.—And the next day, attending Mr. Plante for the owners and discussing the situation in connection with proposed legislation at Quebec?

A.—Yes, because I had been instructed by Mr. Cross to attend at Quebec, and so I mentioned those charges in that way.

20 Q.—What I was trying to get clear was, was this a matter of your being the Ottawa correspondent of Lafleur and Company, or was it that you were acting as counsel for Mr. Cross?

A.—The two bills stand on a different basis in that respect. The first bill was, as the details will show, were all other services rendered at the request of the firm of Lafleur, MacDougall, MacFarlane and Barclay. The second bill, the one with reference to Quebec which I have rendered to Mr. Cross, was incurred under Mr. Cross' direction.

30 Q.—Why did you think it was necessary to go to Quebec in connection with the Legislative matters that were coming up?

A.—Mr. Cross engaged me to, and I think I did some good there. I had a long interview with the Premier, on which I flatter myself. I have known the Premier for many years I may say, and had interviews with him and correspondence with him on various matters.

Q.—But, Mr. Scott, primarily your desire to know what was going on at Quebec was rather from Mr. Plante's point of view than Mr. Cross?

40 A.—As I say, Mr. Cross and Mr. Plante jointly, they were both together at the time, instructed me to go there. That is certainly chargeable to Mr. Cross.

Q.—The account I see begins on November 21st, 1930, that is when you entered into this transaction?

Witness: You are speaking now of the large account?

Counsel: I am speaking of the main account.

*In the
Superior Court*

No. 66.
Plaintiff's
Evidence.
(Supp. Hearing)
W. L. Scott,
Cross-examination
Oct. 11th, 1932.
(continued)

A.—The large account is made up entirely of services I rendered at the specific request of Lafleur, MacDougall, MacFarlane and Barclay.

Q.—Beginning November, 1930?

A.—Yes, November 21st, 1930. It begins with “ I have received letter from Mr. W. B. Scott.”

Q.—I was just interested in knowing that that was when you first became interested in the matter from Lafleur, MacDougall, MacFarlane and Barclay's point of view.

A.—Yes.

Q.—Of course, this litigation had been going on some time before that?

A.—Oh, yes, and I had been doing services at the request of Mr. Cross, for which Mr. Plante had been charged.

Q.—What I want to get at exactly is, whether there are items which are not applicable to us?

A.—May I interrupt and just say, I think the entries are very full and they almost dispense with cross-examination, because they speak for themselves.

I may also explain that it has always been my practice to dictate at the end of each day to a stenographer exactly what I have done that day, and so with this, there can be no question about services performed because the entries are full and were made at the time.

Q.—Then, taking the second item, “ Attending Mr. Pugsley, Secretary of the Department of Railways, and discussing, when he says that it would be necessary for us to write the Deputy Minister, as all matters relating to Beauharnois Company are handled by the Deputy himself.” How would that have to do with this case?

A.—That is following the previous item, advising Mr. Cross that Mr. MacRostie will see us as to receiving Orders-in-Council, copies of which it is desired should be obtained. Those copies related to Beauharnois, or to some Water Power, particulars of which it was thought might be useful in connection with this case.

Q.—I suppose you merely acted on the suggestion of Mr. Scott of the firm of Lafleur and Company as to what you should do?

A.—No. I got specific instruction in this case. I think it appears there I got instructions to endeavour to get copies of those Orders-in-Council, and I proceeded to endeavour to do so.

Q.—When did Mr. Plante come into this picture?

A.—I think it was before that, if I recall. I do not think this was the beginning.

Q.—It was during the time this case was before the Quebec Public Service Commission, was it not?

A.—I have not got a note here of when Mr. Plante gave me his instructions, but it was long after the hearing that took place when

*In the
Superior Court*
No. 66.
Plaintiff's
Evidence.
(Supp. Hearing)
W. L. Scott,
Cross-examination
Oct. 11th, 1932.
(continued)

Mr. Lafleur handled the case for Mr. Cross. I had nothing to do with it at that time.

Q.—I think you stated those are your usual charges?

A.—Oh, yes.

BY THE COURT:

Q.—Did I understand you correctly that you made a charge to Mr. Plante also?

10 A.—Not for these services.

BY THE COURT:

Q.—Mr. Plante had nothing to do with those services?

A.—These services in one case were performed at the request of Mr. W. B. Scott of the firm of Lafleur and Company, and in the other case Mr. Cross and Mr. Plante were together in instructing me to go to Quebec to attend to this matter, so the instructions came from both, and I have charged this bill to Mr. Cross.

BY MR. MONTGOMERY:

Q.—Whether you received instructions from Plante or from Cross with regard to Legislation, the whole bill was charged to Cross?

A.—For services, not including this bill, I look to Mr. Plante.

Q.—In the Quebec matter you charge the whole to Cross?

A.—Yes. I think they are both liable for it.

30 (And further deponent saith not.)

In the
Superior Court

No. 67.
Plaintiff's
Evidence.
(Supp. Hearing)
P. Trowse,
Examination
Oct. 11th, 1932.

DEPOSITION OF PHILLIP TROWSE, A WITNESS PRO-
DUCED ON BEHALF OF THE PLAINTIFF

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

PHILLIP TROWSE,

10

of the Village of Wakefield, in the Province of Quebec, Blacksmith, aged 56 years, a witness produced on behalf of the Plaintiff, who, being duly sworn, doth depose and say as follows:

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

Q.—Were you living in Wakefield from 1920 to 1926?

A.—Yes, I was.

20

Q.—Were you using electricity?

A.—Yes, I was.

Q.—From whom were you obtaining it?

A.—From F. T. Cross.

Q.—How much was it costing you a year?

A.—It averaged from \$60.00 to \$75.00 a year.

Q.—What have you to say as to the quality of the service?

A.—The quality was all right.

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

Cross-examination

30

Q.—Are you still taking current from Mr. Cross?

A.—Yes.

Q.—And are you paying his bills?

A.—I am paying his bills.

Q.—Did you ever take electrical service from anybody else?

A.—No, not from anybody.

Q.—So you have never had anything to compare his service by?

A.—No, I never did. It was always satisfactory.

40

Q.—What is your business?

A.—Blacksmith.

Q.—Were there interruptions from time to time?

A.—No, not very much.

Q.—Not much?

A.—No. The service was all right.

Q.—You are the same Mr. Trowse, are you not, that has taken an action against the Company?

*In the
Superior Court*
No. 67.
Plaintiff's
Evidence.
(Supp. Hearing)
P. Trowse,
Cross-examination
Oct. 11th, 1932.
(continued)

A.—Yes.
Q.—And how much did you claim?
A.—I just forget what the claim was now.
Q.—About \$11,000.00?
A.—Somewhere around there.
Q.—How much did you get?
A.—I got about \$800.00.

10 (And further deponent saith not.)

*In the
Superior Court*
No. 68.
Plaintiff's
Evidence.
(Supp. Hearing)
G. S. Nesbitt,
Examination
Oct. 11th, 1932.

DEPOSITION OF GEORGE S. NESBITT, A WITNESS PRO-
DUCED ON BEHALF OF THE PLAINTIFF

20 On this eleventh day of October, in the year of Our Lord one thousand nine hundred and thirty-two, personally came and appeared

GEORGE S. NESBITT,

of the Village of Wakefield, Real Estate Agent, aged 51 years, a witness produced on behalf of the Plaintiff, who, being duly sworn, doth depose and say as follows:

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

30 Q.—Were you living in Wakefield, say, from 1920 to 1926, inclusively?
A.—Yes.
Q.—Were you using electricity?
A.—Yes.
Q.—From whom did you obtain it?
A.—From F. T. Cross.
Q.—How much did it cost you a year on an average?
A.—Prior to the time he put in the meters, I was paying him
40 \$35.00 a year.
Q.—When were the meters put in?
A.—I have just forgotten the exact date or the year. They were all put in at the same time at Wakefield Village.
Q.—Will it be longer than four or five years ago?
A.—I don't know the exact date.
Q.—At any rate, it was when the meters were put in generally at Wakefield?

*In the
Superior Court*
No. 68.
Plaintiff's
Evidence.
(Supp. Hearing)
G. S. Nesbitt,
Examination
Oct. 11th, 1932.
(continued)

A.—Exactly.

Q.—After that time you were paying \$35.00 a year?

A.—Prior to that time I was paying \$35.00 flat rate.

Q.—What have you to say as to the quality of the service?

A.—We were well satisfied.

BY THE COURT:

10 Q.—Did you say what you were paying when you got your meter?

A.—Your Lordship, before the meters were put in I was paying Mr. Cross a flat rate of \$35.00 a year. Since the meters were installed it has cost me less money, around about \$2.00 to \$2.50 a month.

Cross-examination

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

20 Q.—You are still taking electricity from Mr. Cross?

A.—Yes.

Q.—Together with all the other residents of Wakefield?

A.—Yes.

Q.—You say the service was satisfactory. Was it continuous twenty-four-hour service?

A.—There was an odd time. We were well pleased with the service.

BY THE COURT:

30 Q.—Speak for yourself.

A.—Pardon me, I was well pleased with the service up to the time the Company started to build their dam at Chelsea. There were more interruptions than by trees falling across—I understand by trees falling across over Mr. Cross' wires.

BY MR. KER:

40 Q.—But apart from that, had the service been continuous and uninterrupted before these trees fell?

A.—Not altogether continuous.

Q.—You had never been on the lines of any other public utility company?

A.—No.

Q.—So you really had nothing to compare Mr. Cross' service with. It was the only service that was available there, was it not?

A.—Yes.

*In the
Superior Court*

No. 68.
Plaintiff's
Evidence.
(Supp. Hearing)
G. S. Nesbitt,
Cross-examination
Oct. 11th, 1932.
(continued)

Mr. Montgomery: I object to the evidence of these witnesses as not constituting the best proof of their accounts, and because more than five of them were called upon to testify to the quality of the service.

(The Court reserves the objection.)

(And further deponent saith not.)

10

*In the
Superior Court*

No. 69.
Plaintiff's
Evidence.
(Supp. Hearing)
E. Vaillancourt,
Examination
Oct. 11th, 1932.

DEPOSITION OF ELZEAR VAILLANCOURT, A WITNESS
EXAMINED ON BEHALF OF THE PLAINTIFF.

On this eleventh day of October, in the year of our Lord one thousand nine hundred and thirty-two, personally came and appeared

20

ELZEAR VAILLANCOURT,

of the Town of Wakefield, barber, aged 45 years, a witness produced and examined on behalf of the Plaintiff, who, being duly sworn, deposes as follows:

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

30

Q.—How long have you been living in Wakefield?

A.—I have been there for the last seven or eight years.

Q.—In what year did you go there?

A.—1924.

Q.—You are a barber?

A.—Yes.

Q.—Have you a shop at Wakefield?

A.—Yes.

Q.—Have you a residence there?

A.—Yes.

40

Q.—Did you use electricity?

A.—Yes.

Q.—How much were you paying for electricity in the years 1924, 1925 and 1926?

A.—\$3.50.

Q.—For what period? \$3.50 a month?

A.—Yes, \$3.50 a month.

Q.—A flat rate of \$3.50 for both the house and the shop?

*In the
Superior Court*

No. 69.
Plaintiff's
Evidence.
(Supp. Hearing)
E. Vaillancourt,
Examination
Oct. 11th, 1932.
(continued)

- A.—Yes.
Q.—How long did you have that flat rate, before going on a meter?
A.—Two years.
Q.—The meter was put in in about 1926?
A.—Yes.
Q.—And did you use electricity after that?
A.—Just the same.
Q.—How much did it amount to then?
10 A.—About the same thing in the winter, and a little less in the summer.

Cross-examination

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

- Q.—You are still a customer of Mr. Cross?
A.—Yes.
20 (And further deponent saith not.)

*In the
Superior Court*

No. 70.
Plaintiff's
Evidence.
(Supp. Hearing)
K. Chilcott,
Examination
Oct. 11th, 1932.

DEPOSITION OF KENNETH CHILCOTT, A WITNESS
EXAMINED ON BEHALF OF THE PLAINTIFF.

- 30 On this eleventh day of October, in the year of our Lord one thousand nine hundred and thirty-two, personally came and appeared

KENNETH CHILCOTT,

of the Village of Alcove, in the Province of Quebec, General Merchant and Postmaster, aged 47 years, a witness produced and examined on behalf of the Plaintiff, who, being duly sworn, deposes as follows:

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

- Q.—You are a general merchant at Alcove?
A.—I was until 1928.
Q.—You had a house and a store there?
A.—Yes.
Q.—Did you use electricity?
A.—Yes.

*In the
Superior Court*

No. 70.
Plaintiff's
Evidence.
(Supp. Hearing)
K. Chilcott,
Examination
Oct. 11th, 1932.
(continued)

- 10 Q.—From whom did you get it?
A.—F. T. Cross.
Q.—How much were you paying him for it around 1926?
A.—Around \$70 for the year.
Q.—For both the house and store?
A.—Yes.
Q.—Were you on a flat rate, or on a meter?
A.—A flat rate.
Q.—Did you remain on a flat rate up to 1928?
A.—To around 1926.
Q.—The meter was put in around 1926?
A.—Yes.
Q.—And then did you continue on the meter?
A.—Yes, I continued on the meter.
Q.—What was the average you were paying on the metered
quantity?
A.—Around \$100 to \$108.
Q.—Your bill went up to around \$108 on the meter?
A.—Yes.

20

Cross-examination

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

- 30 Q.—You left in 1928?
A.—I sold in 1928, and I moved to Alcove again in 1929.
Q.—Are you still taking electricity?
A.—Yes.
Q.—From Mr. Cross?
A.—Yes.
Q.—You do not know why the meters were put in in 1926?
A.—No, I do not.

(And further deponent saith not.)

40

In the
Superior Court

No. 71.
Plaintiff's
Evidence.
(Supp. Hearing)
P. Armstrong,
Examination
Oct. 11th, 1932.

DEPOSITION OF PERCY ARMSTRONG, A WITNESS EXAM-
INED ON BEHALF OF THE PLAINTIFF.

10 On this eleventh day of October, in the year of our Lord one
thousand nine hundred and thirty-two, personally came and appeared

PERCY ARMSTRONG,

of the City of Ottawa, in the Province of Ontario, merchant, aged 44
years, a witness produced and examined on behalf of the Plaintiff,
who, being duly sworn, deposes as follows:

20 EXAMINED BY MR. ST. LAURENT, K.C.,
OF COUNSEL FOR PLAINTIFF:

Q.—You say your address is now Ottawa?

A.—Yes.

Q.—Did you ever live, or do business, in the Gatineau district?

A.—Yes.

Q.—Where were you around 1926?

A.—I was put out in 1926—in the fall of 1926.

Q.—How were you put out?

30 A.—Through the flood.

Q.—The raising of the water at Chelsea flooded out your prem-
ises?

A.—Yes.

Q.—How long had you been in those premises?

A.—Eleven years.

Q.—Did you use electricity there?

A.—Yes.

Q.—From whom did you get it?

A.—From Mr. Cross.

40 Q.—What did you pay for it a year?

A.—\$150 a year.

Q.—That was a flat rate?

A.—Yes.

Q.—Were you ever on a meter?

A.—No, never.

Q.—Where was this property that was flooded out?

A.—Kirk's Ferry, Quebec.

In the
Superior Court
No. 71.
Plaintiff's
Evidence.
(Supp. Hearing)
P. Armstrong,
Cross-examination
Oct. 11th, 1932.

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

- Q.—You spoke of being flooded out. The Company purchased your property?
A.—No, it did not.
Q.—You were never paid for your property?
A.—I was a tenant.
10 Q.—Then it was not your property?
A.—No.
Q.—The property of your proprietor was purchased by the Company?
A.—I could not say.
Q.—And, as a consequence you had to move?
A.—I had to move, yes.
Q.—You had been eleven years on Mr. Cross' lines?
A.—No, I do not think it was eleven years. The power was not
down there eleven years.
20 Q.—The power was not there eleven years before 1926?
A.—No.
Q.—How long had you been on his lines?
A.—I could not just say what year they built down there.
Q.—You were there from the time they were built?
A.—Yes.
Q.—From 1924, or 1925?
A.—It was longer than that, I think. I should think it would
be about five years.
30 Q.—What charge did you pay when you began? What was the first rate?
A.—It was just about the same each year. Of course, I added to it. There were some buildings I did not have electricity in when I started.
Q.—How many buildings did you have taking current for which you were paying \$150 a year?
A.—We had the house, and the store, and I had three warehouses.
Q.—All for \$150?
A.—Yes.
40 Q.—Then they put the meters in?
A.—Not in my time.
Q.—You left before the meters were put in?
A.—Yes.
Q.—You had a general store?
A.—Yes.
Q.—What appliances did you have in the store?

*In the
Superior Court*
No. 71.
Plaintiff's
Evidence.
(Supp. Hearing)
P. Armstrong,
Cross-examination
Oct. 11th, 1932.
(continued)

A.—We had all the things that go with a plant that we used there for cold meats, and things of that kind.

Q.—An electrical plant?

A.—Yes.

That includes the house too.

(And further deponent saith not.)

*In the
Superior Court*
No. 72.
Plaintiff's
Evidence.
(Supp. Hearing)
J. A. Cameron,
Examination
Oct. 11th, 1932.

10 DEPOSITION OF JOHN A. CAMERON, A WITNESS
EXAMINED ON BEHALF OF THE PLAINTIFF

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

JOHN A. CAMERON,

20 of the City of Ottawa, in the Province of Ontario, telephone supervisor, aged 40 years, a witness produced and examined on behalf of the Plaintiff, who, being duly sworn, deposes as follows:

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

Q.—You said you are a telephone employee?

A.—I am.

30 Q.—In what district?

A.—Ottawa.

Q.—Did you ever have anything to do with the Gatineau Valley district?

A.—Yes.

Q.—Did you ever live in the Gatineau Valley district?

A.—We summer there.

Q.—Where did you summer?

A.—At Alcove.

Q.—Just a summer cottage?

40 A.—A summer cottage.

Q.—How much of the year did you spend there?

A.—From three to six months.

Q.—Did you use electricity?

A.—Yes.

Q.—From whom did you get it?

A.—From Mr. Cross.

Q.—When was this?

*In the
Superior Court*
No. 72.
Plaintiff's
Evidence.
(Supp. Hearing)
J. A. Cameron,
Examination
Oct. 11th, 1932.
(continued)

A.—From 1919 to the present time, except about a year and a half or two years.

Q.—What did you pay for electricity each year for the time you occupied the cottage?

A.—About \$12.00 a year.

Q.—Were you on a flat rate, or on a meter?

A.—A flat rate.

That is \$12 for the portion of the year I was there.

10 Q.—Did you ever have anything to do, directly or indirectly, with Mr. Cross' transmission line?

A.—Indirectly.

Q.—Will you please tell His Lordship how you came indirectly to have to do with it or know about it?

20 A.—Shortly after Mr. Cross built his power line up the old highway up the Gatineau it paralleled the Bell Telephon Company's line there and induced interference with our transmission from power. We had our engineers study the thing out, and they devised a means of overcoming some of this transmission difficulty, and I was delegated to look after the work of carrying this out. They put transpositions in on both the electrical and telephone lines, and in that way overcame the difficulties that were encountered in transmission—at least to some extent.

Q.—Is it a frequent occurrence when a power line and a telephone line parallel each other that there is induction and interference with the transmission?

A.—Yes.

Q.—About what year was this?

A.—The first I had to do with it was in 1921.

30 Q.—From time to time after that did you have to deal with it again?

A.—Again in 1923 we had the same thing.

Q.—You had to take it up again in 1923?

A.—Yes.

Q.—Was that along the whole length of the line, or, from what point to what point?

A.—That was from Kirk's Ferry to Wakefield. The greatest interference was around Wakefield.

40 Q.—How many miles distance would there be between Wakefield and Kirk's Ferry?

A.—About twelve miles.

Q.—What was the condition of the transmission line?

A.—From visual inspection, it was good.

Q.—Did you have any occasion to pay any attention to it after 1923?

A.—I cannot say I had directly, but we had considerable work

*In the
Superior Court*

No. 72.
Plaintiff's
Evidence.
(Supp. Hearing)
J. A. Cameron,
Examination
Oct. 11th, 1932.
(continued)

on the Gatineau, and naturally we look at everything we can see along the road.

Q.—Having your own lines through there, it would have been natural for you to give some attention to the paralleling line?

A.—We quite often wondered what was going to happen to the electrical line.

Q.—Why?

A.—Because we had to move the telephone line.

10 Q.—What was the reason why you had to move the telephone line?

A.—On account of the power development of the Gatineau at Chelsea. They were going to flood the lands, and they notified our people to move their line, and that they would be paid for it. We had to design a new plant and put it into operation on a new highway that was built.

Q.—And that led you to wonder what was going to happen to the transmission line?

A.—Yes.

20 Q.—And in that way directed your attention to the transmission line?

A.—Yes.

Q.—In what condition was it apparently then?

A.—From what I saw of it it was apparently in a fair state of repair.

Q.—After 1926 do you know that in fact anything did happen detrimental to this transmission line?

Mr. Ker: It is admitted it was submerged.

30 Witness: It was submerged; I think it was in March of 1927.

BY MR. ST. LAURENT (continuing):

Q.—Besides the damage resulting from actual flooding the location of the poles, was there any interference from falling trees, or things of that kind?

40 A.—All the trees were cut down along the river side of the road—in fact, as far as the new highwater line would go. There were numerous trees along the road where this transmission line was built and where our own line was built.

Q.—Did the felling of those trees have any effect on the lines?

A.—If you fell a tree on a line there is usually some detrimental effect.

Q.—Did it, in fact, happen occasionally that trees fell across the wires?

A.—It must have. I did not actually see it, but they must have fallen across the wires.

*In the
Superior Court*
No. 72.
Plaintiff's
Evidence.
(Supp. Hearing)
J. A. Cameron,
Cross-examination
Oct. 11th, 1932.

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

Q.—I understand you are, or were, an employee of the Bell Telephone Company?

A.—I am still.

Q.—You had occasion to occupy yourself with their business along this Gatineau Division up past Kirk's Ferry?

A.—Yes.

10 Q.—And at a given moment the telephone lines of the Bell Telephone Company were on this piece of road that was to be submerged?

A.—Yes.

Q.—And the Gatineau Power Company told you it was going to be submerged?

A.—Yes.

Q.—And told you they would be very glad to pay for the removal of those lines to another locality?

A.—I could not say that, but I presume that is what happened.

20 Q.—In any event, your great company made no particular objection to removing the poles?

A.—They issued the necessary orders to have the poles removed.

Q.—And the poles were removed, and relocated elsewhere, at the expense of the Gatineau Power Company?

A.—I expect that is what happened.

Q.—I suppose a number of your telephone customers were flooded out up there?

A.—Yes.

30 Q.—Your company has never seen fit to make any claim for those customers?

Mr. St. Laurent: I do not think that is cross-examination.

Mr. Ker: My learned friend is urging a very serious loss of business by the fact that the Plaintiff has suffered a serious loss of customers. We have pleaded that those customers left the place because we bought their properties. My submission to your Lordship is that if it had been reasonable to make a charge of that kind, the Bell Telephone Company would have been one of the first to have done it.

Mr. St. Laurent: But I do not think it is evidence. I did not object when my learned friend asked the witness if, as a matter of fact, his Company did not lose some customers by reason of the properties of those customers being taken. That is a fact. My friend

*In the
Superior Court*
No. 72.
Plaintiff's
Evidence.
(Supp. Hearing)
J. A. Cameron,
Cross-examination
Oct. 11th, 1932.
(continued)

is now asking if the Bell Telephone Company made a claim for the loss of business arising out of that fact, and I do not think that is evidence which is pertinent to the enquiry. The fact of the diminution in the number of customers may be pertinent, but whether the Bell Telephone Company made a claim, or how much they got for their claim if they made one, is not, I think, pertinent to the issue here.

10 Mr. Ker: The fact is they never made a claim.

Mr. St. Laurent: My learned friend has the advantage of me in that. I do not know.

His Lordship: Is there any connection, Mr. Ker, between the evidence you are now attempting to make and the facts proven in the testimony in chief?

20 Mr. Ker: Perhaps it does not arise directly out of the evidence in chief, but my learned friend has seen fit to examine the witness at some length on the condition of Mr. Cross' transmission lines, which we frankly admit were submerged. We have pleaded that we notified Cross before doing any flooding, and asked him for instructions as to the disposal of those lines. We told him we would be glad to move them.

My learned friend has established that we did the same thing with the Bell Telephone Company.

30 One Company, in a business-like way, let us move their lines, and they had no damages. Cross let us submerge his lines, and suffered damages, and is now attempting not only to make us pay for the lines, but also for the loss of customers whose property we acquired.

His Lordship: But can you make that evidence now, seeing that it has no connection whatever with the facts established in the evidence in chief?

I think it would be better to make it as part of your case.

BY MR. KER (continuing):

40 Q.—How often did you have occasion to see Mr. Cross' lines?

A.—From three to six months in the year I saw them every week end. I drove up to the summer camp.

Q.—Were you on his lines up there for electric power?

A.—Yes.

Q.—I suppose you know power service when you see it?

A.—I think I do.

*In the
Superior Court*

No. 72.
Plaintiff's
Evidence.
(Supp. Hearing)
J. A. Cameron,
Cross-examination
Oct. 11th, 1932.
(continued)

Q.—Were there many interruptions?

Witness: During what period?

Counsel: Any period.

Mr. St. Laurent: Prior to the raising of the water?

Witness: Up to 1926 we had pretty good service.

10 BY MR. KER (continuing):

Q.—I suppose there was no one else to give service up there, and you were glad to get service of any kind?

A.—No, I would not say that exactly. Elements of what the surrounding service is has a lot to do with the kind of service that has to be given.

Q.—Have you any idea of what it would cost your Company per mile per year to get its lines going up there?

20 Mr. St. Laurent: I object to the question as not arising out of the examination-in-chief. If my learned friend wishes to call the witness on his own behalf, he will have an opportunity of doing so.

BY MR. KER (continuing):

Q.—How long were you there as a summer customer?

A.—Since 1919.

Q.—And you were paying \$12.00 a year?

30 A.—That was what we paid until 1930.

Q.—On a flat rate?

A.—For the period of time we had service.

Q.—Then the meters went in in 1926?

A.—Around 1926. But we ordered the service out after 1926, because there was not any service.

Q.—How do you mean?

A.—You might get light for an hour, or for two hours, and then you might not get it at all.

Q.—That was in 1926.

40 A.—After 1926.

Q.—You ordered the service out in 1926?

A.—Around 1927, or the early part of 1928.

Q.—How do you account for that?

A.—I do not know. We just did not get service. I imagine it was from the work. We know the line down at Kirk's Ferry was flooded out in 1927, and I believe the line was reconstructed on the highway, but there was no power. I cannot tell you why.

*In the
Superior Court*

No. 72.
Plaintiff's
Evidence.
(Supp. Hearing)
J. A. Cameron,
Cross-examination
Oct. 11th, 1932.
(continued)

Q.—Of course, Alcove is away up towards Wakefield?

A.—It is above Wakefield.

Q.—And none of the lines or services in that direction were submerged?

A.—No.

Q.—The interruptions you speak of appear to have happened when the trees were cut down and so on, for the construction of the Chelsea dam?

10 A.—I would not say that was the cause of the interruption.

Q.—Are you still on Mr. Cross' lines?

A.—Yes, I still have service from Mr. Cross.

Q.—When did you have the service reinstated?

A.—In 1931.

Q.—Were you there in 1927-1928?

A.—I was there every year. We used coal oil lamps then.

Q.—How much are you paying now on a meter rate?

A.—\$15 a year.

Q.—More than you were paying before?

20 A.—Yes.

Q.—You do not know why the meters were put in?

A.—I have not the faintest idea.

(And further deponent saith not.)

DEPOSITION OF MRS. ROBERT NESBITT, A WITNESS
EXAMINED ON BEHALF OF THE PLAINTIFF.

*In the
Superior Court*

No. 73.
Plaintiff's
Evidence.
(Supp. Hearing)
Mrs. R. Nesbitt,
Examination
Oct. 11th, 1932.

30 On this eleventh day of October, in the year of our Lord one thousand nine hundred and thirty-two, personally came and appeared

MARGARET CROSS,

of the Town of Wakefield, in the Province of Quebec, wife of Robert Nesbitt, aged 54 years, a witness produced and examined on behalf of the Plaintiff, who, being duly sworn, deposes as follows :

40 EXAMINED BY MR. ST. LAURENT, K.C.,
OF COUNSEL FOR PLAINTIFF:

Q.—How long have you lived at Wakefield?

A.—Since 1904.

Q.—From, say, 1920 to 1926 or 1927 did you use electricity?

A.—Yes.

Q.—From whom did you get it?

A.—Mr. Cross.

In the
Superior Court

No. 73.
Plaintiff's
Evidence.
(Supp. Hearing)
Mrs. R. Nesbitt,
Examination
Oct. 11th, 1932.
(continued)

Q.—How much did you pay a year for it?

A.—About \$60.

Q.—What kind of premises did you have? Of what did they consist?

A.—Just my dwelling house.

Q.—You paid a flat rate of \$60 for the service in the dwelling house?

A.—Yes; and a stable. I kept a boarding house, too.

Q.—Was this for your dwelling house and boarding house?

10 A.—Just the dwelling house alone. I just had the dwelling house then.

Q.—Did you at any time go on a metered rate?

A.—Yes. When the meters were put in I was on a meter.

Q.—Do you remember when the meters were put in?

A.—I just do not remember, but I found my lights were not the same, because we used to save the lights after we got the meters in; which we did not do before.

20 Q.—When you had the meters put in you used to turn off the current when you did not require it?

A.—Yes.

Q.—And you do not remember if it was in 1926 or afterwards the meters were put in?

A.—I cannot remember what year the meters were put in.

Q.—After the meters were put in did your account go up, or did it go down?

A.—It used to vary.

Q.—How much did it amount to after the meters were put in?

A.—About the same. About \$60.

30 Q.—But, as you say, you used to be more careful with the lights?

A.—I used to be more careful with the lights after we got the meter in.

Cross-examination

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

Q.—Are you still living in Wakefield?

A.—Yes.

40 Q.—Are you still on Mr. Cross' service?

A.—Yes.

Q.—What is your maiden name?

A.—Margaret Cross.

Q.—Are you by any chance a relative of Mr. Freeman T. Cross, the Plaintiff in this Action?

A.—Yes, I am a cousin. His father and my father are brothers.

(And further deponent saith not.)

*In the
Superior Court*

No. 74.
Plaintiff's
Evidence.
(Supp. Hearing)
Mrs. W. Macnair,
Examination
Oct. 11th, 1932.

DEPOSITION OF MRS. WILFRID MACNAIR, A WITNESS
EXAMINED ON BEHALF OF THE PLAINTIFF.

On this eleventh day of October, in the year of our Lord one thousand nine hundred and thirty-two, personally came and appeared

MAY YORK,

10 of the Town of Wakefield, in the Province of Quebec, wife of Wilfrid Macnair, aged 32 years, a witness produced and examined on behalf of the Plaintiff, who, being duly sworn, deposes as follows:

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

Q.—Were you living in Wakefield from 1920 to 1926?

A.—Yes; I have lived there all my life.

20 Q.—Were you using electricity during the period I have mentioned?

A.—Yes.

Q.—From Mr. Cross' system?

A.—Yes.

Q.—For a private residence, or for a business premises?

A.—Business, too.

Q.—Of what did the business consist?

A.—A store and house.

Q.—In one building, or two buildings?

30 A.—Two buildings.

Q.—And you were using electricity both for the store and the dwelling house?

A.—Yes.

Q.—How much was it costing you a year before the meters went in?

A.—\$160 a year for the store, and \$25 for the house.

Q.—Do you remember when the meters were put in?

A.—Not exactly. I think somewhere around 1927 or 1928.

40 Q.—After the meters were put in did you continue to use electricity for both places?

A.—Yes.

Q.—Did your accounts go up, or did they go down?

A.—I think they went up possibly a little, but, as Mrs. Nesbitt said, we were more careful, so it did not make much difference.

Q.—Although you were more careful after the meters went in, you think the accounts went up a little?

A.—Yes, I think they did.

*In the
Superior Court*

No. 74.
Plaintiff's
Evidence.
(Supp. Hearing)
Mrs. W. Macnair,
Cross-examination
Oct. 11th, 1932.
(continued)

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

Q.—Are you still taking electricity from Mr. Cross?

A.—Yes.

Q.—You are on a meter now?

A.—Yes.

10 (And further deponent saith not.)

*In the
Superior Court*

No. 75.
Plaintiff's
Evidence.
(Supp. Hearing)
Frederick Wills,
Examination
Oct. 11th, 1932.

DEPOSITION OF FREDERICK WILLS, A WITNESS EXAM-
INED ON BEHALF OF THE PLAINTIFF

20 On this eleventh day of October, in the year of Our Lord one
thousand nine hundred and thirty-two, personally came and ap-
peared

FREDERICK WILLS,

of the Town of Wakefield, in the Province of Quebec, agent, aged
51 years, a witness produced and examined on behalf of the Plaintiff,
who, being duly sworn, deposes as follows:

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

30 Q.—Were you living in Wakefield from, say, 1920 to 1927?

A.—Yes.

Q.—Were you a user of electricity?

A.—Yes.

Q.—From Mr. Cross' system?

A.—Yes.

Q.—Were you using it only for a dwelling house, or for business
premises.

A.—A dwelling house and a showroom.

40 Q.—In one building, or two buildings?

A.—Two buildings.

Q.—What did you pay for the electric service prior to the in-
stallation of the metered system?

A.—As nearly as I can remember, about \$40 a year, flat rate.

Q.—When the meters were put in, did your accounts go up, or
did they go down?

A.—They went up a little.

*In the
Superior Court*

No. 75.
Plaintiff's
Evidence.
(Supp. Hearing)
Frederick Wills,
Cross-examination
Oct. 11th, 1932.

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

- 10 Q.—Are you still living there?
A.—Yes.
Q.—Are you still on Mr. Cross' lines?
A.—Yes.
Q.—With a meter?
A.—Yes.
Q.—What kind of a showroom have you?
A.—An automobile showroom.
Q.—Have you a garage also?
A.—No.
Q.—And your house and showroom are still lighted by Mr.
Cross' current?
A.—Yes.

(And further deponent saith not.)

20

*In the
Superior Court*

No. 76.
Plaintiff's
Evidence.
(Supp. Hearing)
F. T. Cross,
Examination
Oct. 11th, 1932.

DEPOSITION OF FREEMAN T. CROSS, A WITNESS EXAM-
INED ON BEHALF OF THE PLAINTIFF

- 30 On this eleventh day of October, in the year of Our Lord one
thousand nine hundred and thirty-two, personally came and ap-
peared

FREEMAN T. CROSS,

of Farm Point, in the Province of Quebec, lumberman, aged 53 years,
a witness produced and examined on behalf of Plaintiff, who, being
duly sworn, deposes as follows:

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

- 40 Q.—You are the Plaintiff in this action?
A.—Yes.
Q.—And a part of your business was the electric lighting busi-
ness with respect to which several of your customers have been
heard today?
A.—Yes.
Q.—Although you said in your examination on discovery that
you could not tell what your electric business brought in, it may

*In the
Superior Court*
No. 76.
Plaintiff's
Evidence.
(Supp. Hearing)
F. T. Cross,
Examination
Oct. 11th, 1932.
(continued)

possibly be we can avoid hearing any more of those customers. Can you from memory indicate what certain of your other customers who were on your lines before the meters were put in used to pay you?

Mr. Ker: I do not think that is the best proof.

Mr. St. Laurent: Neither do I.

10 Mr. Ker: It seems to me the only way to prove this satisfactorily would be by the production of the Plaintiff's books. If he has not the books, he cannot make verbal testimony from memory, and I think such proof is entirely illegal.

Mr. Montgomery: Particularly as it is proved that he rendered bills every month. Those bills must be on record, and the Plaintiff must have records of some kind.

20 BY MR. ST. LAURENT (continuing):

Q.—You stated in your examination on discovery that you did not have any other books or written records of your electric business, apart from the papers that were filed when Mr. Perry was examined?

A.—Yes, that is so.

Q.—Did you search for them?

A.—Yes, and Mr. Perry searched for them as well.

Q.—And you swear you have not anything else?

30 A.—Nothing in my possession.

Q.—No other record that was kept at that time, apart from the papers that Mr. Perry brought here when he was examined?

A.—No.

Mr. Perry kept any records I had at that time; and since then they were paid under a flat rate, as the signatures show, and I might have taken it out in charge. There is no record at all. Probably 90 per cent of my customers would pay in a dicker; labour and material. The customers themselves know about what they paid me, and whether it was a cash payment or material.

40 Q.—Just to bring it to a head, so that the matter may be discussed, let me ask you this: was M. K. Lindsay, of Wakefield, one of your customers?

A.—Yes.

Q.—Do you know what she was paying a year for electric current prior to 1926?

A.—I knew she was a big customer of mine, and I went and saw her, and to the best of her knowledge

*In the
Superior Court*

No. 76.
Plaintiff's
Evidence.
(Supp. Hearing)
F. T. Cross,
Examination
Oct. 11th, 1932.
(continued)

Q. (interrupting)—But you must not tell me that. You must tell me about your own knowledge.

A.—To the best of my knowledge she was paying me over \$100 a year—the Lindsay Hotel.

Q.—Who was M. K. Lindsay?

A.—Miss Lindsay. She was running a hotel.

BY THE COURT:

10 Q.—And what do you say she was paying?

A.—Over \$100 a year.

BY MR. ST. LAURENT (continuing):

Q.—Was F. A. Sully, of Wakefield, a customer for power?

A.—Yes.

Q.—What was he paying you?

A.—\$500 a year.

20 Q.—Was R. N. Sully a customer?

A.—Yes.

Q.—For what kind of premises?

A.—He had a saw mill and a house.

Q.—What was he paying you?

A.—Over \$100 a year.

Q.—Was G. H. Earle a customer?

A.—Yes.

Q.—What was he paying?

A.—Over \$100 a year.

30 Q.—Was the McLaren General Store and mill a customer?

A.—Yes.

Q.—What did they pay?

A.—Over \$200 a year.

Q.—Was the Village of Wakefield a customer?

A.—Yes.

Q.—What did they pay?

A.—I think over \$150.

Q.—Was Mrs. A. Diotte a customer?

A.—Yes.

Q.—What was her bill?

40 A.—Over \$100.

Q.—Do you know how much over \$100?

A.—I could not just say. It was over \$100. We figured any hotel or store would be over \$100.

Q.—Was A. E. Austin a customer?

A.—Yes.

Q.—How much was he paying?

A.—Somewhere in the neighbourhood of about \$50.

*In the
Superior Court*

No. 76.
Plaintiff's
Evidence.
(Supp. Hearing)
F. T. Cross,
Examination
Oct. 11th, 1932.
(continued)

- Q.—Was Dr. Geggie a customer?
A.—Yes.
- Q.—What was his bill?
A.—Something in the neighbourhood of \$60.
- Q.—Was D. Morrison a customer?
A.—Yes.
- Q.—How much was he paying?
A.—\$35 or \$40.
- 10 Q.—Was Mrs. S. E. Wilson, of the Peerless Hotel, a customer?
A.—Yes.
- Q.—What was her bill?
A.—In the neighbourhood of \$200, I think. Say about in the
neighbourhood of \$175.
- Q.—Was Wyman E. Cross, of Cascades, a customer?
A.—Yes.
- Q.—Is he a relative of yours?
A.—A brother.
- Q.—What was his account?
A.—Around \$75, I think, if I remember rightly.
- 20 Q.—Was Jane Mullin, of Alcove, a customer?
A.—Yes. She was paying about \$60.
- Q.—Was R. J. O'Hara, of Alcove, a customer?
A.—Yes.
- Q.—What was he paying?
A.—I think \$50.
- Q.—H. Fitzpatrick, of Alcove?
A.—\$60.
- Q.—Finley Stevenson, of Wakefield?
A.—About \$40.
- 30 Q.—S. H. Cross, Farm Point. Is he a relative of yours?
A.—A brother.
- Q.—Was he a customer?
A.—Yes.
- Q.—What was he paying?
A.—\$25 or \$30.
- Q.—W. J. Maxwell?
A.—That is at Cascades. He was paying about \$50.
- Q.—A. Martineau, of Cascades?
A.—About \$40.
- 40 Q.—I. C. Read, or J. C. Read, of Farm Point?
A.—About \$50.
- Q.—Fred Parent, of Wakefield?
A.—About \$40.
- Q.—W. C. Taggart?
A.—About \$45.
- Q.—H. J. Cross, of Wakefield? Is he a relative?

*In the
Superior Court*

No. 76.
Plaintiff's
Evidence.
(Supp. Hearing)
F. T. Cross,
Examination
Oct. 11th, 1932.
(continued)

A.—A cousin.

Q.—Was he a user of electricity?

A.—Yes.

Q.—How much was he paying?

A.—About \$75. No, that is not right. It would be about \$100.
He had a little garage, and he used to charge batteries.

Q.—He had a little garage, where he charged batteries for auto-
mobiles?

A.—Yes.

10 Q.—And he was paying about \$100?

A.—Yes.

Q.—The Banque Canadienne Nationale used your current?

A.—Yes.

Q.—How much did they pay?

A.—About \$40.

Q.—J. T. Shouldice.

A.—He is at Wakefield; \$35 or \$40

Q.—C. Graham, of Wakefield?

20 A.—About \$35.

Q.—The Estate J. B. York? Is that the case about which Mrs.
Macnair gave evidence?

A.—Yes.

Q.—A store, and a residence?

A.—Yes. Over \$100.

Q.—Rev. George Forshaw?

A.—About \$40.

Q.—Joseph Shouldice?

A.—About \$40.

30 Q.—F. A. Moffatt, of Wakefield?

A.—About \$70.

Q.—F. E. Hamilton, of Wakefield; house and shop?

A.—Over \$100.

Q.—What kind of a shop was that?

A.—A garage.

Q.—Is Walter C. Cross, Cascades, a relative of yours?

A.—A brother.

Q.—What was he paying?

A.—\$60 or \$70.

40 Q.—D. J. Campbell, of Wakefield?

A.—About \$50.

Q.—W. P. Flynn, Cascades?

A.—About \$40.

Q.—E. S. Emmerson?

A.—About \$125.00.

Q.—What kind of premises had he?

A.—He had a large cottage, and did practically all his cooking

*In the
Superior Court*
No. 76.
Plaintiff's
Evidence.
(Supp. Hearing)
F. T. Cross,
Examination
Oct. 11th, 1932.
(continued)

- and heating in winter by electricity.
- Q.—Frank Armstrong?
A.—About \$45. Wakefield.
- Q.—Is J. E. Cross, of Cascades, a relative?
A.—Yes.
- Q.—How much was he paying?
A.—About \$60 or \$70—say \$60.
- Q.—Mrs. P. J. Fleming, Kirk's Ferry—house and pavilion?
A.—About \$75.
- 10 Q.—Mrs. J. McAllister, of Kirk's Ferry—summer hotel?
A.—About \$60.
- Q.—John A. McKenzie?
A.—Over \$100.
- Q.—Where is he?
A.—Farm Point.
- Q.—What kind of premises?
A.—A summer cottage.
- Q.—With cooking apparatus?
A.—Yes. He had a very large cottage.
- 20 Q.—R. H. Gordon, Cascades?
A.—About \$40.
- Q.—H. Hellard?
A.—Kirk's Ferry.
- Q.—How much was he paying?
A.—About \$60.
- Q.—I. O. Filion?
A.—Farm Point.
- Q.—How much was he paying?
A.—About \$40.
- 30 Q.—Bertha Cox?
A.—She gave her evidence here this morning.
- Q.—May E. Kirby?
A.—Wakefield. About \$45.
- Q.—Ben Brown?
A.—About \$35. Wakefield.
- Q.—George W. Richardson?
A.—He was over \$100. He had a garage.
- Q.—Fred Maxwell?
A.—About \$40.
- 40 Q.—John Dean?
A.—About \$35 or \$40.
- Q.—John Bourassa?
A.—About \$30.
- Q.—Foster Earle?
A.—About \$40.
- Q.—Mrs. George Patterson?

*In the
Superior Court*

No. 76.
Plaintiff's
Evidence.
(Supp. Hearing)
F. T. Cross,
Examination
Oct. 11th, 1932.
(continued)

A.—About \$45.

Q.—A. F. Brown, Kirk's Ferry?

A.—About \$30.

Q.—Besides those I have named, were there others who paid more than the minimum?

A.—There might have been. I did not go to them.

10 Those I thought over the minimum, I asked: "Do you remember how much you paid me about 1926 or 1927?" and they said they had a fair idea. I said: "Whatever you feel you were paying me. I do not want to influence you one way or the other."

Q.—I have no right to ask you about that. I ask you about what you know yourself. Outside of those I have gone over with you, had you others who were paying more than the minimum?

A.—Yes, there would be a few, to my knowledge.

Q.—What was the minimum?

A.—The minimum for a summer cottage was \$12 a season. If it was a large cottage it would depend on what they had in it.

20 Q.—You have given us, to the best of your knowledge, most of those who were over the minimum for summer cottages?

A.—Yes.

Q.—What was the minimum for those who used power for the whole year round?

A.—The minimum was \$1.50 a month, less 10 per cent discount.

Q.—Was that per customer, or for each separate installation—each building that had a separate loop?

30 A.—It was each building; \$1.50 a month wherever we put a loop into the building. We had the expense of putting in the loop. I went to the expense of going right to the clapboards and putting the lines in, and wherever we did that we charged \$1.50 a month.

Q.—With 10 per cent discount?

A.—With 10 per cent discount, yes.

Q.—And if you saw or thought they were going to use more than the minimum you made a bargain with them?

A.—Yes.

Q.—At whose request did Mr. Frederick make up the book that was put in as an exhibit, when the poles and transformers and buildings and loops were counted?

A.—At my request.

40

Mr. St. Laurent: I have no other questions to put to the witness with respect to the lighting, but I would like to reserve my right to examine him on some other points at another stage.

I wanted to see if we could not get along without bringing any more witnesses down from the Gatineau. I have no others here today, and we will decide at the adjournment whether we will go to the expense of bringing any more or not. I may say it will depend

*In the
Superior Court*

No. 76.
Plaintiff's
Evidence.
(Supp. Hearing)
F. T. Cross,
Examination
Oct. 11th, 1932.
(continued)

upon appearances, after the cross-examination of this witness.

Mr. Ker: Of course, I am not certain that my learned friend is going to put Mr. Cross in the box again. In any event, I take it he does not intend to examine Mr. Cross again on the points he has now covered.

10 Mr. St. Laurent: I disliked as much as anybody bringing witnesses to prove as little as some of the witnesses here today have proved, and I have tried to cover it as much as possible by my examination of Mr. Cross this afternoon. It may be after Mr. Cross has been cross-examined we will feel that it is not necessary for us to bring any other witnesses of this kind, and it may be we will content ourselves with such evidence as will result from the testimony of Mr. Cross with respect to the others. However, if we fear after he has been cross-examined that his testimony has been shaken to such an extent that we cannot rest on it, we may have to call some other witnesses.

20 Mr. Ker: If my learned friend declares he intends to examine Mr. Cross again on other matters, I will reserve my cross-examination until his testimony in chief is completed.

Mr. St. Laurent: But that will not eliminate the necessity under which we may feel ourselves with respect to making other evidence in regard to Mr. Cross' revenues from this system.

30 Mr. Ker: My learned friend has submitted a number of names to the witness, and I think I would like to have an opportunity of examining the records which have been produced before I cross-examine.

Mr. St. Laurent: That is quite acceptable to us.

Mr. Ker: If we might continue the cross-examination of Mr. Cross until tomorrow morning, it would be satisfactory.

40 Mr. St. Laurent: We will endeavour to keep the number of witnesses restricted. If my learned friend will undertake his cross-examination as early as possible, we will see just where we are when it is completed. If Mr. Ker will cross-examine Mr. Cross tomorrow morning, we will be in a position to decide after the cross-examination. I may say we are not going to take the responsibility of bringing other witnesses unless we feel called upon to do so.

Mr. Ker: Then, with your Lordship's permission, we might defer the cross-examination of this witness until tomorrow morning.

*In the
Superior Court*

No. 76.
Plaintiff's
Evidence.
(Supp. Hearing)
F. T. Cross,
Examination
Oct. 11th, 1932.
(continued)

His Lordship: Very well.

Mr. St. Laurent: I presume my learned friend will admit the amounts included in Mr. Scott's bill for stenography were the amounts paid?

10 Mr. Ker: Subject to their being applicable to this case. I am sure Mr. Scott would not make an entry for stenography that he did not pay.

(And the further testimony of the witness is continued to Wednesday, October 11th, at 10.15 o'clock in the forenoon.)

(And further for the present deponent saith not.)

*In the
Superior Court*

No. 77.
Plaintiff's
Evidence.
(Supp. Hearing)
A. J. Hazelgrove,
Examination
Oct. 11th, 1932.

20

DEPOSITION OF ALBERT J. HAZELGROVE, A WITNESS
EXAMINED ON BEHALF OF THE PLAINTIFF

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

ALBERT J. HAZELGROVE,

30 of the City of Ottawa, in the Province of Ontario, architect, aged forty-eight years, a witness produced and examined on behalf of the Plaintiff, who, being duly sworn, deposes as follows:

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

Q.—What is your occupation?

A.—Architect.

Q.—How long have you been in practice?

A.—Since 1911.

40

Q.—In what district?

A.—In Ottawa and in Montreal.

Q.—Did you examine the buildings to which numbers have been assigned on the plan already filed as Exhibit P-97?

A.—Yes, I did.

Mr. Ker: I would like to be of record as objecting to any evidence to be made by the witness as to buildings which are in no

*In the
Superior Court*
No. 77.
Plaintiff's
Evidence.
(Supp. Hearing)
A. J. Hazelgrove,
Examination
Oct. 11th, 1932.
(continued)

way affected by a water level of 321.5. We have pleaded it is irrelevant, and remote to the issue, and I would like to have my objection in the Record. There are forty houses, and only six or seven of them have been affected by the water, and I wish to object to any evidence that may be given in regard to anything that is not affected by the physical water level of 321.5.

10 His Lordship: Any such evidence will be taken under reserve of your objection, Mr. Ker.

BY MR. ST. LAURENT (continuing):

Q.—When did you make that valuation?

A.—In March and April, 1926.

Q.—Did you make it alone, or in company with someone?

A.—In company with Mr. Adamson, a contractor.

20 Q.—What were you endeavouring to ascertain: the then fair depreciated value or the replacement value?

A.—My instructions were to make a detailed replacement value of those buildings.

Q.—And did you do that?

A.—I did.

Q.—Will you look at Plaintiff's Exhibit No. 66, and will you say if the second and following pages are the figures at which you arrived in making that detailed valuation?

A.—Yes. Everything except the first page of that exhibit refers to our valuation.

30 Q.—The first sheet is a summary, about which you do not know anything.

Q.—I do not know anything about it.

Q.—Your own summary is the second page of this exhibit?

A.—Yes.

Q.—And following the second page there is one sheet for each of the items in the summary on the second page?

A.—Yes.

Q.—And that was the result of your personal investigation with Mr. Adamson?

A.—Yes, and personal measurements of each of those buildings.

40 Q.—What did it represent?

A.—It represented our valuation of the replacement value of the buildings at that time.

Q.—Would that be equal to or greater than the fair value of the buildings in the condition in which they were at the time you made your examination?

A.—The actual value of the buildings was depreciated below the figures given in this replacement.

*In the
Superior Court*
No. 77.
Plaintiff's
Evidence.
(Supp. Hearing)
A. J. Hazelgrove,
Examination
Oct. 11th, 1932.
(continued)

Q.—So the actual value would be something less than the figures given in your replacement valuation?

A.—Yes.

Q.—Have you calculated how much less?

A.—They vary from building to building. Applied over the whole valuation it averages forty per cent.

Q.—So that the depreciated value of the buildings in the condition in which they were in 1926 would be forty per cent less than the figures set down in your replacement valuation?

10 A.—Yes.

Q.—So, instead of \$88,000, the fair depreciated value, in your opinion, would be something like \$53,000 at that time?

A.—Yes.

Q.—You say the amount properly deductible for depreciation varied according to the condition of the different buildings?

A.—Yes.

Q.—Did you work it out in detail with respect to the condition of each of the buildings?

20 A.—Yes, we worked it out. It ranged from nothing (in the case of a building that was under construction) through twenty-five per cent, and further from there to fifty per cent. Some of them we took as much as fifty per cent depreciated.

Q.—So you did not just guess at the figure of forty per cent?

A.—No. It happens to work out at that.

Q.—It happens to work out at forty per cent of the total?

A.—Yes.

BY THE COURT:

30

Q.—When you say “we” to whom do you refer?

A.—Mr. Adamson and myself. We took our measurements together, and valued the buildings together, and submitted the report as a joint report.

BY MR. ST. LAURENT (continuing):

Q.—Item No. 28 on the summary appears to be the mill, for which you had a replacement valuation of \$11,975.40?

40 A.—Yes.

Q.—What is your figure for the fair depreciated value of that mill at that time?

A.—Twenty-five per cent less.

Q.—Twenty-five per cent less than \$11,975.40?

A.—Yes.

Q.—Something around \$8,000?

A.—About that, yes.

*In the
Superior Court*
No. 77.
Plaintiff's
Evidence.
(Supp. Hearing)
A. J. Hazelgrove,
Examination
Oct. 11th, 1932.
(continued)

- Q.—And your total would be approximately \$53,000 instead of \$88,000 as the fair depreciated valuation?
A.—Yes.
Q.—Have you seen Mr. MacRostie's valuation on the same buildings?
A.—No.
Q.—This work was actually done during the spring of 1926?
A.—1926, yes.
10 Q.—I am informed that in making up paragraph 28 of our Supplementary Declaration, and in including therein three charges, one of \$216, one of \$800 and one of \$1,250, we put the same things in twice; and that the account of yourself and Mr. Adamson for the work you did was \$1,250. Is that correct?
A.—That was the total for both of us, yes.
Q.—Will you file as Plaintiff's Exhibit No. 84, the account I now hand you, which should have gone in with the Supplementary Declaration, and which was numbered at the time, but as a matter of fact was not put into the record?
20 A.—Yes.
Q.—How does that charge compare with the charges made to your general clientele for similar work?
A.—We have been charging as our joint fee one and one-half per cent of the cost of the amount of our valuation; this was based on the same percentage. That was the joint fee of Mr. Adamson and myself.
Q.—And is that the usual scale employed for making valuations of this character of property?
A.—It is. We have been using that scale for years.
30 Q.—And it is the one in use with your general clientele?
A.—Yes.

BY THE COURT:

- Q.—It is your ordinary charge?
A.—Yes, sir, it is our regular charge.

BY MR. ST. LAURENT (continuing):

- 40 Q.—Are you in the habit of estimating and valuing work or property with Mr. Adamson at that rate?
A.—Yes. I have done a lot of work of that kind with Mr. Adamson.
Q.—I understand the numbers 1 to 40 on Exhibit No. 66 correspond with the similar numbers on the plan Exhibit P-97?
A.—I might explain that there are one or two numbers which have been transposed, because Mr. Adamson and I made our num-

*In the
Superior Court*
No. 77.
Plaintiff's
Evidence.
(Supp. Hearing)
A. J. Hazelgrove,
Examination
Oct. 11th, 1932.
(continued)

bering independently of Mr. MacRostie. Mr. MacRostie made a plan, and today I have renumbered our valuation so that it will agree with the plan and with any other figures which have been used in this case. I am having a freshly typed copy made.

Q.—You have had a summary made showing the same numbers Mr. MacRostie used, and opposite each you have entered your replacement value as it appears in Exhibit No. 66, and your fair value after taking off the depreciation you think should be taken off with respect to each item?

10 A.—That is right.

Q.—Will you please file it as Exhibit P-109?

A.—Yes.

Q.—So, Exhibit P-109 is really the second sheet of number 66, making the transposition of the numbers so that it will agree with Mr. MacRostie's plan, and giving the value after taking off such depreciation as you think should come off with respect to each item to get the depreciated value in 1926?

A.—Yes.

20 I have had no opportunity to check it since it was typed, and I would like to check it, if I might.

His Lordship: Exhibit P-109 is the second sheet of Exhibit No. 66?

Mr. St. Laurent: Yes, your Lordship, and instead of only having a column showing the replacement value, the witness has inserted a column giving the actual depreciated value.

30 Witness: No. 28, the mill, is not on this sheet.

BY MR. ST. LAURENT (continuing):

Q.—So, with respect to No. 28, the figure on the second page of Exhibit No. 66 would remain, but the depreciation would reduce it by twenty-five per cent?

A.—Yes.

Q.—And bring it down to approximately \$9,000.00 instead of \$11,975.40?

40 A.—Yes, \$8,981.55.

Q.—Will you add to Exhibit P-109, below item 40, the item No. 28, with your replacement valuation of the mill, and your valuation of it after taking off the depreciation?

(The witness does as requested.)

Q.—Why is it the numbers on Exhibit P-109 are not consecutive? In other words, why are some omitted?

In the
Superior Court

No. 77.
Plaintiff's
Evidence.
(Supp. Hearing)
A. J. Hazelgrove,
Examination
Oct. 11th, 1932.
(continued)

A.—Because on the buildings the numbers of which were omitted the valuations were omitted.

Q.—You give valuations only of such of the buildings as have numbers on your sheet?

A.—No. I made valuations of every building. I do not know why they have been taken out. They are not in this summary. That is a matter I had nothing to do with.

Q.—They are apparently not being claimed for?

A.—They are not being used in this case.

10

Cross-examination

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

Q.—As far as I can understand, in 1926 you received a sort of roving commission to go and examine all Mr. Cross' houses at Farm Point, and to report on their value?

A.—Yes.

Q.—And to make an estimate of their replacement value and their depreciated value?

20

A.—Yes.

Q.—In other words, you were not really asked to value them; you were asked to make an estimate of what it would cost to replace them?

A.—I was asked to make a replacement valuation.

Q.—But not to give the actual value of those things as they stood?

A.—No; only to the extent that I was giving the valuation of what money would be necessary to replace them.

30

Q.—And I suppose on carrying out those instructions, the purpose for which your investigation was made was immaterial to you—you did not know anything about it?

A.—I did not know anything about it.

Q.—So you did not examine any of those buildings with a view to determining which, if any, of them might be affected by a given water level in the Gatineau River?

A.—I did not.

Q.—And you do not know it yet?

A.—I do not.

40

Q.—Speaking of your account, does your one and one-half per cent include all the houses you examined?

A.—It includes all the buildings we valued for Mr. Cross in that vicinity.

Q.—Is the one and one-half per cent based on the replacement value, or on the depreciated value?

A.—On the replacement value.

Q.—I suppose the higher the replacement value the more money

In the
Superior Court

No. 77.
Plaintiff's
Evidence.
(Supp. Hearing)
A. J. Hazelgrove,
Cross-examination
Oct. 11th, 1932.
(continued)

you were going to get out of it? Does it not work out that way?

A.—You can make it that inference.

Q.—Was it an agreed one and one-half per cent on your replacement value?

A.—On the replacement value, yes. In all the work we undertook.

Q.—In what year was that made?

A.—1926.

10 Q.—Have you done anything further for Mr. Cross since 1926?

A.—Not that I can remember. I do not think so.

Q.—That was a year before there was any flooding on the Gatineau River?

A.—I do not know that even.

Q.—In any event, five years before this case was instituted?

A.—It was in 1926, that is all I know.

Q.—I notice your bill is dated March, 1932. Was that the first account you rendered to Mr. Cross for that work?

A.—No. As I remember it, Mr. Cross advanced us some money from time to time.

20 Q.—I ask you whether you ever rendered an account for those services before 1932? Because they were prescribed, I think, in 1931?

A.—Yes, we rendered an account.

Q.—When did you render the account?

A.—I cannot tell you exactly I know it was before 1932.

Q.—Will you let me have a copy of the account you rendered to him before 1932?

A.—I cannot give it to you now.

Q.—Can you give me an idea when it was rendered?

30 A.—I could not give it to you now.

Q.—Could you give it to Mr. Cross' solicitors during the hearing of this case?

A.—Yes.

Q.—What was the amount of those accounts you rendered in the past?

A.—I could not tell you. There was one payment of \$500, and then there was another payment. I could not give you the details without looking into my books.

40 Q.—If it was based on one and one-half per cent of your valuation, was there any question of doubt about its being variable?

A.—No.

Q.—So it must have been the same amount. But I cannot say as to the man's ability to pay it at the time.

Q.—I ask you these questions because when I examined Mr. Cross on discovery I asked him:

“ Q.—Is the account dated March 3rd, 1932, the first ac-

*In the
Superior Court*

No. 77.

Plaintiff's
Evidence.
(Supp. Hearing)
A. J. Hazelgrove,
Cross-examination
Oct. 11th, 1932.
(continued)

count you ever received from those gentlemen, Messrs. Hazelgrove and Adamson? ”

And his reply was:

“A.—This is the first account.”

A.—I say it is not the first account.

10 Q.—As I understand it, the second page of Exhibit No. 66 contains a summary of the various buildings you inspected, examined and estimated?

A.—Yes.

Q.—And the total of that page, \$88,401.57, is the replacement value of those buildings?

A.—Yes.

Q.—Including the mill?

A.—Yes.

Q.—Which mill is that: the saw mill or the power mill?

20 A.—The saw mill.

Q.—So it includes the saw mill, and all the houses included in that list?

A.—Yes.

Q.—You have just produced, as Exhibit P-109, a detailed list of the depreciated values?

A.—Yes.

Q.—Reducing this amount of \$88,401.57 to something like \$53,000?

30 A.—Yes. One is the replacement value, and the other is the depreciated value.

Q.—In order to give details of the various items numbered 1 to 40, on Exhibit No. 66, you have taken each time the sheet of house No. 1, house No. 2, house No. 3, etc.?

A.—Yes.

Q.—Will you look at the figures for building No. 5 and will you please tell me what the sum of \$1,936.52 represents? I take it that is the total replacement value, without the depreciation?

A.—Yes, \$1,936.52.

40 Q.—Can you tell me what is the depreciated value of that building, No. 5?

A.—It is on the list Exhibit P-109; \$1,449.30.

Q.—So that while that house or building No. 5 was taken into Exhibit No. 66, at \$1,936.52, you estimate the fair value to be \$1,449.30?

A.—Yes.

Q.—The next one which I would like you to refer to is No. 6. Will you please tell me what is your replacement value on that?

In the
Superior Court

No. 77.
Plaintiff's
Evidence.
(Supp. Hearing)
A. J. Hazelgrove,
Cross-examination
Oct. 11th, 1932.
(continued)

A.—House No. 6, replacement valuation, \$2,699.

Q.—And what is the depreciated valuation?

A.—\$2,024.

Q.—That is something over \$600 off?

A.—Yes.

Q.—Will you now please look at house No. 9, and give me the same particulars?

A.—House No. 9: \$2,135 replacement; depreciated, \$1,601.

Q.—About \$500 off?

10 A.—Yes.

Q.—Will you please give me the same particulars for house No. 10?

A.—House No. 10: \$2,007 replacement; \$1,505 depreciated.

Q.—And house No. 30?

A.—\$4,188 replacement; \$2,094 depreciated. That was 50 per cent.

Q.—There was quite a heavy depreciation on that house?

A.—Yes.

20 Q.—I ask you about these, because I think Mr. MacRostie stated that those were the only buildings, apart from the mill, that were physically affected.

Mr. St. Laurent: I object to this evidence as not arising out of the examination in chief of the witness, and as not a correct statement of fact as mentioned by Mr. MacRostie.

BY MR. KER (continuing):

30 Q.—There are five buildings included, and your total replacement value on those buildings, I understand, is something like \$12,965; and your fair value is \$8,673.

A.—That seems to be correct.

Q.—I suppose if you had gone out merely to examine the buildings I have just mentioned, you would hardly have been able to make out an account of \$1,250, would you?

A.—No.

Q.—How much would your account have been based on those valuations?

40 A.—One and one-half per cent on the amount of \$12,000 odd.

Q.—How much would that amount to?

A.—About \$180 or \$190.

Q.—From the fact that this item of \$1,250 is entered in the Declaration for your services, I assume the item of \$216 for Mr. Adamson, and the item of \$800 for Messrs. Adamson and Hazelgrove are to be struck from the Declaration?

A.—Yes. The amount of \$1,250 was our total account.

*In the
Superior Court*

No. 77.
Plaintiff's
Evidence.
(Supp. Hearing)
A. J. Hazelgrove,
Cross-examination
Oct. 11th, 1932.
(continued)

Q.—Therefore, you have no accounts for \$800 and \$216 respectively?

A.—No.

Q.—How could those have originated?

A.—I do not know.

Q.—And the item of \$11,975.40 for the mill becomes approximately \$8,000?

10 A.—Twenty-five per cent deduction. It is nearer \$9,000 than \$8,000.

Mr. St. Laurent: \$8,981.55.

BY MR. KER (continuing):

Q.—During what time of the year did you make that inspection?

A.—In March and April.

20 Q.—You are an architect, with a good practice in Ottawa. In a general way, what kind of construction is it you find in those houses at Farm Point?

A.—They are all frame construction. Some of them have masonry basements, others have not.

Q.—There were some of them being built in 1926?

A.—There was one building being constructed, and we just valued the amount that was finished up to that time.

Q.—How did you go about establishing your valuation? On the cubing system?

30 A.—Most all the valuations are worked out in detail. They are not on the cubic basis at all. They are worked out so many feet of lumber, and so on. There are some at the end which are cubed.

Q.—Did you base the figures you have given in those various details on current prices for first-class wood, or did you base them on the kind of wood that was actually on the premises?

A.—Those were made on the replacement value of the material that was there at the time.

Q.—Is it material of the very first class?

A.—No.

40 Q.—There were a number of little outhouses connected with those buildings, I suppose?

A.—Yes, numbers of them.

Q.—I suppose that accounts somewhat for the irregularities of the numbers? For instance, I see 31, and then 33?

A.—As a matter of fact, each of those numbers represents a group of buildings—a house and its outhouses.

BY MR. ST. LAURENT:

In the
Superior Court

No. 77.
Plaintiff's
Evidence.
(Supp. Hearing)
A. J. Hazelgrove,
Cross-examination
Oct. 11th, 1932.
(continued)

Q.—Will you please refer to item No. 31, the replacement value of which you gave as \$14,595.28. What kind of building was that?

A.—No. 31 was the hotel building. That was a better building than many of the others around there. It was quite a large "L" shaped building.

Q.—Not exactly in the same class as the laborers' cottages, which constituted a number of the other buildings?

A.—It was a much better type of building in all respects.

10 Q.—What was No. 40, which has a replacement valuation of \$7,142.92?

A.—No. 40 was the house they call the "Comet". It is of a better type and better finished inside.

Q.—Is it the building in which Mr. Cross was residing at the time?

A.—Yes.

Q.—For what purpose were most of the others used at that time?

A.—Dwellings.

20 Q.—Dwellings for whom?

A.—Workmen.

Q.—Workmen around the saw mill?

A.—Yes.

BY MR. KER:

Q.—How old a building would the hotel be?

A.—I do not know.

Q.—Could you venture an opinion or a guess?

30 A.—It is an old-fashioned hotel structure.

Q.—At least 70 years old?

A.—I do not know.

Q.—In any event it is a very old building?

A.—It is a very old building. It is one of those solid old time buildings that would be worth a whole lot more than a new building.

Q.—It would require to be a very solid building to be able to stand up for seventy years?

A.—Yes.

40 BY THE COURT:

Q.—Why are those old buildings better than the new buildings?

A.—Because they were more honestly constructed, and they were constructed with very heavy material. Instead of using 2 x 8 for floor joists; they used cedar logs and things of that kind, and the walls were much more thickly constructed than in the new buildings.

Q.—Is it a wooden building?

*In the
Superior Court*

No. 77.
Plaintiff's
Evidence.
(Supp. Hearing)
A. J. Hazelgrove,
Cross-examination
Oct. 11th, 1932.
(continued)

A.—My impression is there was a stone foundation under the hotel.

BY MR. KER:

Q.—But a wood frame?

A.—Yes.

Q.—I suppose, irrespective of how well it was built, there must have been a great deal of depreciation in that length of time?

10 A.—If you figure it by the tape as depreciation there would be nothing left. Nevertheless, it is still there.

Q.—If you were undertaking the replacement of that building today, would you think of replacing it with the same size joists?

A.—No. We figured on replacing that building in the modern way, with the lighter material. In other words, we did not take the heavy material into consideration.

Q.—The other houses had a good deal of cull lumber in them?

A.—There was some lumber that was not first class lumber, but we did not figure it on a first class basis.

20 Q.—If you had applied the usual rules of depreciation to the appraisal of the building, you say it would have been less than nothing. What rules of depreciation or what idea of depreciation did you bring to bear on it? I ask you this because you have reduced it from \$14,000 to \$8,000. How did you arrive at that depreciation?

A.—By an actual inspection of the physical condition of the building. In other words, the building is still there, and has the appearance of being there for a great many years to come.

30 All our depreciations are based on an inspection, not merely working it out on an arithmetical table, which means nothing, because it all depends on how the buildings are kept up or maintained.

BY THE COURT:

Q.—Did you take into consideration the revenue derived from the buildings?

A.—No, your Lordship.

Q.—Were they occupied when you were there?

A.—That particular building was only used, I think, in the summer, in recent years, as a hotel. And at that time of the year there was no one in it.

40 BY MR. KER:

Q.—That being so, would I be right in assuming that a place which is left vacant all the fall, winter and spring suffers more than an ordinary building which is inhabited and heated?

A.—Yes, it would if it was a building with a high degree of finish, good hardwood floors, and so on, it would suffer very seriously.

(And further deponent saith not.)

*In the
Superior Court*

No. 78.
Plaintiff's
Evidence.
(Supp. Hearing)
W. G. Adamson,
Examination
Oct. 11th, 1932.

DEPOSITION OF WILLIAM G. ADAMSON, A WITNESS
EXAMINED ON BEHALF OF THE PLAINTIFF

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

WILLIAM G. ADAMSON,

10 of the City of Ottawa, in the Province of Ontario, contractor, aged 60 years, a witness produced and examined on behalf of the Plaintiff, who, being duly sworn, deposes as follows:

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

Q.—How long have you been carrying on business as a contractor?

20 A.—Thirty-seven or thirty-eight years.

Q.—In what district?

A.—Ottawa and the Valley.

Q.—Ottawa and the Ottawa Valley?

A.—Yes.

Q.—Are you the Mr. Adamson referred to by Mr. Hazelgrove in his testimony?

A.—Yes.

Q.—You heard his evidence?

A.—Yes.

30 Q.—Were you with him on the work about which he testified?

A.—I was.

Q.—Have you anything to add to what he has said, and do you concur in what he has said?

A.—I agree with what he said. We worked jointly all the way through.

Q.—Have you anything to add to what he said?

A.—No.

Q.—Or any change to suggest?

A.—No.

40 Q.—You entirely corroborate his evidence?

A.—I do.

Cross-examination

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

Q.—Did you hear the questions I put to him?

A.—Yes.

*In the
Superior Court*
No. 78.
Plaintiff's
Evidence.
(Supp. Hearing)
W. G. Adamson,
Cross-examination
Oct. 11th, 1932.
(continued)

Q.—If the same questions were put to you, would you give the same answers?

A.—I would. I think it is a fair explanation.

Q.—In the last few years in how many cases have you made appraisals for clients who were at issue with this Company?

A.—The first valuation I made in opposition to this Company was for Mr. Walter Cross.

Q.—And you have been engaged for some considerable time in work of this nature? You have had a number of cases in which you
10 have made appraisals for use against the Company?

A.—Yes.

Q.—I think I first examined you about five years ago?

A.—Yes.

Since that time I have been working on the Lièvre.

Q.—Against the McLaurin Company?

A.—Yes.

Q.—You do not seem to be very predisposed towards the Power Company?

A.—Well, I do not know. It is my bread and butter, I suppose.
20

Q.—And apparently the more bread, the more butter, as far as valuations are concerned?

A.—Not necessarily. I have always tried to be fair in my valuations.

Q.—You and Mr. Hazelgrove did team work for some length of time against the companies, did you not?

A.—I think I was doing some before Mr. Hazelgrove. It was about the same time, but I think I was first.

Q.—And you have done a good deal of that work?

A.—Yes.
30

I have been acting for Insurance Companies, also for private individuals, and adjustments also.

BY MR. ST. LAURENT:

Q.—Did the fact my learned friend suggests to you affect at all the figures you used as being the current prices of lumber, or did it affect your measurements?

A.—We used the current prices of lumber—in fact, less than
40 the current prices at that time.

Q.—Were your measurements accurately taken?

A.—Yes.

Q.—And your figures properly set down?

A.—Yes.

Q.—And the extensions properly worked out?

A.—Yes.

*In the
Superior Court*
No. 78.
Plaintiff's
Evidence.
(Supp. Hearing)
W. G. Adamson,
Cross-examination
Oct. 11th, 1932.
(continued)

Q.—If you had been asked to do it for the Company, would the result have been any different?

A.—No different.

(And further deponent saith not.)

10

*In the
Superior Court*
No. 79.
Plaintiff's
Evidence.
(Supp. Hearing)
J. Frederick,
Examination
Oct. 11th, 1932.

Ce onzième jour du mois d'octobre, de l'an mil neuf cent trente-deux,

A comparu:—

JOSEPH FREDERICK,

électricien, âgé de cinquante-et-un ans, demeurant à Farm Point, témoin produit de la part du demandeur.

20 Lequel après serment prêté sur les saints Evangiles, dépose et dit:—

INTERROGE PAR Me ST-LAURENT, C.R.,
PROCUREUR DU DEMANDEUR:

Q.—Vous avez dit que vous étiez électricien?

R.—Oui, monsieur.

Q.—Avez-vous jamais travaillé pour Freeman T. Cross?

R.—Oui, monsieur.

30 Q.—Pendant combien d'années?

R.—Vingt-sept (27) ans.

Q.—Qu'est-ce que vous faisiez pour M. Cross?

R.—Je "runnais" le pouvoir, et bâtir la ligne électrique.

Q.—C'est vous qui surveillez le pouvoir, vous dites?

R.—Oui, monsieur.

Q.—Et vous avez bâti la ligne électrique?

R.—La ligne électrique.

Q.—Quand il y avait des réparations à faire à la ligne, qui les faisait?

40 R.—C'est moi.

Q.—Où demeuriez-vous pendant ce temps-là?

R.—A Farm Point.

Q.—A quelle distance vous trouviez-vous à demeurer de l'usine génératrice?

R.—Seize (16) pieds.

Q.—Aviez-vous un système quelconque qui vous avertissait quand il y avait du trouble sur la ligne?

In the
Superior Court
No. 79.
Plaintiff's
Evidence.
(Supp. Hearing)
J. Frederick,
Examination
Oct. 11th, 1932.
(continued)

- R.—J'avais une lampe pendue à douze (12) pouces de ma figure.
Q.—Qu'est-ce qui arrivait quand il y avait du trouble?
R.—Cela s'éteignait, cela me réveillait.
Q.—Cette lampe s'éteignait s'il y avait du trouble et la dis-
parition de la lumière vous éveillait?
R.—La disparition de la lumière m'éveillait.
Q.—Que faisiez-vous alors?
R.—Je me levais, je remettais mes " switches ".
Q.—Vous cherchiez jusqu'à ce que vous ayez trouvé le trouble?
10 R.—Des fois un coup de vent la jetait à terre et je la remettais,
elle restait.
Q.—Je comprends que quand il arrivait un trouble vous vous
mettiez à chercher où c'était?
R.—Oui.
Q.—Que vous répariez le trouble et remettiez la ligne en état
de fonctionner?
R.—Oui, monsieur.
Q.—A quelles conditions faisiez-vous ce travail pour M. Cross?
R.—J'étais fourni d'eau, j'étais fourni de bois, j'étais fourni de
20 logement, j'étais fourni de lumière.
Q.—Vous aviez votre logement, votre électricité, l'eau et le bois?
R.—Oui, monsieur.
Q.—Maintenant, pour le temps que vous travailliez quand il y
avait du trouble, étiez-vous payé?
R.—Oui, monsieur.
Q.—Combien?
R.—Cinquante cents (50 cts) de l'heure.
Q.—Qu'est-ce que vous faisiez à part cela, à part de réparer le
30 trouble quand il y en avait?
R.—Mon ouvrage, je filais les maisons.
Q.—C'est-à-dire poser les fils pour l'éclairage électrique, ou
courant électrique pour autres fins dans les maisons?
R.—Oui. Plombier.
Q.—Vous étiez plombier en même temps?
R.—Oui, monsieur.
Q.—Vous vous occupiez des systèmes d'aqueduc?
R.—Je m'occupais des systèmes d'aqueduc, de la vente des
" pipeless furnaces ", des moulins à laver, agent pour Connors.
40 Q.—Pouvez-vous nous dire combien il y avait de clients de ce
système électrique de M. Cross, en mil neuf cent vingt-six (1926)?
R.—Quatre cent vingt-quatre (424).
Q.—Quatre cent vingt-quatre (424) édifices qui prenaient l'é-
lectricité?
R.—Sur la ligne.
Q.—Les avez-vous comptés?
R.—Oui, monsieur.

In the
Superior Court

No. 79.
Plaintiff's
Evidence.
(Supp. Hearing)
J. Frederick,
Examination
Oct. 11th, 1932.
(continued)

Q.—Je vois que vous avez un livret entre vos mains, dans lequel M. MacRostie a écrit " Information used in estimate on transmission line ", qui a fait le décompte énuméré dans ce livre?

R.—C'est moi-même.

Q.—Voulez-vous produire ce livre comme pièce P-108?

R.—Oui, monsieur.

Q.—A la demande de qui avez-vous ainsi compter les maisons qui étaient fournies d'électricité par le système de M. Cross?

R.—A la demande de M. Cross.

10 Q.—Je vois que dans ce livre il y a à plusieurs pages diverses colonnes, que dans les colonnes il y a quatre petits traits verticaux et un trait horizontal, quest'ce que cela veut dire?

R.—Cinq lignes.

Q.—Vous mettiez un trait vertical pour chaque chose que vous comptiez, et quand vous en aviez quatre vous mettiez un trait horizontal?

R.—Qui comptait pour le cinquième.

20 Q.—Chacune de ces figures, consistant en quatre traits verticaux et un trait horizontal, représente cinq?

R.—Veut dire cinq.

(Objecté par Me Ker, C.R., à la production de ce livre).

Objection réservée.

Q.—Je vois qu'à l'avant dernière page indexée C il y a un résumé: " Buildings 424. Primary polls 809. Secondary 1138. Loops 424. Transformers 52 ", qui a écrit cela?

R.—C'est moi.

30 Q.—Est-ce là le résultat du compte que vous avez fait?

R.—Oui, monsieur.

Q.—Qu'est-ce que cela veut dire, ces mots " Primary polls " ?

R.—Des poteaux sur lesquels passent les hauts voltages.

Q.—Les poteaux qui portent les fils de hauts voltages?

R.—De hauts voltages.

Q.—" Secondary polls " ?

R.—Poteaux qui portent de 110 à aller à 220.

Q.—Ce sont des poteaux qui portent des fils chargés d'un courant de 110 à 220?

40 R.—Qui vont aux maisons.

Q.—Et qu'est-ce que veut dire le mot " loop " ?

R.—C'est la broche qui part de la maison et qui va au poteau du 110.

Q.—A la première page je constate qu'il y a d'écrit au crayon de plomb des chiffres 135, 135, 150, un average de 135, est-ce vous qui avez écrit cela?

R.—Non.

In the
Superior Court

No. 79.
Plaintiff's
Evidence.
(Supp. Hearing)
J. Frederick,
Examination
Oct. 11th, 1932.
(continued)

- Q.—Alors votre témoignage ne porte pas sur cela, votre témoignage porte sur ce qui est écrit à l'encre?
R.—Sur ce qui est écrit à l'encre.
Q.—Combien y avait-il de bâtisses se servant de l'électricité à Kirk's Ferry?
R.—Soixante (60).
Q.—Qu'est-ce qui est arrivé de cette partie du système qui servait pour Kirk's Ferry lorsque l'eau a été montée?
R.—Il a disparu avec l'eau.
- 10 Q.—Est-ce que l'exhaussement du niveau de l'eau a eu quel-
qu'effet sur aucune autre partie du système à Cascades?
R.—Certaine partie du Secondary qui a resté, on n'était pas capable de la faire fonctionner sans avoir le Primary qui a été noyé.
Q.—Combien y avait-il d'édifices éclairés par cette partie du système à Cascades qui s'est trouvée noyée?
R.—C'est pas mal difficile de le dire. Ce n'était plus serviable pour nous autres, on n'a pas compté cela séparément, on ne s'en est plus bâdré, c'est perdu.
- 20 Q.—Combien y avait-il de bâtisses éclairées, ou se servant de l'électricité à Cascades?
R.—Cinquante-quatre (54).
Q.—Quelle partie de ces 54 s'est trouvé affectée par l'élévation de l'eau?
R.—La partie sud.
Q.—Et quelle proportion des 54 y avait-il dans cette partie sud? Etait-ce le quart, la moitié, le dixième?
R.—La plus grosse majorité.
Q.—Vous voulez dire plus que la moitié?
- 30 R.—Oui, monsieur.
Q.—Plus que la moitié des 54 se trouvait dans cette partie sud?
R.—Oui.
Q.—Maintenant, en mil neuf cent vingt-six (1926) dans quel état était votre ligne?
R.—Elle était de première classe. Qu'est-ce qui prouve qu'elle était de première classe c'est qu'on n'a jamais blessé personne, on n'a jamais tué personne.
Q.—Quand la partie de la ligne de Cascades à Kirk's Ferry avait-elle été construite?
- 40 R.—En mil neuf cent vingt-quatre (1924).
Q.—Est-ce que ç'avait été construit avec de vieux matériaux, ou du matériel neuf?
R.—Tout en neuf: transformers neufs, poteaux neufs, broche neuve.
Q.—Et quand l'autre partie du système avait-ell été construite?
R.—En 1912, 1913.

In the
Superior Court

No. 79.
Plaintiff's
Evidence.
(Supp. Hearing)
J. Frederick,
Examination
Oct. 11th, 1932.
(continued)

Q.—Commencée en 1912 et 1913?

R.—Oui.

Q.—Est-ce vous qui en aviez eu constamment l'entretien depuis mil neuf cent douze (1912) jusqu'en mil neuf cent vingt-six (1926)?

R.—Oui, monsieur.

CONTRE-INTERROGE PAR Me KER, C.R.,
PROCUREUR DE LA DEFENDERESSE:

Cross-examination

10 Q.—C'est vous qui étiez le seul employé de M. Cross pour la réparation de ces lignes, n'est-ce pas?

R.—Oui, monsieur.

Q.—Et vous êtes entré à l'emploi de M. Cross en quelle année?

R.—Depuis que je suis à son emploi, du commencement. Depuis les vingt-sept ans, cela doit faire mil neuf cent cinq (1905).

Q.—Et c'est avant que l'usine, le pouvoir ait été construit, n'est-ce pas?

R.—Oui, monsieur.

20 Q.—Et après que la construction fut faite, en mil neuf cent douze (1912) je pense, vous étiez là et vous avez aidé à la construction?

R.—Le " power-house " et la ligne.

Q.—Vous dites que vous aviez des troubles et des interruptions sur la ligne?

R.—Ce n'était pas le mouvement perpétuel, il y a toujours des troubles.

Q.—Si c'était durant la nuit, vous demeuriez très près?

R.—A seize pieds.

30 Q.—Et vous aviez une lumière?

R.—Comme à douze pouces de ma figure.

Q.—Est-ce qu'il y a une sonnette sur la lumière?

R.—Non. Si elle s'éteint je me réveille.

Q.—Ce petit livre que vous avez produit, où avez-vous pris l'information qui est contenue dans ce livre, pour faire le calcul?

R.—Cela, je le savais depuis longtemps.

Q.—Vous n'êtes pas allé sur la ligne pour compter les poteaux?

R.—Pour savoir le montant dedans?

Q.—Oui?

40 R.—J'ai marché la ligne d'un bout à l'autre, à chaque poteau je faisais une barre.

Q.—Vous avez compté les poteaux les uns après les autres?

R.—Oui, et quand j'arrivais à 5 je mettais une barre de travers.

Q.—Est-ce qu'il y a des fils, pour les fils " secondary ", qui sont amenés sur les mêmes poteaux que les fils " primary " ?

R.—Oui.

Q.—Est-ce que vous avez compté ces poteaux deux fois: une

*In the
Superior Court*

No. 79.
Plaintiff's
Evidence.
(Supp. Hearing)
J. Frederick,
Cross-examination
Oct. 11th, 1932.
(continued)

fois pour les "secondary" et une autre fois pour les "primary"?

R.—Certainement.

Q.—Combien de poteaux avez-vous sur le système complet?

R.—Dans les onze cents et quelque chose. C'est marqué dedans.

Q.—Cela comprend tout le système?

R.—Cela comprend tout le système de "secondary", de "primary". On a plus de "secondary" qu'on a de "primary".

Q.—Combien de "primary" avez-vous?

R.—Dans les neuf cents. Je vais vous le dire au juste.

10 Q.—A peu près deux mille poteaux?

R.—Primary, 809. Secondary, 1,138.

Q.—809 poteaux Primary, est-ce qu'aucun de ces poteaux porte des fils Secondary?

R.—Oui, monsieur, il y en a.

Q.—Est-ce que vous avez compté comme poteaux Secondary les mêmes poteaux?

R.—Il y en a.

20 PAR Me ST. LAURENT, C.R.:

Q.—Avez-vous compté le même poteau deux fois?

R.—Si le Secondary passait dessus?

Q.—L'avez-vous compté deux fois? A-t-il compté pour deux poteaux, ou un poteau?

R.—Il a compté pour deux poteaux. La dépense est là pareille, il faut mettre les "cross-arms", les "braces".

PAR Me KER, C.R.:

30 Q.—Sur cette partie de la ligne qui va de Cascades à Kirk's Ferry, combien de poteaux submergés avez-vous?

R.—228 poteaux Primary, 206 Secondary dans Kirk's Ferry.

Q.—C'est sur la division de Cascades à Kirk's Ferry?

R.—Il y a Cascades à part cela.

Q.—Vous ne comprenez peut être pas ma question. Pouvez-vous me dire combien de poteaux de Cross étaient actuellement submergés, de poteaux individuels peu importe si les Secondary et les primary sont sur le même poteau, ne comptez pas deux poteaux par le fait que vous avez le secondary?

40 R.—Cascades n'est pas tout submergé.

Q.—Mais la partie sud vous avez dit?

R.—Il peut y avoir vingt-cinq (25) poteaux dans Cascades.

Q.—Vingt-cinq (25) poteaux qui étaient affectés à Cascades?

R.—Vingt-cinq (25) poteaux qui étaient affectés à Cascades.

Q.—Après cela vous avez combien de poteaux, à part de Cascades, plus bas que Cascades, à Kirk's Ferry, qui étaient affectés, submergés?

*In the
Superior Court*
No. 79.
Plaintiff's
Evidence.
(Supp. Hearing)
J. Frederick,
Cross-examination
Oct. 11th, 1932.
(continued)

- R.—Je l'ai dit tout à l'heure, c'est le montant que j'ai donné.
Q.—206 et 228?
R.—Oui, monsieur.
Q.—434 poteaux?
R.—228 et 206, 434.
Q.—Vous en êtes maintenant sur le principe que vous avez adopté la première fois, il y a des cas où les "secondary" . . . ?
R.—Ce sont ces poteaux-là qui portaient notre secondary.
Q.—Ce sont les mêmes poteaux qui porteraient. . . . ?
10 R.—Il y avait deux "cross-arms", des "pins", des "insulations", des "braces", des "screws".
Q.—Et vous avez 228 Primaries?
R.—228 primaries.
Q.—Sur ces 228 primaries vous portez aussi des services secondaries?
R.—Non, il y en a d'autres.
Q.—Il y en a d'autres qui portaient sur les secondaries?
R.—Oui.
Q.—Combien portaient seulement les secondaries?
20 R.—206. On s'éloigne dans les montagnes, les secondaries ne vont pas là.
Q.—Cela comprend aussi les poteaux qui étaient sur les propriétés des abonnés, pour amener les fils à leurs maisons, n'est-ce pas?
R.—Le Primary ne se rendait pas là.
Q.—Mais le Secondary?
R.—On bâtit les lignes dans les chemins, dans les concessions.
Q.—Si j'ai bien compris vous avez dit que vous aviez 60 mai-
30 sons ou constructions sur la ligne Kirk's Ferry?
R.—Oui.
Q.—Et à Cascades vous aviez 54 constructions, mais elles n'étaient pas toutes affectées, toute la ligne à Cascades n'était pas affectée?
R.—Non.
Q.—Quelle proportion de ces 54 constructions était actuellement affectée à Cascades?
R.—La plus grosse majorité.
Q.—Vous ne pouvez pas le dire actuellement?
40 R.—Il faudrait que je réfléchirais une bonne secousse. Je ne peux les compter, je me rappelle du chemin parfaitement.
Q.—La moitié était affectée?
R.—Plus que la moitié.
Q.—Vous dites qu'il y avait 424 constructions en mil neuf cent vingt-six (1926)?
R.—424 constructions sur toute la longueur de la ligne.
Q.—Cela ne veut pas dire que vous avez 424 abonnés?

In the
Superior Court

No. 79.

Plaintiff's
Evidence.
(Supp. Hearing)
J. Frederick,
Cross-examination
Oct. 11th, 1932.
(continued)

R.—424 abonnés, 424 constructions qui se servaient de la lumière électrique.

Q.—De ces 424, combien de constructions étaient occupées par les employés de M. Cross à Farm Point?

R.—Il doit y en avoir comme dix-huit (18). Ils étaient des abonnés quand même, ils payaient leur courant la même chose.

Q.—Je ne vous demande pas cela, je demande sur ces 424 constructions combien y en avait-il qui étaient actuellement la propriété de M. Cross, le demandeur?

10 R.—Aux alentours de dix-huit (18), je crois bien.

Q.—Nous avons ici 40 constructions que le demandeur prétend avoir été affectées par l'inondation, n'est-il pas vrai que ces 40 constructions. . . . ?

R.—40 bâtiments.

Q.—Ils avaient tous l'électricité, n'est-ce pas?

R.—Tous l'électricité.

Q.—C'est-à-dire au moins 40 de ces 424 constructions étaient actuellement la propriété de M. Cross?

20 R.—Comment?

Q.—N'est-il pas vrai qu'il y a actuellement 40 constructions?

R.—Oui, 40 constructions.

Q.—Qui étaient la propriété de M. Cross, le demandeur?

R.—Oui.

Q.—Et qui sont comptées dans cet estimé de 424 constructions?

R.—Certainement.

Q.—Vous dites qu'il y avait 60 constructions à Kirk's Ferry?

R.—60 constructions, oui.

30 Q.—Pouvez-vous nous dire combien de ces constructions étaient sur les propriétés achetées par la compagnie?

R.—Il y en a plusieurs toujours, tout le village a disparu complètement.

Q.—La plus grande majorité, n'est-ce pas?

R.—Oui, parce que le village a disparu complètement.

Q.—Le village est actuellement disparu, et la compagnie a acheté presque toutes les propriétés?

R.—Je ne peux pas dire, je n'ai pas suivi les contrats.

Q.—Maintenant à Cascades vous avez 54 constructions?

R.—54.

40 Q.—Et vous dites que la plus grande majorité de ces constructions étaient affectées?

R.—Oui.

Q.—Combien de maisons ainsi affectées avaient été achetées par la compagnie avant que l'inondation ait lieu?

R.—Je ne sais pas s'ils ont acheté, ou s'ils ont promis d'acheter, c'est une chose que je ne peux pas dire, je ne travaille pas pour eux.

Q.—Il y en a plusieurs?

In the
Superior Court

No. 79.
Plaintiff's
Evidence.
(Supp. Hearing)
J. Frederick,
Cross-examination
Oct. 11th, 1932.
(continued)

R.—Ils peuvent dire qu'ils ont acheté ou qu'ils n'ont pas acheté, parce que je connais bien des gens et je ne sais pas si c'est réglé encore.

Q.—Comme question de fait il est à votre connaissance que par les opérations de la compagnie l'eau a refoulé et a inondé la partie de Cascades et presque tout le chemin, tout le petit village de Kirk's Ferry?

R.—Oui.

Q.—Et la compagnie a acheté toutes les propriétés?

10 R.—Je ne peux pas le dire sans avoir vu, je ne le sais pas. Je pourrais bien penser que M. Cross a été payé, sa propriété a été noyée, je peux penser qu'il a été payé, mais je ne le sais pas.

Q.—Pouvez-vous nous dire combien de constructions M. Cross a maintenant sur ses lignes?

R.—Non, parce que depuis on a changé les taux, ils ont été haussés, il y en a plusieurs qui ont abandonné.

Q.—Il a perdu des abonnés?

R.—Il a perdu des clients.

Q.—Depuis quand?

20 R.—Depuis les deux ans.

Q.—Quand vous vous occupiez des réparations, vous vous occupiez encore des réparations des lignes et de tout cela pour M. Cross?

R.—Oui, monsieur.

Q.—Vous avez commencé ces réparations quand l'usine a été construite?

R.—Après qu'elle a été en mouvement.

30 Q.—Pendant les années de mil neuf cent vingt-et-un (1921) jusqu'en mil neuf cent vingt-six (1926) vous étiez chargé de faire les réparations et tout cela?

R.—Oui, monsieur.

Q.—A cinquante cents de l'heure?

R.—Oui, monsieur.

Q.—Pouvez-vous estimé combien vous avez gagné chaque année en faisant ces réparations?

40 R.—Des années que je gagnais un peu plus que d'autres, des années cinquante dollars, d'autres années soixante-et-quinze dollars, d'autres années une centaine de dollars, cela variait. C'est à peu près cela.

Q.—Vous avez gagné j'espère quelque chose chaque année?

R.—Je travaille à part cela, je travaille dans le plombage.

Q.—A cinquante cents de l'heure comme vous parlez, vous avez gagné quelque chose chaque année pour ces réparations, n'est-ce pas?

R.—Oui, monsieur.

In the
Superior Court

No. 79.
Plaintiff's
Evidence.
(Supp. Hearing)
J. Frederick,
Cross-examination
Oct. 11th, 1932.
(continued)

- Q.—A votre connaissance il n'y a pas une année où il n'y avait pas quelque chose à faire durant l'année?
- R.—Je parle des réparations, pas toujours sur la " main line ".
- Q.—Je ne vous demande pas cela, je demande si entre les années mil neuf cent vingt-et-un (1921) et mil neuf cent vingt-six (1926) il y a eu une année où il n'a pas été nécessaire de faire aucune réparation sur les lignes de M. Cross?
- R.—Il y a des années que je n'ai pas eu plus que dix dollars. C'est bien long de se rappeler dans vingt ans de temps.
- 10 Q.—Dans l'hiver?
- R.—L'hiver, rien du tout. Un peu de réparation, quand il y a des tempêtes en été, changer des " fuses ". Cela n'affecte pas toute la ligne, cela affecte peut être un " transformer ".
- Q.—Quand avez-vous fait le calcul qu'il y a dans votre cahier?
- R.—En mil neuf cent vingt-six (1926).
- Q.—Dans quel mois?
- R.—Dans le mois de septembre, je pense.
- Q.—Vous êtes allé sur la ligne?
- 20 R.—D'un bout à l'autre.
- Q.—Vous étiez seul?
- R.—Seul.
- Q.—Est-il à votre connaissance que M. Cross soit allé voir chacun de ses abonnés?
- R.—Je ne le sais pas.
- Q.—Et vous ne pouvez pas dire combien de constructions vous avez sur la ligne maintenant?
- R.—Non, parce qu'on en a gros d'ôté, il y en a beaucoup d'ôté.
- Q.—Pour d'autres raisons que le refoulement des eaux?
- 30 R.—Le courant est haussé, ils n'aiment pas les taux, ils abandonnent.
- Q.—Ils n'aiment pas à payer les taux de M. Cross?
- R.—Non, les clients n'aiment pas les taux depuis deux ans.
- Q.—Et vous ne pouvez pas du tout donner aucun estimé des constructions qui sont là maintenant?
- R.—Vous aimeriez l'avoir au juste, il faudrait que je les compterais. Si j'avais fait un " guess " dans mon livre, vous ne le prendriez pas.
- Q.—Connaissez-vous le nombre des abonnés maintenant?
- 40 R.—On peut l'avoir.
- Q.—C'est vous qui avez fait la lecture des compteurs?
- R.—Non.
- Q.—La seule fois que vous êtes allé pour faire une liste des poteaux et tout cela c'était en mil neuf cent vingt-six (1926)?
- R.—Mil neuf cent vingt-six (1926).
- Q.—Si je me rappelle bien vous avez dit qu'une partie de la ligne entre Cascades et Kirk's Ferry était pratiquement neuve?

*In the
Superior Court*
No. 79.
Plaintiff's
Evidence.
(Supp. Hearing)
J. Frederick,
Cross-examination
Oct. 11th, 1932.
(continued)

R.—Elle était neuve sur toute la longueur.

Q.—Pour quelle distance? De Cascades à Kirk's Ferry c'est une affaire de trois, quatre milles?

R.—La longueur, je ne l'ai pas mesurée.

Q.—Vous dites que ç'a été construit en mil neuf cent vingt-quatre (1924), mil neuf cent vingt-cinq (1925)?

R.—Oui.

Q.—Avant mil neuf cent vingt-quatre (1924) il n'y avait pas d'électricité à Kirk's Ferry?

10 R.—Non.

Q.—Il n'y avait pas d'électricité à Mileage 12?

R.—Oui, il y avait un moulin à scie qui marchait là.

Q.—Mais vous n'aviez pas de courant pour le moulin à scie avant mil neuf cent vingt-quatre (1924) si la ligne n'était pas construite?

R.—Mileage 12 n'est pas dans Kirk's Ferry, c'est avant d'arriver, plus haut.

Q.—La ligne de Mileage 12, quand a-t-elle été construite?

20 R.—En mil neuf cent vingt (1920).

Q.—Dans ces circonstances c'est clair que toute la ligne de Cascades à Kirk's Ferry n'était pas construite en mil neuf cent vingt-quatre (1924)?

R.—Pas partant de Cascades, partant de Mileage 12.

Q.—La partie entre Cascades et Mileage 12 a été construite quand?

R.—Construite en 1920.

Q.—Cela, c'est la plus grande partie de la distance entre Cascades et Kirk's Ferry?

30 R.—Non, il n'y a pas grande différence.

Q.—La moitié?

R.—Il n'y a pas grande différence entre les deux.

Q.—Si c'est la moitié de la distance entre Cascades et Kirk's Ferry, cette partie de la ligne de Cascades à Mileage 12 a été construite en mil neuf cent vingt (1920)?

R.—Autour de cela, je n'ai pas marqué l'année.

Q.—Et c'est la balance de la ligne entre Mileage 12 et Kirk's Ferry qui a été construite en mil neuf cent vingt-quatre (1924) ou mil neuf cent vingt-cinq (1925)?

40 R.—En 1924.

Q.—Je vois sur la troisième page, après la lettre C, l'entrée à l'encre: Building Primary, quand avez-vous fait ces entrées-là?

R.—En 1926.

Q.—Les entrées à l'encre?

R.—Oui.

Q.—Et les 52 "transformers", vous les avez comptés vous-même?

*In the
Superior Court*
No. 79.
Plaintiff's
Evidence.
(Supp. Hearing)
J. Frederick,
Cross-examination
Oct. 11th, 1932.
(continued)

R.—Oui, monsieur.
Q.—“ Buildings served, 384 ”?
R.—Ce n'est pas mon écriture cela.
Q.—Vous le savez pas?
R.—Cela doit être M. MacRostie. Il a mesuré la distance de la
“ main line ”.
Q.—Vous n'avez pas entré cela?
R.—Pas dans cette page-là.

10 (Et le déposant ne dit rien de plus).

*In the
Superior Court*
No. 76.
Plaintiff's
Evidence.
(Supp. Hearing)
F. T. Cross,
Examination
Oct. 12th, 1932.
(continued)

DEPOSITION OF FREEMAN T. CROSS, A WITNESS RE-
CALLED ON BEHALF OF THE PLAINTIFF.

20 On this twelfth day of October, in the year of our Lord one
thousand nine hundred and thirty-two, personally came and re-
appeared

FREEMAN T. CROSS (recalled),

a witness already examined, now recalled on behalf of the Plaintiff,
who, being duly sworn, doth depose and say as follows:

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

30 Q.—When I examined you yesterday, by inadvertence I omitted
to ask you how many meters you had on that system prior to 1926?

A.—My first purchase was two hundred.

Q.—When were those two hundred installed?

A.—In the year 1920, I think, to the best of my knowledge.

Q.—And how long were they in?

A.—They were in for five years.

Q.—What happened after five years?

A.—They were taken out for Government inspection.

40 Q.—When they were taken out for this inspection, where were
they placed?

A.—They were placed in the house that was flooded at Farm
Point and remained there until they were put in by the Commission.

Q.—You say they were placed in the house that was flooded?

A.—Yes.

Q.—In one of the houses that had been flooded by raising the
level of the water?

In the
Superior Court

No. 76.
Plaintiff's
Evidence.
(Supp. Hearing)
F. T. Cross,
Examination
Oct. 12th, 1932.
(continued)

A.—Yes.

Q.—Then they were taken out about 1925 and brought down to Farm Point for inspection?

A.—Five years after they were installed we were supposed to take them out. About five years after they were taken out, in the neighbourhood of five years.

Q.—You say they remained in that house at Farm Point until the Commission ordered them put back?

A.—Yes.

10 Q.—And when was that? I am not asking the exact date?

A.—1927 or 1928.

Q.—Was it before or after the waters of the Gatineau River were raised?

A.—After the Gatineau waters were raised.

Q.—And you only have two hundred meters?

A.—Yes.

Q.—How are you getting along with the rest of your customers?

20 A.—They were on a flat rate, and summer people who are not big users; we let them go on a flat rate. There were arrangements made for others that we supplied current.

Cross-examination

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

Q.—Do I understand you wish it to be understood that in the year 1920 you had something over two hundred meters installed?

A.—Not over two hundred, two hundred.

Q.—Exactly two hundred?

30 A.—Yes.

Q.—And that you took those two hundred meters out in 1925?

A.—About the year 1925.

Q.—For what purpose?

A.—For inspection.

Q.—Do you mean to tell me that the Montreal Light, Heat and Power Company takes out all its meters for inspection?

A.—I had been ordered to take them out.

Q.—Who ordered you to take the meters out?

40 A.—I am trying to tell you. The office is on Queen Street, for the gas, electric and the Government inspection. They sent up a man there, a Government man to test them. This year they were tested, this fall on the order given by the Government.

Q.—Will you tell me under whose instructions you took out all those meters?

A.—I don't know the man's name. I know he is a Government man for that purpose.

Q.—Do you know of any other time in history when people have

*In the
Superior Court*

No. 76.
Plaintiff's
Evidence.
(Supp. Hearing)
F. T. Cross,
Cross-examination
Oct. 12th, 1932.
(continued)

taken out two hundred meters and have left them out for two years for Government inspection?

A.—I say they remained out. They were never put back again.

Q.—I know they were not put back, but I ask why they were not?

A.—Some were played out, I could not put them back. Where they remained, the whole line was disorganized. There was nothing for me to do with it.

10 Q.—You took them out in 1925, is that right?

A.—I said about the year 1925. If they were put in in 1919, they were taken out five years later as I was ordered, but if I was ordered to take them out in a month, or half a year or six months, I could not tell you.

Q.—Of course, there was no water up in 1925?

A.—No, there was no water up in 1925.

Q.—Consequently, there was no reason, when you took your meters out, why they should be flooded?

A.—All I do know

20 Q.—Will you please answer my question?

A.—The year the flooding came through at Kirk's Ferry was the summer, the brushing; the meters were taken out. That may have been in 1920 or 1921. The dates will speak for themselves. You need to get those dates.

Q.—I am sorry to say that your evidence on discovery is just shot with answers to questions backwards. I wish you would answer my question just as shortly and as intelligently as you can: I understand by your statement that you took out your meters for inspection purposes in 1924 or 1925, five years after they had been put in?

30 A.—If they were placed in order in 1921, they would be ordered out in the summer of 1926 or 1927.

Q.—You put them in in 1920, and took them out in 1925?

A.—If they were put in in the fall of 1921 and then taken out in the summer in the following year—I do know those meters were taken out when the flooding started to take place at Kirk's Ferry and the damage occurred. That is what I do know. Now, for dates I am not going to say exactly within a year, because I don't know.

40 Q.—Am I to understand the statement which you made to your counsel was that meters were put in 1920 and taken out in 1925, is that what you mean?

A.—To the best of my knowledge it would be about 1925 they were taken out, if they were put in in 1920.

Q.—And taken out around 1925?

A.—They were probably taken out the next summer, in 1926 probably.

Q.—In 1926 the whole of the meters in your whole system were taken out for the purpose of inspection?

*In the
Superior Court*

No. 76.
Plaintiff's
Evidence.
(Supp. Hearing)
F. T. Cross,
Cross-examination
Oct. 12th, 1932.
(continued)

A.—Yes.

Q.—On direct orders from whom?

A.—The Government inspection.

Q.—The Government inspection? Who ordered you to take out all the meters?

A.—I don't know the man's name.

Q.—Do you mean to tell me he told you to take your entire meter system and leave them out for two years for the purpose of inspecting the meters?

10 A.—He did not tell me to leave them out for two years.

Q.—They were left out for two years.

A.—Yes.

Q.—And you only put them back because the Quebec Public Service Commission ordered you to put them back?

A.—Yes.

Q.—So for two years, after those meters were out, nobody had meters?

A.—No.

20 Q.—How were you keeping track of your accounts?

A.—It is very easily answered.

Q.—Well, answer it?

A.—They were running the same rate as they were under. They were satisfied. They were not eager for them to go back again as far as that is concerned.

Q.—In other words, you just got them on trust, where a man had a meter for five years, you took his meter and left it out for two years?

30 A.—Well, there was not much trust about it; they were getting very little, between one thing and another with what happened at the Gatineau Power. I had very little to give them, when the draft tube was submerged I had nothing to give them.

Q.—I am not asking about draft tubes. We want to get on with this case. The Quebec Public Service Commission ordered you to put back those meters—for what reason?

A.—For the reason that some would not pay me anything at all for the service they were getting, and others were willing to pay.

40 Q.—Is it not a fact that the Quebec Public Service Commission ordered you to put those meters back because there was absolutely a riotous waste of current by the people who were on the flat rate?

A.—I would not say that.

Q.—Why were you ordered to put the meters back?

A.—As I understand, it is against the rules, everyone should be on a flat rate, so I ordered the meter system installed, and everyone had it, even myself. I put in a meter in my own home which never was done before.

*In the
Superior Court*
No. 76.
Plaintiff's
Evidence.
(Supp. Hearing)
F. T. Cross,
Cross-examination
Oct. 12th, 1932.
(continued)

Q.—So you could not use a lot of current on the flat rate which was going to interfere with somebody else's service?

A.—I was never put off my current.

Q.—I suppose that is an answer of some kind; is it not true that the Quebec Public Service Commission ordered you to put back those meters immediately?

A.—Yes.

Q.—And how many meters did you put back?

10 A.—I put back the two hundred. I had to buy something like thirty-eight meters more, and Kirk's Ferry was cut off the line at that time. Kirk's Ferry and Cascades were off the line.

Q.—You had two hundred, and you had to buy thirty-eight more?

A.—I think thirty-eight, to the best of my knowledge.

Q.—So everybody was on a meter then?

A.—Yes.

Q.—So you had 238 customers at that time?

A.—Yes.

20 Q.—That was two years after the water was up?

A.—About that.

Q.—Two years after the water was up, you had 238 customers still going on in your system?

A.—Yes.

Q.—How many did you have before the water was put up?

A.—In the neighbourhood of 300, somewhere thereabouts.

Q.—So the total reduction in your customers after the water went up was somewhere about 50, 55 or 60, is that right?

A.—Yes.

30 Q.—There were about 60 customers lost to you after the water went up?

A.—Yes.

Q.—And of those sixty, how many involved lands or constructions upon which houses were built, which the Company had purchased and dispossessed the people?

A.—I could not tell you that.

Q.—The large part of them were, were they not?

A.—Yes.

40 Q.—Are you in earnest in believing that this Company should compensate you for the loss of those customers?

Mr. St. Laurent: I object to this question as not being a matter for cross-examination.

His Lordship: That is a question for the Court to decide.

BY MR. KER:

*In the
Superior Court*

No. 76.
Plaintiff's
Evidence.
(Supp. Hearing)
F. T. Cross,
Cross-examination
Oct. 12th, 1932.
(continued)

Q.—Are you making a claim for compensation for the loss of customers which the Company submerged?

A.—Any customer on the land from one end to the other I am making a claim. The draft tube is submerged. The line is out of order; the transformers are on the bottom of the river.

Q.—Am I to understand you are making a claim that you have lost sixty customers altogether, all of whom are submerged by the Company, their lands having been bought by the Company, you are asking the Company to pay you for every customer on the land?

10 A.—Yes. If the Company's plant is out of order, they are all out of order.

Q.—I wanted to ask you about these names that you referred to yesterday on being questioned by your counsel. You referred to about fifty or sixty names?

A.—Yes.

Q.—And, as far as I remember, you said A was paying me \$50.00, B was paying me \$100.00 a year, C was paying so much, and so on?

20 A.—Yes.

Q.—When were they paying you those sums?

A.—Up to 1926, and from 1920 there was regular current and along from the time the first meter was put in, the reason the rates ran up was, when the water was put in, and there was a basis and understanding on which they were to pay me.

Q.—I am asking you in respect to your evidence of yesterday in which you referred to certain people paying you certain sums per year, to what year were you referring? Were you referring from the years 1920 to 1926?

30 A.—Yes.

Q.—That has no reference to what these people have paid you since that time?

A.—No.

Q.—So that really this is a matter, six years afterwards, that you come before the Court and from memory tell the Court what you believe in a general way, to have been what these people were paying you per year?

A.—Yes. There is a lot went through my memory in those years, Mr. Ker.

40 Q.—Those estimates were made from memory?

A.—Yes.

Q.—With respect to about fifty of your customers?

A.—Yes.

Q.—I think your memory was enough to carry fifty people in year head. Mrs. S. E. Wilson, for instance, how much did you say she was paying?

A.—\$175.00.

In the
Superior Court

No. 76.
Plaintiff's
Evidence.
(Supp. Hearing)
F. T. Cross,
Cross-examination
Oct. 12th, 1932.
(continued)

Q.—\$175.00 a year?

A.—Yes.

Q.—I see on this Exhibit No. 160, the name of Mrs. S. E. Wilson: I suppose that is the same one that is at Cascades. In fact, she is your sister, is she not?

A.—Yes.

Q.—I see her current account for the month of January, 1922, is \$1.50. How do you account for that? According to this exhibit which you produce her current for that month is \$1.50, which is
10 \$18.00 a year?

A.—I am just stating that I received \$175.00 from Mrs. Wilson. The meter was only read for a matter of form.

Q.—That is all very well, but you produce this?

A.—They are facts. They speak for themselves.

Q.—Mrs. S. E. Wilson is in arrears \$44.51 and her current account for the month is \$1.50?

A.—When I went down to the Cascades, I went purposely for my sister. She has a big hotel to light and I advanced my line a mile and a half to two miles, with the understanding that she would give
20 me \$175.00 a year.

Q.—On the understanding that she would give you \$175.00 a year. I suppose that paid part of the construction for lines?

A.—It helped.

Q.—But that was not the rate she was on? Was not that the kilowatt rate referred to in that exhibit?

A.—The same as all the rest.

Q.—And her bill for the month of January 1921 is \$1.50?

A.—Yes.

Q.—At that time she still owed you \$44.00 of arrears?
30

A.—That is the minimum charge, \$1.50.

Q.—It is the current account.

A.—Yes, the minimum, \$1.50. I did not read this. Is there any kilowatts on that? She just paid me the minimum charge and based it on \$1.50 a month.

Q.—She could not have been using much electricity?

A.—She might have been using \$200.00 worth of electricity for all I know. My memory is not that good to go back on dates, but I do know the minimum charge is marked on that \$1.50 a month.

Q.—If she had been using anything over the minimum.
40

A.—She would not pay more than \$175.00.

Q.—Mr. Cross, let us not carry this matter to points where we cannot understand what you say. I understand this Exhibit P-106 to be a record of meter readings for the dates given?

A.—I never read a meter in my life. It was put in by Mr. Perry.

Q.—You never read a meter in your life?

A.—No.

*In the
Superior Court*

No. 76.

Plaintiff's
Evidence.
(Supp. Hearing)
F. T. Cross,
Cross-examination
Oct. 12th, 1932.
(continued)

Q.—I will refer you to page 26 of your evidence on discovery in which I asked you:

“ Q.—How did you keep track of the amount they owed you from time to time if you kept no books?

10 A.—Those meters were read once a month. I went around and read the meter and brought in their bill. Sometimes I go around myself. Sometimes I send the timekeeper out to collect it and bring it in. Some of them paid me in money and some paid me in material and work.”

A.—Well, I can explain that very nicely. It is just exactly what happened. Mr. Perry, after the meters were installed, read the meters. Sometimes I would go with him.

Q.—You say you never read a meter?

A.—I never read a meter myself.

Q.—Your answer does not jibe with what you stated on discovery?

20 A.—I took a man to read the meters. When I was in the house, I would look up on the wall when the meter was read, but I never took the meter.

BY THE COURT:

Q.—You never looked at the meter to read it at the time?

A.—No.

BY THE COURT:

30 Q.—It was your employee who did that in your presence?

A.—Yes. Some of them would pay me the case. As soon as he would come down off the wall he would say: “ Your kilowatt is so much,” so it is pretty close to reading it.

BY MR. KER:

40 Q.—In any event, these amounts which you have given and which you have been referring to in your evidence are from memory what those various customers paid you?

A.—Yes.

Q.—And they are only from memory? They are not from any entry in the books or anything of the kind?

A.—No.

Q.—How much did you estimate that Mr. George Richardson was paying you?

A.—He paid me over \$100.00 a year.

*In the
Superior Court*

No. 76.
Plaintiff's
Evidence.
(Supp. Hearing)
F. T. Cross,
Cross-examination
Oct. 12th, 1932.
(continued)

Q.—Still, I find that his current account for the same month as Mrs. Wilson is \$3.10?

A.—What month is that.

Q.—That is the month of January, 1922, the only month for which you have produced any return?

A.—He has a garage. He used to charge batteries. Every man driving on the road, he would shove him on the juice. He paid me over \$100.00.

Q.—He is on a meter?

10 A.—Well, in that amount—in the summer months he might be the same, on a meter.

Q.—It was just in the month of January 1922, and his monthly bill was \$3.10?

A.—Yes.

Q.—This, of course, is the only document you have produced to show these meter readings, consequently it is the only document I can rely to control your evidence, Mr. Cross.

20 Mr. St. Laurent: Is that a question or a comment, Mr. Ker?
It does not require an answer.

BY MR. KER:

Q.—Referring again to Mr. G. Earle, how much did you say he was paying you?

A.—He was a witness yesterday—no, he was giving me over \$100.00 a year.

30 Q.—I find in the only record which you have produced of his consumption, he was paying you for the current month \$3.90?

A.—But has a blacksmith shop and a garage as well.

Q.—I do not doubt it, but at the same time, that was his bill for the month.

His Lordship: What month is that?

Mr. Ker: The month of January, my Lord. The only month we have, January, 1922.

40 BY MR. KER:

Q.—All these net amounts I have given you are subject to a discount of ten per cent?

A.—Yes.

Q.—So the account of Mr. Earle, instead of being \$3.90 is \$3.90 less 40 cents, which would be \$3.50?

A.—Yes.

*In the
Superior Court*
—
No. 76.
Plaintiff's
Evidence.
(Supp. Hearing)
F. T. Cross,
Cross-examination
Oct. 12th, 1932.
(continued)

Q.—How much was R. N. Sully paying you?

A.—In the neighbourhood of about \$100.00.

Q.—I see his account for the current month of January is \$5.70 less ten per cent. I take it that is the same Mr. Sully?

A.—Yes.

BY THE COURT:

Q.—What does he do?

10 A.—He has a little flour mill, Your Lordship.

BY MR. KER:

Q.—Was that current that he was using in his saw mill?

A.—Sleeping camps and bunk houses.

Q.—Was that current he was using in his sleeping camps and bunk houses that is referred to here?

A.—R. N. Sully.

20 Q.—I suppose that is the only person whose name is on that list?

A.—That is the only person, R. N. Sully, Lumber Mill.

BY THE COURT:

Q.—Was the saw mill working in the winter?

A.—Yes.

BY MR. KER:

30 Q.—There are only one or two names here, in fact. Henry Cross, is that your brother?

A.—He is a cousin.

Q.—How much is he giving you?

A.—About \$50.00 a year.

Q.—I see by yesterday's evidence, page 319, the following:

“ Q.—H. J. Cross, of Wakefield, is he a relative?

A.—A cousin.

40 Q.—Was he a user of electricity?

A.—Yes.

Q.—How much was he paying?

A.—About \$75. No, that is not right. It should be about \$100. He had a little garage and he used to charge batteries.”

That is the same?

A.—It is not the same. That is Harry Cross; Harry Cross is a

*In the
Superior Court*

No. 76.
Plaintiff's
Evidence.
(Supp. Hearing)
F. T. Cross,
Cross-examination
Oct. 12th, 1932.
(continued)

first cousin of mine, and he paid me in the neighbourhood of about \$60.00 a year.

Q.—I find his current account in January is \$2.40, less 20 cents, so that in practically every case I have been able to cite to you, the only record which you have been able to produce for current consumed does not bear out your case as to the amount those people were giving you?

A.—To the best of my memory.

10 Q.—On the whole, what was your distribution business doing in 1926 before the time that this flooding took place; were you operating it at a profit?

A.—I never did anything else. That is what it was put up for, to make a profit.

Q.—How is it you have arrived at that conclusion. In your examination on discovery I asked you this question:

“ Q.—Do you know or do you not know whether you have made any money on this system since 1926?”

20 and you say:

“ A.—No living man can take the electric business from my lumber business.”

That is your answer. And the next question is:

“ Q.—Did you make any money with your electric system in 1926?”

30 Mr. Scott objected to this question in regard to anything that occurred after the flooding and in spite of your counsel's objections you say, “ I don't know ”.

I then asked you, “ Did you make any money in the year 1925 ”, and you answer:

“ I don't know. When you speak of the electric system, I don't know.”

40 Then I asked you:

“ Did you make any money in 1924?”

And you say:

“ I don't know.”

*In the
Superior Court*

No. 76.
Plaintiff's
Evidence.
(Supp. Hearing)
F. T. Cross,
Cross-examination
Oct. 12th, 1932.
(continued)

Is that right? Do you know or do you not know?

A.—I never knew in my business one year how much money I made, in one year from the time I started business till I finished.

Q.—Did you furnish the Government with income tax returns?

Mr. St. Laurent: I object to this question as being declared confidential by the Statutes.

10 (The Court reserves the objection.)

BY MR. KER:

Q.—Did you file income tax returns?

A.—I did not myself, but Mr. Milne filed them for me.

Q.—I suppose you signed them yourself?

A.—Yes.

Q.—For every year?

A.—He is figuring out the income.

20 Q.—For every year?

A.—Since it started.

Q.—Did you file one for 1917?

A.—I could not just say the year.

Q.—Did you file one for 1918?

A.—Each year I left it entirely with my auditor.

Q.—I am asking you a simple question?

A.—I left it in good hands, Mr. Milne the auditor.

30 Q.—I am asking you probably the simplest question any business man could have possibly put to him: have you rendered an income tax return for the years you have been obliged to render one?

A.—I worked entirely on the instructions of my auditor, and if he asked for them he got them and filed the income return in the regular way.

Q.—Will you tell me whether or not you have filed an income tax return for the years from 1917 to 1926, each year?

A.—I could not say.

Q.—You don't know: is that your answer?

40 A.—I said I left it entirely with him. If he missed one year and the Government got after him, the next year maybe we got it straightened out.

Q.—You allege in your declaration you were making \$20,500 a year from your lumber business and for some years previous to the raising of the water \$8,000 a year out of your electric business. Will you tell me under those circumstances whether you are prepared to say whether or not you rendered an income tax. By your declaration you are claiming revenue amounting to \$28,500 per year for many years before 1926. Did you render an income tax return each year?

*In the
Superior Court*
No. 76.
Plaintiff's
Evidence.
(Supp. Hearing)
F. T. Cross,
Cross-examination
Oct. 12th, 1932.
(continued)

A.—To the best of my knowledge they were rendered each year.

Q.—That is not an answer to my question?

A.—Well, it is the only answer I can give you. I left it entirely with the auditor.

Q.—Have you any idea yourself what went into your income tax return?

A.—Not each year, no.

Q.—Can you tell me any year what went into it?

A.—Not now, no.

10 Q.—Can you produce copies of your income tax?

A.—I have no copies. They are with Mr. Murray Milne.

Q.—I suppose there is no difficulty about your getting them?

A.—He will produce them.

20 Q.—No he won't. I am asking you to produce them. He is your auditor. I have not any right to demand them from him; I am asking you to produce them. As a matter of fact, on discovery I asked you to produce everything which had any bearing on your revenues and expenditures in this business, and you produced nothing. You promised to produce all Mr. Milne's statements. I asked you to produce them at the trial and on your examination on discovery you referred us to Mr. Milne, but you have not produced anything?

Mr. St. Laurent: I object to this question as irrelevant.

BY MR. KER:

Q.—Have you got them with you?

30 A.—I had not got them here at that time. I produced all I had; you asked me to produce all I had in my possession. I did so. I had nothing. I told you where they could be got.

Q.—I asked you if you would kindly have Mr. Milne produce them on the continuation of your examination and you said you would?

A.—It is my mistake.

Q.—Will you kindly get copies of your income tax returns from Mr. Milne for these years.

40 Mr. St. Laurent, K.C.: I object to the production of these income tax returns.

His Lordship: The Statute states that these reports are secret.

Mr. Ker: That is perfectly true, as far as the Department is concerned that by Statute they are absolutely secret, or when an individual is called upon in respect to his business by another person to state whether or not he has filed an income tax return, is a privilege as between those two people.

*In the
Superior Court*

No. 76.
Plaintiff's
Evidence.
(Supp. Hearing)
F. T. Cross,
Cross-examination
Oct. 12th, 1932.
(continued)

Mr. Scott: That is the holding in this case.

BY MR. KER:

Q.—I would like to read some questions I asked you on discovery:

10 “ Q.—I ask you whether or not you have any statement
with you which would show what I have asked for?
A.—No.
Q.—Where could it be obtained?
A.—In Murray Milne's office. The nearest I got was a
yearly record.
Q.—Why did you not bring it with you?
A.—They were not in my possession.
Q.—But it is your statement?
A.—Yes.
Q.—Will you kindly have it for the trial?
20 A.—Yes.
Q.—Year by year?
A.—Yes.
Q.—And you will make it available to counsel as soon as
possible, so that we may avoid any long delay in examining
you on it
A.—Very well.”

30 Have you got this with you, Mr. Cross? I am not speaking of
income tax returns. I am speaking of the yearly reference to Mr.
Milne?

A.—I have not this with me.

40 Mr. St. Laurent: To clear this point up, I may say we are not
trying to hide anything in this connection and I will tell you quite
frankly what the situation is: we will make Mr. Milne available with
with such reference as he has got. As a matter of fact, Mr. Milne is
a chartered accountant who has succeeded another chartered
accountant, Mr. Blatch. I don't know Mr. Blatch personally, but
from what Mr. Milne has stated, he is not in a position to be examin-
ed as a witness. He is deaf and stutters and Mr. Milne does not
believe we can get any information from Mr. Blatch.

Mr. Montgomery: Ask Cross to produce them.

Mr. St. Laurent: Cross cannot explain them.

Mr. Montgomery: He can produce them and explain them as
far as he can.

*In the
Superior Court*

No. 76.
Plaintiff's
Evidence.
(Supp. Hearing)
F. T. Cross,
Cross-examination
Oct. 12th, 1932.
(continued)

Mr. St. Laurent: Mr. Milne is coming down this afternoon and we will have him and if you wish to examine him we will not raise any objection.

Mr. Montgomery: The question is, Mr. Cross is asked to produce statements prepared by his auditors. That is surely a fair question to ask Mr. Cross.

10 Mr. St. Laurent: He has told you he has not got them.

Mr. Montgomery: He can get them. They are made by his employees. He cannot shield himself by that.

20 His Lordship: The Company should have done what the law required before they took possession of his property. The Courts are for the purpose of protecting such people as this man, and I want to give all the latitude possible, but I think it is only fair to say that I consider this man is in perfect good faith; he did not expect he would have to provide all these statements and prepare all the receipts of moneys received. Some people do not keep account of any kind.

Mr. Montgomery: I think your Lordship will appreciate the difficulty in controlling evidence which is made of, what at least from the Company's point of view is a colossal and very greatly exaggerated claim.

30 His Lordship: I must admit the amount is very large. At the same time the Statute states the Judge in deciding this case has great power as far as that is concerned, and the law says that he must give to this man what is fair.

40 Mr. Montgomery: I am sure your Lordship wants to get at the facts and I think your Lordship from your long experience on the Bench, particularly in connection with a claim which, on its face, is as large as this one, would welcome something that would control the plaintiff's evidence in the case of a man doing as large a business as the plaintiff who is not apparently an educated man, who has not kept books or any records.

His Lordship: No doubt that is surprising. I have no doubt as to that.

Mr. Montgomery: If he had books or records, naturally the Court would want them produced to control his evidence. We did find that he has a statement made up by two firms of chartered accountants.

*In the
Superior Court*

No. 76.
Plaintiff's
Evidence.
(Supp. Hearing)
F. T. Cross,
Cross-examination
Oct. 12th, 1932.
(continued)

Mr. St. Laurent: One firm. Milne succeeded Blatch.

Mr. Montgomery: By a firm of chartered accountants who are acting for him. Surely he can be asked to produce these statements. They are made up by his employees, quite as much as if they were his bookkeepers, and they were for that purpose. I submit he can be asked to produce those statements and be cross-examined upon them. He is the proper party to be examined upon them. He may have given his accountants entries which require cross-examination
10 upon and I submit there should be no hesitation upon his part to produce them. I cannot see any legal reason why the question is not a perfectly fair and proper one, and why he should not be asked to produce them.

Mr. St. Laurent: I submit we are meeting my learned friend. I told him Mr. Milne was coming down this afternoon and will have these things here and we will produce him before the Court, although we do not think we are bound to.

20 His Lordship: They may be filed by the Plaintiff himself. Let him get these documents from Mr. Milne.

Mr. St. Laurent: There is this difficulty about it. I am told Mr. Blatch made up some statements for certain periods which, when Mr. Milne came in afterwards and investigated the whole situation, were not found to be correct, and that he had to have adjustments made in some of the statements which had been prepared by Mr. Blatch at an earlier time on the best information he could get, and that he had to go over the whole thing and get his information from
30 Mr. Cross from what records he could, of his, and from the bank, and that on the whole period he adjusted for several years at the same time the liability of income tax of his client, so if these went in separately, Mr. Cross is not in a position to understand anything about them.

His Lordship: Mr. Cross can say that he knows nothing about bookkeeping and knows nothing about such accounts, but that here are the accounts that were made by my accountant or my employee,
40 certainly counsel would then have the right to ask him questions on those accounts.

Mr. St. Laurent: We have asked Mr. Milne to bring that information here because we realize that we must not come before the Court appearing as though we were withholding things we had available.

BY THE COURT:

*In the
Superior Court*

No. 76.
Plaintiff's
Evidence.
(Supp. Hearing)
F. T. Cross,
Cross-examination
Oct. 12th, 1932.
(continued)

Q.—Mr. Cross, would you be able to let us have those statements that are in the hands of your employees or who were your employees and will you file them here this afternoon?

A.—Yes.

Mr. St. Laurent: Mr. Milne is coming down from Ottawa and is to meet us at half-past four this afternoon and he is to have these records here tomorrow morning.

10 Mr. Ker: I was drawing the witness' attention to the fact that I had asked him to have them available some days before the trial.

Witness: I understood Mr. Milne would have them with him.

Mr. Montgomery: Could they be communicated to us tonight and it would save time.

20 Mr. St. Laurent: I am not sure that they can. All I can say is we realize that Mr. Cross does not desire anything to be withheld.

His Lordship: When could you give communication of these documents to your learned adversaries?

Mr. St. Laurent: We have not seen them yet. We are meeting Mr. Milne and probably one of the managers or accountants of the Bank at half past four and have asked that all these papers be brought.

30 (And the further examination of the witness was suspended until the information asked for is obtained.)

(And further for the present deponent saith not.)