

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 10

PLAINTIFF'S EVIDENCE (Supplementary Hearing)  
(Continued)

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W.C.1.**

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## THE CASE

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

*In the  
Superior Court*

No. 80.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
P. E. Marchand,  
Examination  
Oct. 12th, 1932.

DEPOSITION OF PAUL EUGENE MARCHAND, A WITNESS  
PRODUCED ON BEHALF OF THE PLAINTIFF.

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

PAUL EUGENE MARCHAND,

10

of the City of Ottawa, Electrical Engineer, aged 65 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.—I understand, Mr. Marchand, that for this short examination you have no objection to answering in English, in view of the fact we have not a French stenographer here at the moment.

A.—I have no objection.

Q.—How long have you been practicing as an Electrical Engineer?

A.—For nearly forty years.

Q.—How extensive a practice have you had?

A.—Industrial installations and some small hydraulic development, transmission lines, power developments.

30 Q.—What would be the gross value of the equipment that has been installed under your supervision say in the last ten years?

A.—Around a million dollars anyway.

Q.—Very substantial industrial establishments?

A.—Yes.

Q.—Did you have anything to do with the installation of Mr. Cross' electric plant at Farm Point?

A.—Yes, I installed the electrical apparatus.

Q.—When was that?

A.—I believe it was in 1912.

40 Q.—What kind of installation was made as regards the quality of the installation?

A.—It was a very good installation for the time. It was as good as could be made at the time.

Q.—Did you then ever go back to see that installation at a subsequent time?

A.—Yes, I did, now and again.

Q.—Did you make a special examination say in 1926 before the waters of the Gatineau River were raised?

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A.—Yes. We took readings there for about a week; hourly readings.

Q.—What was that to determine?

A.—To determine the power that was delivered from the plant.

Q.—And what result did you find?

A.—Well, according to our readings, power delivered varied from about 70 to 150 horsepower.

Q.—From 70 horsepower to about 150 horsepower?

A.—Kilowatts.

10 Q.—And in horsepower that would be how much?

A.—It would be about a third more.

Q.—About one hundred horsepower to two hundred horsepower?

A.—Yes, about. The waterwheel was 200 horsepower.

Q.—What was the rated capacity of the generator?

A.—125 kilowatts.

Q.—That would be equal to about 165 horsepower?

A.—165 horsepower.

20 Q.—In what condition was the electrical generating system in 1926?

A.—Well, it was still in very fair condition. It was operating first class.

Q.—Did you make a valuation of the electrical installation in the power house at that time in 1926?

A.—Yes, I did make a valuation in August, 1926.

Q.—Was it at that time you were checking the readings from the generating plant.

A.—That is the time.

30 Q.—What part of August was that?

A.—I have not got the date. I have the month of August.

Q.—Do you remember what the general water conditions were at that time. Was it high water period or low water period, or just average summer water?

A.—That would be average summer water in August.

Q.—Is this electrical system regulated by any governor according to the demand?

A.—There is a small Woodward governor.

40 Q.—Does that enable the system to speed up as greater demand is put upon it by opening further switches?

A.—It keeps the speed uniform at different loads.

Q.—Was the output being determined, then, by the load that was being put on by the system?

A.—By the load that was being put on the system.

Q.—When the load went up, the plant delivered more?

A.—Oh, yes.

Q.—Will you file as Exhibit P-110 this valuation, and say if

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that is your valuation of the electrical equipment thereon listed as of August, 1926?

A.—Yes.

Q.—Amounting to \$4,095.00?

A.—Yes. That does not include the installation of the foundation or anything like that. That is just merely the apparatus.

Q.—That is the cost of the apparatus?

A.—That is the cost of the apparatus.

10 Q.—Is it the cost or the value of the apparatus?

A.—That is the value.

Q.—The value at that time?

A.—The value at that time.

Q.—To which, in order to get proper valuation, would have to be added the cost of transportation and installation?

A.—Yes.

Q.—With such concrete bed or other foundation as the machinery required?

A.—Yes.

20 Q.—This was in August, 1926?

A.—In August, 1926.

Q.—Several months before the level of the waters of the Gatineau were raised?

A.—The water was not raised at the time.

Q.—It had not been raised at that time?

A.—No.

Q.—The plant was working under its normal conditions?

A.—Yes, the plant was working under full head.

Cross-examination

30

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

Q.—What is the full head?

A.—I don't know.

Q.—Do you not think it is necessary to know that in order to figure out the amount of power to be generated?

A.—I say I don't know, because I never measured it. It was supposed to be around 70 feet. I am not positive of that. Mr. Cross bought his wheel himself. I had nothing to do with that.

40 Q.—What is the per second feet flow in the creek that he gets his water from?

A.—I don't know anything about that.

Q.—Don't you think that is an important thing to know in estimating the capacity of a power plant?

A.—I did not estimate it.

Q.—All you did was to take the rating of the wheel?

A.—Yes.

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Q.—Those are printed on the wheels themselves?

A.—Oh, no. That was the output.

Q.—You measured the output?

A.—The output.

Q.—You got it up to how much?

A.—At times it rated as high as two hundred horsepower. They had very big motors there.

Q.—Did you have those motors started especially for a test?

A.—They had those motors on the saw mill . . . . .

10 Q.—Did you have them started for the purpose of the test?

A.—No, we just took the readings as they were.

Q.—At what saw mill was that? Was that at Mileage 12?

A.—There was a saw mill at Alcove, and another one, I don't know if it was in operation on this line, but there was a big motor at Wakefield, some 15 or 20 horsepower.

Q.—Of course, it is a peculiar thing about saw mills on an electrical line; when the logs go in the peak goes on?

A.—Yes.

20 Q.—Would you, as an engineer with a great deal of experience, consider that it is an economical way to operate by electricity, economical and sound?

A.—No, it is not.

Q.—Steam or gasoline is better?

A.—Unless you have a large generating capacity.

Q.—If you have something like 200,000 horsepower it does not matter, but if you have a little system of 100 or 150 horsepower, when you are using up to 80 each time you shove a log in, it is not a very economical way of doing it?

30 A.—No, it is not.

Q.—Your generator was 125 kilowatts?

A.—125 kilowatts.

Q.—As he was getting 150 kilowatts on, sometimes the generator must have been pretty well overloaded?

A.—Overloaded, and heated up some, too.

Q.—The plant had then been in operation for fourteen years. I suppose there have been a good many changes in equipment in that time?

40 A.—No, very little. As you see there, there was another exciter put in, that is all.

Q.—I mean in those fourteen years between 1912 and 1926 would the electrical art have advanced considerably?

A.—Certainly.

Q.—And would the machinery which would have been in vogue in 1912 have been machinery which you would have recommended a client to instal in 1926?

A.—The generators are practically the same even today. It is



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only the switching equipment on some of the lightning arresters and improvements like that.

Q.—Would you consider it as up to date in 1926, being installed in 1912; it would function all right?

A.—It was in first class shape at the time.

Q.—Am I to understand correctly that the minimum load on the lines, when you were there, when you took your readings, was seventy kilowatts?

10 A.—Well, it is on that head. It may have run down. I am just saying that approximately. At night it may have gone down considerably.

Q.—How long are those readings for? From what hour of the day till what hour of the day?

A.—It started on August 10th every half-hour.

Q.—At what time on August 10th?

A.—At eleven-thirty a.m.

Q.—Eleven-thirty a.m. on August 10th every half-hour until when?

20 A.—Until ten o'clock p.m. on August 13th.

Q.—Was that continuous for twenty-four hours?

A.—Twenty-four hours.

Q.—Every half-hour; surely you got your minimum down in that case below seventy?

A.—Well, yes.

Q.—What is your actual minimum, the low?

A.—There is thirty early in the morning, thirty, thirty, thirty point six, thirty-one. Early in the morning it is low. It drops down to thirty-one. Thirty-one is about the lowest.

30 Q.—I think you said that during the day the highest when the sawmill was working was around 170 or 200?

A.—It is 154.

Q.—Is that kilowatt?

A.—That is in the forenoon at eleven o'clock. That is horsepower, 154 horsepower.

Q.—You cannot find any place there when it went up to 200?

A.—No. This is all horsepower. I should have said horsepower instead of kilowatts. It is all figured in horsepower, 154 horsepower.

Q.—150 is the highest horsepower?

40 A.—154 is the highest horsepower we reached.

BY THE COURT:

Q.—Did you not say it went as high as 200?

A.—I was figuring this in my mind at kilowatts. It should have been horsepower instead of kilowatts.

BY MR. KER:

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Q.—The highest you can find is 154 horsepower?

A.—154 is the highest.

Q.—That is with all the gadgets working, the sawmill and the generator at Wakefield, is that right?

A.—Well, all that was on the line at the time.

Q.—There could not have been much more added to the load at the time?

A.—Not very much.

10 Q.—He was then running to the capacity of the generator, was he not?

A.—Just about.

Q.—And that was during the day?

A.—That was during the day.

Q.—I suppose that if during the day he had any particular occasion to give lighting service to his customers that day he would have been rather out of luck?

A.—I suppose this included some lighting service.

20 Q.—His usual lighting load was not on when that peak was going?

A.—Not the night load, of course.

Q.—The greatest part of that was at his sawmill?

A.—It was power which brought up the load.

Q.—Perhaps you had better produce this, seeing it is a record of load reading? Will you produce this as Exhibit P-111, showing the peak load of 154 horsepower?

A.—Yes.

Re-examination

30 RE-EXAMINED BY MR. ST. LAURENT, K.C.,  
OF COUNSEL FOR PLAINTIFF:

Q.—On the first page there is a note showing power factor of system to be 85 volt ampere tests reduce these results by 15 per cent . . . . .

A.—These results here that have been reduced to the red.

Q.—135 is horsepower in ink, and 113.2 horsepower in red typewritten figures. The 113.2 is supposed to be the reduction of the 135 by 15 per cent?

A.—That is it.

40 Q.—To get at the net?

A.—That is it.

Q.—And over the red typewritten figures there are the words, "Delivered output of plant at Unity P.F."

A.—Unity Power Factor. That means that this red is a reduction to Unity Power Factor from 103.3 horsepower, is the reduction from 123 horsepower. This is the result as taken from the instrument, without the watt meter.

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Re-cross-  
examination

Q.—That is to say, the figures in ink are the result taken from the watt meters?

A.—Yes.

Q.—And the typewritten red figures are the proper reduction after bringing it back to the proper power plant?

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

10 Q.—Mr. Marchand, the first item of your valuation of hydraulic electric plant at Farm Point made at that time, as set out in Exhibit P-110, is a 125 kilowatt generator for \$2,200?

A.—Yes.

Q.—Just how did you arrive at that price for the value of that generator?

A.—We have the prices of these machines.

Q.—That is, the regular price?

A.—Well, the regular selling prices.

Q.—The regular selling price new?

20 A.—That is the low-speed machine.

Q.—And that is the price new?

A.—No. New, it would cost a little more than that. At the time it would. I don't know about this year.

Q.—Perhaps you would tell me just where you got that price of \$2,200 for the first item?

A.—You take a machine 125 kilowatts, a 600-revolution machine, it would cost around \$2,600 or \$2,700 at the time, new.

Q.—And then you took off \$500 or \$600 for depreciation?

A.—Yes.

30 Q.—That is about twenty per cent depreciation in the generator?

A.—Yes, it would be about that.

Q.—After running sixteen years?

A.—Well, it depended on the condition of the machine. The machine is in good condition.

Q.—Anyway, you thought twenty per cent was a reasonable depreciation to take from the list price of a similar machine, new?

A.—Yes.

40 Q.—Did you reflect at all on the question of how much you can purchase a similar machine to that in the open market for?

A.—I did not at the time.

Q.—Would the same remarks apply to your estimate on the switchboard with oil circuit-breaker and instruments?

A.—Yes.

Q.—What would the new price of that be?

A.—It would be somewhere around twenty per cent more.

Q.—Do you not think that is pretty high for that switchboard?

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(continued)

A.—That is a 7,500-volt apparatus that was on there, much more expensive than the regular 2,300.

Q.—And as to the exciter, that looks to be high for the Westinghouse exciter, \$150?

A.—I believe that was five kilowatts.

Q.—And these rheostats; you have them practically at the new price there, have you not, the lightning arresters?

A.—\$7,500 for an arrester, that is all right.

Q.—The rheostats are about \$30.00 new?

10 A.—There is a big one for the field, would run about \$75 or \$80.

Q.—Wiring between the generators, switchboard, \$150?

A.—That is all lead covered cable.

Q.—As to that item, the Barber wheel, 250 horsepower, 600 revolutions, \$600; is that, as a matter of fact, a 250-horsepower wheel?

A.—I think it was 200 horsepower. I am not positive about it—200 or 250.

Q.—Is it not a fact that it was a 200-horsepower wheel?

20 A.—I am not positive about that.

Q.—As a matter of fact, I am informed it is 150 and not 250 horsepower?

A.—I always understood it was 200. That is from what Mr. Barber said at the time.

Q.—Anyway, you did not give it such a very careful examination really to decide what his horsepower was; if it was a 150-horsepower wheel would that cut the price down somewhat?

A.—No. I happen to know the value of that wheel pretty well.

Q.—You mean the replacement value?

30 A.—It is a cased in wheel, not exactly replacement; replacement would cost much more than that again.

Q.—At any rate, your total estimate of the power house equipment is \$4,900, made in 1926?

A.—Yes.

Q.—Have you been in the power house since?

A.—I was there this summer.

Q.—Is that equipment still up there?

A.—I don't know.

40 Q.—I suppose you did not notice whether the water wheel is there? It has not been pulled up?

A.—Everything is there as far as I know. I have seen everything there. I did not test them.

BY MR. ST. LAURENT:

Q.—You made no examination this year?

A.—No.

(And further deponent saith not.)

*In the  
Superior Court*

No. 81.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
G. B. Langford,  
Examination  
Oct. 12th, 1932.

DEPOSITION OF GEORGE B. LANGFORD, A WITNESS  
PRODUCED ON BEHALF OF THE PLAINTIFF

On this twelfth day of October, in the year of Our Lord, one thousand nine hundred and thirty-two, personally came and appeared:

GEORGE B. LANGFORD,

10

of Timmins, in the Province of Ontario, Geologist, aged 35 years, a witness produced on behalf of the Plaintiff, who being duly sworn doth depose and say as follows:

EXAMINED BY MR. W. B. SCOTT, K.C.,  
OF COUNSEL FOR PLAINTIFF:

Q.—Mr. Langford, I understand you are a graduate of the  
20 University of Toronto?

A.—Yes.

Q.—What degree did you obtain there, and in what did you graduate?

A.—I graduated in mining engineering from the University of Toronto?

Q.—In what year?

A.—In 1911. And subsequently I took a degree in Geology at Cornell University.

Q.—And since then you have been practicing your profession?

30 A.—As a Geologist.

Q.—And where are you at present engaged?

A.—I am at present engaged with the McIntyre Mines at Timmins as Geologist. The main office is at Shumaker, Ontario.

Q.—I understand you have made a study of the piling ground, and land around it at Farm Point, which is in question in this case?

A.—Yes, that is correct.

Q.—Perhaps you would like to state in your own words to His Lordship, or, you might start with a description of the general nature of the ground, where Meach Creek empties into the Gati-  
40 neau River at Farm Point? Perhaps you might tell us what the geological formation is?

Witness: You want me to go ahead?

Counsel: In your own way. I see you have in your hand a blue print with certain markings on it in pencil, which I presume have been made by yourself and which will be explained later, and

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that plan is a duplicate of the plan already proved and filed by Mr. MacRostie as Exhibit P-94: will you now file as Exhibit P-112 a profile, which is a duplicate of plan P-94 which has already been filed and proved; and I noticed attached to this plan P-112 is a profile of the piling ground at Farm Point, Quebec; this profile is signed, "George B. Langford" and is dated October 12th, 1932?

A.—Yes.

10 Q.—Looking at this plan P-112, will you tell us, in order that it may become part of your deposition, such points you deem necessary for the purpose of understanding the evidence you are going to give?

A.—You have here at Farm Point a flat area, and it is bounded on the two sides opposite to the river by very hard granite rock. The flat area is largely delta material built up by Meach Creek.

Q.—That is, by the deposits coming down Meach Creek.

A.—Material deposited by Meach Creek with the speed drop down here below the fall. There is some material underneath the Toy Factory site.

20 Q.—The Toy Factory site is marked on the plan "Toy Factory"?

A.—Yes.

Q.—And it is on the upstream side of the C.P.R. siding, is that correct?

A.—Yes.

Q.—Upstream side along the Gatineau?

30 A.—Yes. Underneath that pond there is some gravel which is a river deposit—not gravel; there is some sand, which is a river deposit; elsewhere in this flat area the material is that which you would find in deltas.

Q.—A usual condition?

A.—Yes, quite usual.

Now, for the purpose of investigating the sub surface conditions, Mr. MacRostie put down four holes as shown on this map.

Q.—You yourself have investigated the subsoil conditions?

A.—Yes: I am just going over the history of the thing, the number of holes.

Over the last week end the Gatineau Power Company put down seven holes, and following that I put down eight holes.

40 I have the information of Mr. MacRostie's holes, which was given to me by Mr. MacRostie. I was present when all the Gatineau Power Company holes, with the exception of two, were put down and I examined the material and I have also material from my own, that makes a total of nineteen holes.

Q.—I will ask you in a minute or two as to the examination you made yourself, but in the meantime will you just say what these two red pencil lines are that appear on this plan 312?

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A.—They mark approximately the boundaries of the piling ground as it was before the water was raised by the Power Company.

BY MR. KER:

Q.—How do you know?

A.—From the best evidence I can get on the question.

10 BY MR. SCOTT:

Q.—You said these examinations were made over last week end?

A.—Yes.

Q.—That would be last Saturday?

A.—I was there Saturday, Sunday, Monday and Tuesday.

Q.—Monday was Thanksgiving Day, and a holiday?

A.—Well, not for us.

Q.—Not for the Gatineau Company Engineers apparently?

20 A.—No.

Q.—Do you know what the water levels were on Monday, Thanksgiving Day?

A.—I would not care to say?

Q.—You did not take the readings?

A.—No.

Q.—On this plan P-112, this broken line, I am now pointing to the upstream side of the C.P.R. siding, is the 321.5 contour line running along there?

A.—Yes.

30 I might say in regard to these profiles of the work here, we did not use the contour lines as shown on that map.

Q.—That is where you made your borings, you took the elevations independently?

A.—Yes.

Q.—With these preliminary remarks, will you continue with your story of what you did, and what you found?

40 A.—We found that the surface is generally underlain with a deposit that may run there about six or eight feet, has a rather impervious clay where it has not been covered with water, and around the edges of the delta it is hard, relatively dry and firm. As you go out into the middle of this area into the delta with drill holes you find the material become progressively softer.

Q.—That is the part that is now covered with water?

A.—Yes, and holes in the centre, or delta, give you no firm top material at all. It is quite soft, with the consistency of very soft putty. A portion of it will not retain any shape at all, but will just slump down into a shapeless mass.

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I am sure it is the same material we found in the drill holes in the centre of the delta as we found in the one closer to the margin, because the material is a yellow clay marked with small nodules and streakings of limonite and vegetable mold, and that is quite characteristic of it wherever we encountered it near the surface.

Underneath that layer there are layers of silt and blue clay and sand. In none of them did we find any material that was as hard as the surface layer. It is all quite soft, and on squeezing in your hand comes out through all your fingers just as putty would when  
10 you squeeze it. The sand layers are entirely saturated with water and some of them are in the position of quicksand in the hole, which I put down; when we got down to the depth of 13 feet the sand effected into the hole, so we could no longer get any deeper. We were using an augur and we would bore down and bring up the material in the augur, the sand was flowing in so quickly in between times, when we would put more in and put it in the hole, would fill up again.

Q.—The hole "C" is marked in yellow?

20 A.—It is marked in yellow.

Q.—The letter "C" which you have been speaking about is marked with a small "C" in yellow pencil beside a yellow cross along an added line marked "Range line", is that correct?

A.—Yes.

Q.—The reason I ask you that is because there is another capital C further on.

A.—In that hole "C" we found at the top material which we had not difficulty in identifying with a crustal clay layer that we found near the margin of the delta, but in hole "C" there was nothing in the way of firm material at all. It was all quite soft.  
30

Q.—Does that indicate anything from a geological point of view?

A.—It indicates the saturating of that clay and the softening of it. When clays are dry they become quite hard and will support a considerable weight, but on being immersed in water they absorb the water and slake down in it, yet it depends on the type of clay. They may slake down in five minutes in a mass of soft mud, or it may take them days to do the same with clay, depending entirely on the nature of the clay, but any time clay is immersed in water it will soak up  
40 water and slake.

Q.—Does that arrive by progressive stages, depending on the thickness of this crust?

A.—It would depend on the thickness of the crust and the amount of compaction there has been, and the amount of pore spaces in the material.

Q.—Will you tell us about your next boring? Will you indicate



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first of all on that plan where it is? You have just been talking about the hole made at the place " C " with the cross beside it?

A.—Yes.

Q.—I see nearby is the lettering in yellow, " B " with a cross beside it?

A.—Yes.

Q.—Is there anything special to add about the result which you found there? Were they the same as C-X, or were there any special peculiarities?

10 A.—Hole B.

Q.—B with an X beside it, also seen with added Range line?

A.—Yes, contained nine feet of this yellow clay on top, very soft and wet.

Underneath that for seven feet a coarse silted sand, very wet. I have samples of these as taken from the hole if you care to see them. They are in bottles, with the original moisture content—.23 was good silt with sand layers, and we stopped there, because we were not able to go any deeper with our equipment. We had not struck anything in the nature of hard material or bed rock.

20 Q.—When you made that boring, was this place B-X under water from the Gatineau flooding?

A.—It was almost at the water level.

Q.—Was B-X done yesterday?

A.—That was done on Monday. A, B and C were done on Monday.

Q.—That was done almost at the water level?

A.—Yes.

Q.—Was the water just over it?

30 A.—Just over the water level, a matter of probably six inches. Yesterday we put in that hole. It is marked inside that circle. I did not give elevations in C because they were not concerned with the profile.

Q.—Will you tell us from the plan where your next hole was made?

A.—The next hole was on that same range line.

Q.—And it is indicated by a circle in black ink?

A.—In black ink with the letter " D " in black ink inside it.

Q.—And beside the C.P.R. spur?

40 A.—Yes, and at profile AA.

Q.—On the profile indicated by yellow pencil line with an arrow at each end?

A.—Yes.

Q.—Will you tell us what you found there?

A.—That hole is at elevation 317.7, which was the water level at that time.

Q.—At that time yesterday?

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A.—Yes. The water there was one foot deep.

Q.—One foot deep over where you made the hole?

A.—We drilled the hole from a raft. The water was one foot deep and then to 4½ in depth it was soft yellow clay.

Q.—The first thing you found was 4½ of soft yellow clay?

A.—Yes, followed with two feet of the same material which was dry; followed by four feet of the same material which was wet, very wet and soft, and then followed by one foot of blue clay, and we stopped that hole on either boulders or cobbles or bed rock. I  
10 am not prepared to say which, but it was very hard; practically 10½ to 11 feet; we had a depth of 10 feet of this yellow clay, of which there were two feet in the centre, which was still hard. It had not softened, but the four feet above and the four feet below were quite soft. It was like putty. That hole is shown on the profile AA.

Q.—Can you say anything about the bearing capacity of that sort of soil that you found in this hole? Would you recommend it?

A.—In the original condition when that yellow material had all  
20 been dry, we would have a good bearing strength, but when you saturate it with water and it gets soft, it is very slippery and exceedingly treacherous material, and the blue clay underneath it, which is water-soaked and very, very soft, is almost somewhat analogous to the grease in a grease gun. You can put a big pressure on as long as there is no means of escape, but open the valve and it will flow, just the same as a more viscous liquid.

Q.—In your opinion was that condition due to the water which had been over it?

A.—The softening of these crustal areas was entirely due to the water.

Q.—And the elevation then was only 317.7?

A.—317.7.

BY MR. SCOTT:

Q.—Before lunch we were dealing with the hole referred to which is the one shown on this Exhibit P-112 as letter D inside an ink circle with a yellow cross underneath it?

A.—Yes.

Q.—On this yellow profile, letters AA, will you tell us about the  
40 next hole you bored, and indicate first of all on the plan where it was?

A.—The next hole we numbered hole E, is shown on the map in a black ink circle with the letter E also in black ink, inside a yellow cross underneath it, and is almost on profile CC.

Q.—The yellow line indicating profile CC?

A.—Yes.

Q.—Was that hole made yesterday?

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A.—That hole was made yesterday.

Q.—By you?

A.—Yes. That hole started one foot below the level of the water, the level of the water being the same, 317.7. It showed two feet of loam, which is clay with vegetable mold mixed in with it; 4 feet of hard yellow clay, 2½ feet of loam with rotten wood that is washed in there during the stages of the building up of this thing; a foot and a half of coarse sandy blue silt; 10 feet of fine soft wet blue silt and clay, and the hole stopped at 21 feet because it was as far  
10 as our equipment would allow us to go.

Q.—You had not struck any rock then?

A.—No. It was still in that very soft blue clay?

BY THE COURT:

Q.—You went down 21 feet?

A.—21 feet.

20 BY MR. SCOTT:

Q.—Without finding rock.

A.—Yes. We did not find any rock at that depth.

Q.—What was the condition of the top soil?

A.—The top crust was dry at that point and relatively hard. The only signs it showed of softening were, as you got into it, it was water-soaked, and the bottom part was water-soaked, but the main part was still relatively dry.

Q.—Would you say it was disintegrating or not?

30 A.—To look at the specimen in that one hole with it damp on top and damp below, it bears out the impression we got with all our holes, there was disintegration. We got a general progress of disintegration as you got out from the center of the delta, from the shore.

Q.—What was the next hole?

A.—From there we went to hole F. It is marked with a circle in black ink, with the letter F in black ink, inside the circle with a yellow cross under it.

Q.—And it is near to this number E you have just been describing?

40 A.—Yes, near hole E.

Q.—Tell us what you found there?

A.—That hole was drilled from the shore. The water was low enough, so that that place was not submerged.

Q.—That was also drilled yesterday?

A.—Yes. The elevation of that hole was 318.28, at hole F. That hole showed in the first 3 feet dry, gray clay or loam, 5 feet of dry yellow clay—pardon me, I will read that again: Three feet of dry

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gray clay, 2 feet of dry yellow clay, 2 feet of wet yellow clay, 5½ feet of wet soft silt, 2 feet of wet soft silt with narrow coarse sand layers, 7 feet of wet soft blue clay and silt. The hole was stopped at 21½ feet when we struck hard bottom. It was rock of some sort, rock or pebbles or boulders.

Q.—At 21 feet?

A.—21 and a half feet.

Q.—Have you any comments to make on that hole?

10 A.—That did not disprove our idea at all. This hole is closer to the shore and the delta than the previous one, and we find again dry yellow clay on top with it becoming water-soaked from the adjacent wet layers underneath.

BY THE COURT:

Q.—How close would that be to the shore?

A.—At that time it was not more than ten feet from the edge of the water, and the water would come over it at times.

20 BY MR. SCOTT:

Q.—I think you told us yesterday you did not know what the river elevation was?

A.—There is just this one elevation we took, 317.7 for these two holes which were in the water.

30 The fact that that yellow clay is dry merely shows that, as I stated previously, it is a rather impervious material, and the rate of softening is slow. It takes years for the water to permeate a clay of that nature and soften it. It is not a rapid process, but as I also stated earlier, out in the center of the delta the hole is put down there, I find the same sort of material which was entirely softened, and by gradations it got softer

Q.—Would you say that what has happened in the center of the delta would also happen at the point F?

Mr. Ker: Objected to as leading.

40 BY MR. SCOTT:

Q.—As my learned friend objects, what conclusion would you draw from the observations you made at the hole at that point F, with the other observations you made from holes dug more towards the center of the delta?

A.—It is a change which is going on slowly in that layer, due to the absorption of moisture, and you may wonder why there was ever a crust here, why it ever got hard.

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In the building up of this type of deposit, delta, you have a series of beds and the uppermost beds known as the top set beds are laid down above the elevation of the stream which is flowing.

Q.—Above the elevation of Meach Creek?

A.—Above the elevation of the Gatineau River, they are laid down largely by Meach Creek flooding, and when it overflows its bank the velocity of the water is lessened, and the load which it is carrying deposits, that goes on building up these top set beds which are above the elevation of the Gatineau River.

10 Q.—Is that what is called the crust?

A.—That is what is forming the crust.

Q.—What is the next hole you made?

A.—The next hole we put down was hole G. That is marked in the circle in black ink, marked with the letter G and a yellow cross under it, and it is on the profile line marked in yellow pencil and lettered BB.

20 Q.—G, which is inside this black circle, and on this yellow cross, approximately on this profile, letters BB, is the circle nearest to the range line or the spot furthest from the railroad spur, is that right?

A.—Yes.

Q.—Tell us what you found there?

A.—The hole G was at elevation 317.93, which was just above the water level at that time?

Q.—Yesterday?

A.—Yes, yesterday afternoon. The first 7 feet was yellow clay. My notes say it is the same rather impervious layer found for the first seven feet in hole F. In hole G it shows definite signs of softening, and is half way between the dry state and soft mud.

30 The next 13 feet was blue clay of the consistency of soft putty. It goes into an almost shapeless pile of its own weight. When we dumped it out from the augur it went into an almost shapeless pile. The hole was stopped on account of the difficulty in raising the augur with the equipment we had at 20 feet.

Q.—You went down twenty feet?

A.—Yes.

Q.—There was no rock then?

40 A.—No. From there we moved towards the railroad and put down hole H. It is marked with a black circle and the letter H in the centre in black ink, with a yellow cross.

Q.—Still on the line BB.

A.—On profile line BB.

Q.—But nearer to the railroad spur than the hole you have just described last?

A.—Yes. The elevation of this hole was 317.88. From zero to 3 and a half we got loam.

The next three feet was yellow clay half way between the wet

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and dry states as we described in the previous hole. It had not slaked down into very soft mud, nor was it dry and hard the way we had found it in some other hole.

From there to 16 and a half feet on, which would be ten feet further down, was blue clay. It was fairly over the 8 feet, then quite soft, and loses its shape on piling.

At 16½ feet stopped on rock or boulders.

Those were all the holes which we drilled. I have not described A, B and C in detail. I can do so if you think it is necessary.

10 Q.—You have not yet described A with the X opposite, which is between the Canadian Pacific Railway track and the Gatineau River, is that right?

A.—Yes.

Q.—Have you anything special to comment about A?

A.—No. I will give the log. Zero to 7.75 dark gray and dense blue clay; 2 feet gray silty clay with limonite nodules, and some layers of blue clay; one foot sand and silt, two feet loam with rotten wood and the hole was stopped at twelve and a half feet on coarse gravel. We brought up some of the specimens. They were cobbles from two to three inches across.

BY THE COURT:

Q.—What hole is that?

A.—Hole A, stopped at 12 and a half feet on coarse gravel.

BY MR. SCOTT:

30 Q.—That is on the Gatineau River side of the Canadian Pacific Railway track?

A.—Yes.

BY MR. KER:

Q.—What was the elevation of that hole A?

A.—We did not take an elevation for that hole. It was beyond where we could shoot from the setup we had of the instrument, and we did not bother taking an elevation. It is above the water. I should say it would be 2 to 3 feet above the 318 level.

40 Q.—About 321 probably?

A.—About that.

BY THE COURT:

Q.—Does the C.P.R. track rest on that ground?

A.—The C.P.R. track runs right across the delta. I am very

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glad you mentioned that point. We have drilled holes on both sides of the C.P.R. track, one by Mr. MacRostie, one by myself. Our hole B was within 100 feet of the C.P.R. track and I have already described it as being very soft material.

Now, Mr. MacRostie tells me that he got similar material in his hole on the other side, so we are still assuming that our yellow clay bed extends across between the two. I think anyone would admit that.

10 As I said, that crust material shows evidence of having been very hard and dry originally. When I say originally, I mean before it was submerged, and the railroad grade was laid down on that hard material.

I enquired, and I was given to understand the C.P.R. . . . .

Mr. Montgomery: I object to this.

BY MR. ST. LAURENT:

20 Q.—Perhaps you had better say you assume?

A.—I assume that the C.P.R. grade was laid down before the flooding of the Farm Point Delta.

BY THE COURT:

Q.—Is the C.P.R. railway track raised?

A.—Yes. I would say it is about 10 to 12 feet above the water level, graded up with gravel, and it is very wide there, being about 30 feet on top.

30 BY MR. KER:

Q.—It is built on the delta?

A.—It is built on the delta.

BY THE COURT:

Q.—What do you mean by 30 feet on top?

40 A.—The grade runs across the delta, and the width of it on top is 30 feet, which is wide for a railroad grade, single track rail.

That grade, allowing my assumption, was laid down when that crust was hard and dry and the weight of that material on there is sufficient, in my opinion, to prevent the softening of the material underneath there. The softening takes place by a slow infiltration of water through the pore space in that clay, and the clays and silts are particularly susceptible to loss of pore space due to pressure, and the weight of that grade on there as I said, in my opinion, is

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sufficient to retard the rate of softening of that material, and it is also my opinion that the softening will continue as long as the present railroad grade is in a very dangerous position.

BY MR. SCOTT:

Q.—The rest of the delta did not have that protection?

A.—No.

10 It is also my opinion that had the rest of the delta had that protection, the rate of softening would have been retarded. I do not say it would have been arrested permanently, but it would have been retarded so that the delta would have remained firm for a much longer time than it has.

BY THE COURT:

Q.—What is the dimension of the delta?

20 A.—The dimensions all the way around, it would be a triangle of about a thousand feet on the base by four hundred perpendicular.

BY THE COURT:

Q.—How many square feet?

A.—1,000 feet long one dimension, and 800 in the other. That would be 400 times a 1,000, 400,000 square feet.

BY MR. SCOTT:

30 Q.—You have arrived at this dimension and figures which you have just given by looking at and taking measurements from the exhibit already filed as D-10?

A.—Yes, and it was only given as an approximation.

Q.—That is approximately?

A.—Yes.

Mr. Ker: I think we are agreed it is about ten acres, my Lord.

BY MR. SCOTT:

40

Q.—So, if I understand you, in order to retard distintegration of this crust, the filling over should be done before the flooding?

A.—Yes, that is my conclusion.

Q.—Would it have been possible to have done that up to elevation 318 before the flooding?

A.—I think it would have retarded the softening of that crust, no matter what elevation the water was raised to.



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Q.—If it had been done before?

A.—If it had been done before the water was let on, in arriving at that conclusion, the weight retarding it. We have evidence going out here progressively of the softening of that material.

We find the same material over here entirely softened.

Q.—You are now looking towards the middle of the delta?

A.—Yes, going out towards the middle of the delta we found the material softened. We find the softened material on both sides of the railway. The assumption is the same material comes under the  
10 railroad and obviously it has not let the crust down, but the material adjacent to the railroad, 100 to 150 feet from it, would not support the present grade.

Q.—That is outside the line of the grade?

A.—That is outside the line of the grade.

Q.—You had attached to this plan Exhibit P-112 this morning a profile of the piling ground at Farm Point. Have you any comment to make to his Lordship on that profile?

A.—There are three lines marked on this plan P-112. They are  
20 marked in yellow pencil. They have arrows at each end showing the direction in which you are looking when looking at the profile, and they are lettered AA, BB and CC. The profile letters on the attached sheet correspond to this profile AA, profile BB and profile CC.

Those profiles have a legend attached with colors showing the various types of material, yellow, being yellow clay we were speaking of, this blue being a soft blue clay, sand being in green, silt in red. On these profiles I have plotted the holes.

BY THE COURT:

30 Q.—All the holes are indicated on the profile?

A.—Yes.

BY MR. SCOTT:

Q.—You have mentioned two or three times already what your augur brought up?

A.—Yes.

Q.—Would you state in a few words your method of testing this material with the augur?

40 A.—We used what is commonly called a post hole augur. It is operated by twisting a piece of pipe. On the end of it there is a receptacle which digs into the ground and retains what you pick up, and you draw it out for six or eight inches with the material that it encountered while going through that section, so by using that means we have continuous specimens throughout the whole depth of the hole for examination. We have the actual material foot by foot right through.

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Q.—It is not washed out? It does not come up in a bucket and is washed out?

A.—It comes up in the bit of the augur.

BY THE COURT:

Q.—When you draw the augur out, you see what the augur has encountered?

10 A.—Yes. We examine that material because it is held in the augur by claws on the end of it, and we take it out from there and actually see what it is.

BY MR. SCOTT:

Q.—This information that you have been giving us this morning and this afternoon, I see you have been looking at notes. I take it those notes were made as you went along?

A.—Yes. They are the copies from the field book.

20 Q.—You told us you were at Meach Creek during the last week-end?

A.—Yes.

Q.—Did you go up Meach Creek to find out conditions up above, to see if they had any bearing on the examinations you were making of the delta?

30 A.—On my examination of this as a delta formed by Meach Creek I knew that the material would have to come from the upper reaching of Meach Creek, consequently I made an examination of the upper reaches of Meach Creek for a matter of possibly four or five miles to see if the material up there corresponded to the material in the delta, and I found sufficient correspondence to satisfy me that that is where it came from.

Q.—Were you present when any tests were made by the engineers or consulting engineers of the Defendant Company?

A.—Yes, I was present on Saturday, Sunday and Monday while they were drilling on Mr. Cross' property.

Q.—While the Defendant Company's engineers were also drilling on Mr. Cross' property?

A.—Yes.

40 Q.—Have you indicated on this Exhibit P-112 where the Company's engineers drilled holes?

A.—Yes, we have the Company's holes indicated on this Exhibit P-112.

I have indicated on Exhibit P-112 the holes drilled by the Company's engineers, and they are marked numbers 1 to 7.

Q.—Will you tell us where their number 1 hole was?

A.—The Gatineau Power Company's No. 1 is shown on this map

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P-112, situated on profile line BB, indicated in yellow pencil. The location of the hole is shown by a circle in black ink, with the number 1 also in black ink within it and the yellow cross adjacent to it.

Q.—You might describe their method of drilling or sinking these holes and recording the substance brought up?

A.—Their methods varied.

Q.—Were they the same as yours, or different?

A.—They varied from the one I used. They drove a pipe and washed the material out under pressure by inserting a pipe within the one. They drove about a three-inch pipe and inserted a smaller pipe in that, pumped the water down that, and it washed the material up, and they recovered these washings as they flowed out of the top of the hole.

Q.—And the receptacle received these washings?

A.—On the top of what we call the casing pipe they had T joint, and the water flowed from there into an ordinary pail, and, of course, the difficulty with that type of sampling, when you want to get geological information, is that the velocity of the water and the churning up which it gets washes away a great deal of the fine clay and fine sand material. What settled in the pail is only the coarser sediment, so you only get a partial sample of the material to examine.

Q.—Would some of this material be in solution, so to speak, in the pail?

A.—It is in suspension, and they allow the pail to stand for a while while the stream is flowing in and flowing out, and after they reach a certain depth they allow the water in the hole to settle for a short length of time and draw off the liquid and use what has settled. You only get the heavy constituents that way.

Q.—You only get the heavy constituents at the bottom of the pail?

A.—Yes.

Q.—The finer material disappears?

A.—It is washed away.

Q.—It is washed away when the pail is emptied out?

A.—Yes.

Q.—Do you prefer your method of testing to that?

A.—If you want to actually see the material as it is in the condition under ground you have to bring it up in toto and the augur is the best means I know of for doing it.

Q.—What comment, if any, have you to make on what was found at hole number 1 made by the Company's engineers, that was made by them on Saturday last?

A.—I think it was Saturday. That was the day they started—well, that hole did not bottom on rock. It went to a depth of approximately ten feet.

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BY THE COURT:

Q.—Which hole was that?

A.—Hole number 1 drilled by the Gatineau Power Company.

BY MR. KER:

Q.—At what elevation?

10 A.—The elevation of number 1 is 321.68.

BY MR. SCOTT:

Q.—Therefore, it was well above the water line?

A.—Yes.

Q.—And from this plan P-112 I see it was on the north side or upstream side of the C.P.R. siding?

A.—Yes.

20 Now, as regards the material which came out of those holes, I was present and saw the washings, and I made notes of it, and subsequent to that we put down our own holes and got a great deal better knowledge of the actual materials that were below the surface.

With that knowledge I reinterpreted my notes where possible, and I have shown on the profile as I think the material occurs in the Gatineau Power Company's holes. In some cases I was not able to do that, and I left them blank.

Q.—At how many of those holes of theirs that were drilled or sunk, were you present?

30 A.—I was present during the sinking of five, that is, number 1, 2, 3, 4 and 5. I came back to number 6 just as they were completing the hole, and I saw the material that had been washed out, and I was not present when number 7 was put down, but it was put down on the same place as number 2 was, so I did not consider it necessary to be there.

Q.—The same place as their number 2?

A.—The same place as their number 2, hole number 6. But I did not see. I have not used the profiles. I have not made any attempt to correlate that with my own findings.

40 Q.—Will you just indicate where those holes of theirs numbers 1 to 7 inclusive were made?

A.—The holes put down by the Gatineau Power Company were all on the uphill side of the railroad, in the railroad itself, or very close to it.

Number 1 hole is at profile BB in the center of the C.P.R. line of the railroad; number 2 is practically on the line BB and on the center line of the railroad; number 3 is on profile AA in the center line of the railroad; number 4 is practically on profile CC also in the

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center of the railroad. Five and six are on the downhill side of the railroad, and between hole number 4 and the switch to the siding. Number 7 hole is at practically the same location as number 2.

Q.—When you say railroad, you mean the railroad siding?

A.—The railroad siding.

Q.—Do the observations you made on the spot when the Gati-neau Power Company's engineers were making these tests confirm or modify the opinion you have given as to the delta and its bearing capacity, crust, etc.?

10 A.—My opinions were made up after seeing their holes in conjunction with my own drilling.

Q.—What is the final conclusion you draw after having made three or four days' study of the conditions prevailing there at the present time?

20 A.—You have a deposit of unconsolidated material. I use the word "unconsolidated" from a geological point of view. It means it is not rock. It is not a state of rock. The uppermost layer has had an opportunity to dry out and become hard. The layers underneath being in varying stages of wetness, that is something which cannot be cleared up now, because we do not know where the water table was originally.

30 The raising of the water has put this dry layer underneath water over most of its extent, and has had the effect of raising the water table, in that part of it which is still above water level, by the raising of the water and drowning that bed has caused it to soften. That softening is complete in the center of the delta, and as you get out towards the outside there is a decreasing amount of softening having taken place. It was that hard crust that enabled the ground to be used as a piling ground, because it had sufficient bearing strength to carry whatever weight was put on it; quite a good analogy, I think, is something we are entirely familiar with; it is due to the atmospheric change similar to that, and that is the freezing of any lake in the winter time, you have a crust form on top, and underneath it is perfectly viscous material, as we all know. Nevertheless, that crust is able to bear considerable weight. It softens and you cannot put anything on it. That is analogous to what has taken place here.

Q.—And when you were there the water was not at any time at an elevation of 321.5?

40 A.—No, not to my knowledge.

Q.—When you were there, was the water on the upgrade side, or the upstream side of the C.P.R. siding?

A.—No, I did not observe the water on the upgrade side of that siding, although it came right up to it on the other side.

Q.—On the lower side?

A.—On the lower side.

Q.—But it was not above?

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A.—No.

Q.—There were no pools of water above?

A.—There were some pools of water, but it was a question as to whether it was due to the heavy rains or not.

BY THE COURT:

Q.—To what practical use can this soft land be put?

10 A.—Well, my Lord, could you make your question more specific?  
You see, material of that sort might be used for building material, for clay products or for cement manufacture or for something of that nature. Does that come within the scope of your question?

BY THE COURT:

Q.—Yes, it does. Can it be used for lumbering purposes?

A.—You mean the area as examined by me?

20 BY THE COURT:

Q.—Yes.

A.—For a piling ground?

BY THE COURT:

Q.—For a piling ground or any other purpose?

30 A.—In the present condition the bulk of what I have indicated on this map as piling ground, whether it is correct or not, we will have to determine later, is under water at present. Obviously, lumber cannot be piled on it.

BY MR. ST. LAURENT:

Q.—As to the part that is not under water?

A.—As to the part that is not under water at present, you could pile lumber on that. The softening has not progressed far enough to make it entirely useless.

40 BY THE COURT:

Q.—How much of it could be used as piling ground?

A.—What I have indicated, the area here, the original piling ground was about three acres, and I do not think there is very much more than an acre left at present that is suitable.

BY MR. SCOTT:

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Q.—That is at what elevation?

A.—An elevation of 318 or 319.

Q.—And if the waters were up to elevation 321.5, would there be an acre left?

A.—I could not say without going into the matter more fully, but there would be less ground left.

Q.—In your opinion, what would be the effect if the water were held at 321.5 upon that portion of the remainder of the piling ground which did not happen to be submerged from the studies you have made on the site?

A.—Not altogether from the studies I have made, but from knowledge of the water table, that is, the height to which the soil is saturated below the surface of the ground.

When rain falls on the ground, a certain amount runs off, a certain amount evaporates and a certain amount sinks down, and there is a pond below the surface which varies accordingly where the pores of the soil are saturated, filled with water, and that is the water table. The water table follows along underneath the general surface of the ground, and it comes out to the surface at the lake or river. They are both the same elevation. When you raise a lake or river you raise the whole water table, and it goes back. It is effected back for a considerable distance, and the material over which the water table has become raised will become saturated with water, and the bringing of the elevation of the river to 321 is going to raise the whole water table inland from there.

Q.—Assuming the waters were raised to elevation 321.5, would you recommend this area between these red lines shown on this plan P-112 for piling ground purposes, for holding and supporting lumber for a saw mill?

A.—It would have to be improved because the whole thing would be under water at present, and I would strongly condemn any attempts made to fill it, because the material is softening and simply won't carry a fill. Close to the edge you are still capable of filling it.

Q.—Close to the edge?

A.—Close to the edge of the delta you can still fill there, because the material is not softened, but as you go out here, you get progressively softer crust and you are going to reach a point where it won't carry a load during filling operations.

Cross-examination 40

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

Q.—You have been a geologist for some years now? How many years?

A.—I have been practising the profession of geology for a matter of nine or ten years.

Q.—Largely as a mining geologist?

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A.—Yes, to a large extent as a mining geologist.

Q.—You have been working in mines in Northern Ontario?

A.—Yes.

Q.—And I suppose your duties there were more or less devoted to the business of testing out, to try and find precious metals or such other metals?

A.—Very broadly, that is what my duties are.

10 Q.—Have you had a great deal of occasion or opportunity during your practice to study the stresses on various types of geological formations?

A.—You mean of material of this sort?

Q.—Yes, the stresses on the material?

20 A.—Yes. I instructed a course called Engineering Geologically at Cornell University for three years, and that was the course in which the Civil Engineers were given their course in geology, and in connection with that work we studied a great many cases just like this one. It was Professor Reece who was head of the department. He is quite an authority on Engineering Geology, and in order to get his ideas home to the engineers he makes examples of cases brought up from all the world where engineering structures have failed, which is due to not properly understanding the conditions under which they are built, and in studying this I got quite a knowledge of this type of material.

Q.—But your practice has not been particularly devoted to that branch of the work?

A.—No, but I will say that it does not require very profound knowledge of geology to see what I have seen there. I think even a lawyer would understand it.

30 Q.—I should suggest, then, that a person whose business was chiefly devoted to the building of foundations on more or less uncertain ground would understand it pretty thoroughly, too.

A.—Well, I can only say in that regard a great many buildings have been built and are still standing, and there are a great many failures.

Q.—I suppose if you were going to give out a job of that kind, you would look for some engineering person who was devoting his energies largely to construction rather than to the finding of precious metals, would you not?

40 A.—For ascertaining what knowledge . . . . .

Q.—Ascertaining just what the possibilities were of putting heavy weights on that place?

A.—If I wanted geological knowledge I would get a geologist. If I wanted engineering knowledge I would get an engineer, and where they overlapped I would get both.

Q.—Supposing you yourself particularly thought that you would like on a piling ground to have something done in the way of



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filling in, would you think a geologist would really be the best man to decide on that point for you?

A.—Of filling it in?

Q.—Yes.

A.—My experience with engineers has taught me in a case like that, I would not depend entirely on the engineer's decision.

Q.—You would like to get a geologist on it too?

A.—I think it would be beneficial.

10 Q.—In order to make this matter clear, because, while I am sure it is clear to you as you are an expert, it may not be quite so clear to the limited understanding of the members of the Bar: now, as I understand the geographical features of this place, we have the Gatineau River running down north and south?

A.—Yes.

Q.—We have this little Meach Creek coming in or running out into the Gatineau River?

A.—Yes.

20 Q.—I take it there is a culvert made into the C.P.R. tracks to let the creek run through there?

A.—Yes.

Q.—And there is a roadway also which it crosses and in which there is a culvert?

A.—Yes.

Q.—I take it from the evidence you have given in chief that your theory is there has been a delta formed in low land?

A.—Yes.

Q.—Almost on the level of the Gatineau River?

A.—Yes.

30 Q.—Inside the track and inside the road?

A.—Yes, extending out to the Gatineau.

Q.—And on that delta, as I remember the word delta at school, it was land formed at or by the mouth of rivers?

A.—That is a definition given at school.

Q.—And it is brought down over a long period of time, or small quantities down alongside the Meach Creek hill, is that right?

A.—The quantities would not be large in that creek.

Q.—That would take a long time?

A.—Yes.

40 Q.—But ever since Meach Creek has been running down the side of that hill, it has been making its contribution to the delta?

A.—I think that is a fair assumption.

Q.—And where this delta has formed down on the bottom (let us call it the creek, for instance), you made borings?

A.—Yes. Might I have that last question asked again.

Q.—They were all made down on the low level, on the level near the Gatineau River?

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A.—Yes, from the top of the delta.

Q.—What was your object in making borings under the water?

A.—Simply to get further out into the delta, to get further out from the shore.

Q.—How many borings did you make altogether?

A.—Eight, I believe.

Q.—Do you know how many of those were made below the level of 318?

10 A.—There were four, excluding A, B and C, of which we did not take the elevation.

Q.—Why did you not take the elevations of A, B and C?

A.—Simply because we did not feel inclined to do so.

Q.—They were above 318?

A.—They would be just about on it.

Q.—Why did you not take the elevations? It is very important to know the elevation?

A.—That is your opinion. In my opinion it was not important.

Q.—Why did you find it necessary to give the elevation for 8?

20 A.—I gave them because you asked for them, or your associate did. I have them on the other holes.

Q.—But for A, B and C?

A.—No.

Q.—Why?

A.—Have I not already explained that? I have no elevations at A, B and C.

Q.—But you have elevations on the other five?

A.—On the other five.

Q.—But four out of those five are below low water?

30 A.—Below 318.

Q.—In fact, you put your boring machines through the water and got down underneath?

A.—Yes.

Q.—And of the five one was about, am I right in saying, the water's edge or slightly above the water edge?

A.—It is only slightly above.

Q.—And the other three were at other points considerably above the water's edge?

40 A.—You will have to be more specific. There is a list of my elevations, A, B and C; no elevation for D and E at the water level, that is where I started. That is about 318. The water was going up.

Q.—There is only one of the five above the level of the 318?

A.—Yes.

Q.—Four of them were below the 318 level and the 5th was slightly above?

A.—Yes.

Q.—At 318.2?

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A.—318.2.

Q.—Did you consider the places you were making these borings below 318 or just at 318, just from the point of view of being piling ground?

A.—I was given to understand they were on the old piling ground, but my object in boring them, as you see, I wanted to have a better knowledge of what was there . . . . .

10 Q.—Quite apart from the geological aspect of this matter, I would like to have your opinion made by the Plaintiff under oath . . .

Mr. St. Laurent: I object to this as not cross-examination.

BY MR. KER:

Q.—I would like to clear my mind as to what the Plaintiff in this case pretends was piling ground?

(Same objection.)

20 Q.—As a matter of fact, were you considering this matter that you were investigating from the point of view of establishing how much piling ground had been affected or saturated with water, or would be?

A.—No, it was to determine the general condition in that delta on the piling ground side.

30 Q.—And the delta itself is ten acres, and an acreage such as that, which I think you measured as being in the center, you have not considered that from the point of view of its being piling ground at all?

A.—My work was not governed in any degree whatsoever by what was piling ground and what was not, except the piling ground was on one side of the delta, and I confined my observations to one side of the delta.

Q.—And your borings or observations which were made below the 318 level in the delta, when you had to get out in the boat, were merely devoted to trying to find out what that soil would be in relation to the soil to the left and which was used as piling ground, is that right?

40 A.—I do not think I follow you.

Q.—What was the object of making the borings below the 318 level?

A.—Below 318?

Q.—Well, under the water?

A.—They were wanted to trace these forms from the land side of the delta out towards the centre of it. We had to go out irrespective of what the elevation was. I gave no thought whatsoever

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to whether I was above 318, or whether I had been below 318. That did not enter into my consideration at all.

Q.—You were merely looking at it from a geological point of view to see what the subsoil and soil was like in that vicinity?

A.—Yes.

Q.—And most of your drilling was done below the water level?

A.—That is, of the Gatineau people. They drilled above and we had to go above to get information.

Q.—They were drilling at the elevation 321?

10 A.—I think that is all put down there.

Q.—They were not drilling under water, they were drilling at the 321 level.

A.—Yes.

Q.—And what did they find at the 321 level, which is the level to which this water is presumably to be raised? How far did they go down?

A.—They went down various depths, from 7 to 20 feet.

Q.—Were there any of the holes at the 321 level which they went down to, and which you say you examined, that disclosed there must have been moisture when they got down to the bottom?

20 A.—I don't know how they could tell, because they pumped water into them.

Q.—You really don't know what the Gatineau Company found in the holes, on the 321 level?

A.—I would not say.

Q.—Could you tell me whether the holes were dry or wet?

A.—No, nor I do not think your engineers can either.

Q.—You cannot?

30 A.—The only way you can tell that is to drive your casing and wait and see if water comes in.

Q.—You don't know what the Gatineau Company found in its drillings of the 321 level?

A.—No, I would not say that. I think I know as well as the Gatineau Company's engineers.

Q.—If the water did not go up in the casings, would you presume they were dry?

A.—If the casing was not clear on the bottom.

40 Q.—Do you know or do you not know whether the Gatineau Power Company found moisture in the holes they did drill?

A.—Now, that is rather. . . .

Q.—Do you know.

BY THE COURT:

Q.—State what you know.

A.—The material which came out of one of their holes—I forget

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the number, came out in a very soft muck, and settled in the pail and was entirely analogous with the same surface a little further out in the delta, and the silt was wet, and it would be a very logical conclusion to say this stuff was wet on account of the material.

Q.—At what level did they encounter that?

A.—I think I can give you that. In hole number 2 from 7 to 14½ feet from soft silt-like material. It formed a mash in the sampling hole.

10 Q.—They did not encounter any suspicions of dampness until they got down 7 to 14 feet in that hole?

A.—There was good clay for the first six feet as I remember, and it was fairly hard.

Q.—And it was good bearing surface?

A.—The little pieces that came up were washed up. We only saw a little of it. I don't know how much there was, but there were some samples of good clay.

Q.—Let us take just that one hole for the moment; they were drilling then at about level 321?

20 A.—You can check that.

Q.—What was the level of that hole number 2?

A.—320.08.

Q.—And they went down to seven feet, that is to 313 before they encountered any rock?

A.—Whatever was in it.

Q.—I thought you said it was seven feet down before they ran into this clay? I asked you what was the level of the water at the time in Meach Creek?

A.—That was the day before I took any measurements.

30 Q.—Was it not a 318 or 317.

A.—It was about 318 or 319.

Q.—So they got down five feet below the level of the water before it began to get moist?

A.—Yes. That is not unusual.

Q.—It is a fact?

A.—Yes, it is a fact, but there is nothing unusual in it.

40 Q.—As a matter of fact all the borings you took of the so-called delta; although they were made under water, and although that water has been there for five years, you still find that tenacious tendency to be a hard surface?

A.—No, not all the holes.

Q.—Because you will probably know that Meach Creek itself is now up higher than it was originally?

A.—We did not find a hard surface in all our holes.

Q.—The further you got out towards the middle of the creek the softer it got?

A.—The further we got from shore the softer it got.

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BY THE COURT:

Q.—What shore?

A.—From the shore of the delta.

BY THE COURT:

Q.—Meach Creek?

A.—Yes.

10

BY MR. KER:

Q.—The further you got into the middle of Meach Creek?

BY MR. ST. LAURENT:

Q.—Or what had been the creek?

A.—Meach Creek bed.

20

BY MR. KER:

Q.—And the nearer you got to the bank where the piling ground was the harder it got?

A.—Yes.

Q.—Is that correct?

A.—Yes.

30 Q.—Let us just hark back again for a moment to this delta. How great a distance of the Canadian Pacific Railway's right-of-way is located on this delta?

A.—You mean what length?

Q.—What length laterally? I am not speaking of the width of the right-of-way, but of the length of the right-of-way along tracks. What length of tracks are laid upon the right-of-way which right-of-way is constructed upon the delta?

A.—I would say roughly, 800 or 1,000 feet, something in that order.

Q.—And it has been raised from what it was originally?

A.—I believe it was raised.

40 Q.—The railway had to be raised when the water was flooding, and you say it is thirty feet wide?

A.—On top.

Q.—And does it go down?

A.—About a one to one slope.

Q.—It is a double or single track?

A.—Single track.

Q.—It is rather broad right of way for a single track?

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A.—That was my impression.

Q.—It is the main line of the C.P.R., the Maniwaki division?

A.—I don't know.

Q.—How high is from what would be the bottom of the delta?

A.—From the water level up above, I should say somewhere in the neighbourhood of ten or fifteen feet. That is just my impression.

BY MR. MONTGOMERY:

10 Q.—That would be from 318?

A.—From 318. That is my impression. I did not take any measurements.

BY MR. KER:

Q.—What, in a general way, would be the right of way from the original surface of the delta?

20 A.—I thought it would be somewhere in the vicinity of ten or fifteen feet, about the vicinity of the delta. That is just from looking at it without taking any measurements.

Q.—Would not that be a very considerable bearing load on that delta?

A.—Certainly.

Q.—The delta seems to be standing up on it?

A.—Certainly.

Q.—I suppose it is a very considerably greater load than the piling ground would be?

A.—I am not in a position to speak about that at all.

30 Q.—Of course, there are heavy locomotives going over it?

A.—I admit there is a heavy load on that.

Q.—The delta seems to be holding it up all right? And the highway, they are both standing up all right?

A.—They are both standing up, as far as my observation led me to see.

Q.—And the highway is built up along the same lateral length of the delta for perhaps a little less?

A.—We can assume it is about the same.

40 Q.—And it is bearing up under its troubles with the highway on top of it too?

A.—It seems to be.

Q.—And these culverts run through and carry the water?

A.—Yes.

Q.—If it is bearing up that way when a large part of its surface is under the level of the water and its foundation is under the level of the water, why do you not think a piling ground which is three or four feet above the level of the water should hold up?

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A.—Would you repeat the question, please?

Mr. Scott: My learned friend is again falling into the same error as before by suggesting to the witness that the whole of the piling ground is three or four feet above the water, which is not the case.

Mr. Montgomery: That is a matter of argument.

10 BY MR. KER:

Q.—What I would like to know is, have you any reason to think that that piling ground, presuming it was three feet above the level of the water on that same boring surface—let us say it was even the same boring surface—what reason have you to think it would not hold up?

A.—You mean permanently three feet above water?

Q.—Yes.

20 A.—Well, it is holding up.

Q.—And any piling ground which could be constructed three feet above the water would, in your opinion, hold up?

A.—I would not go so far as to say that.

Q.—Why not?

A.—Tell me how you are going to construct it?

Q.—I think you said there would be no particular trick in constructing, so long as you were constructing . . . . .

30 A.—(interrupting) If you had not started construction before the Gatineau River was raised I think my statement was that the softening of the crust would not be much as it is at present.

Q.—Really, do you anticipate any difficulty in dealing with that part—we won't call it piling ground, but call it surface of the earth or ground which is above the present level of the water?

A.—That is a very ambiguous statement. You say dealing with it.

Q.—I mean in the way of making it substantial to hold piles.

A.—You can drive piles through it and get good bottom on the surface. That is one way.

Q.—For driving piles?

40 A.—Well, suggest some way that you are going to do it.

Q.—If you don't know, say so.

A.—I have already expressed my opinion.

Q.—You think that that would not do—let us presume for the moment that the level of the water today is 318 and I want to make the land above that level, I want a load, loaded up three feet more, I want to make it three feet higher.

A.—Above 318?



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Q.—Yes, to 321, is that physically possible?

A.—I think when you get out to 318 you are getting in a zone that is very questionable. I don't know the exact location of the 318 contour, but from the elevation of the water as it was the other day, the crust material is material weakened out there. It won't have the bearing strength it had originally. Just how much can be put on there or how much cannot be put on there is largely a matter of guess.

10 Q.—Perhaps you will pardon me if I refer back again to the Gatineau Power Company hole that went down there 7 feet from 321, that is, down to 313, when the water is still at 318, you are still dry at 313?

A.—I again say, what of it?

Q.—Is that not an indication that there is a pretty good surface?

A.—That does not indicate that that surface is going to be maintained at 313 over the whole district.

Q.—It has been there for five years?

20 A.—Of course, you understand time is quite a geological agency, one year, two years or five years has not to be given too much consideration. The thing is, we have found definite evidences of the softening of it. When that will soften I don't know, but the process is on. It may be a hundred years, it may be a year and a half.

Q.—But you have found definite evidences of softening, mostly under the water, have you not?

A.—Yes, certainly.

Q.—Under the water?

A.—Yes.

30 Q.—And on ground which is subjected up to 318 to being flooded every spring by natural springs?

A.—I don't know what the conditions are, but that is what we found the level.

Q.—When you get down to 320 you go down seven feet before you find any moisture, you go down to 313; would that not indicate that certainly any moving in this mysterious way, the mills of the gods are grinding slowly, that after five years you cannot find any moisture just a few feet from the edge?

40 A.—I am sorry, but my mind functions in circles so distinctly different from your mind, but it does not indicate that to me.

Q.—How do you account, then, for that five feet of dry earth below the water level at hole number 2 of the Gatineau Power Company?

A.—The five feet of dry ground?

Q.—Seven feet of dry ground from the 320 level?

A.—Of course, saying it is dry ground is an assumption. I sus-

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pected the water, of course, came in—we will say it is quite all right, seven feet.

Q.—How do you account for that? That would be five feet below the surface of the water?

A.—Yes. Well, as I have tried to point out, this top layer is relatively impervious material and the water soaks in it exceedingly slowly, and the material is not entirely uniform from one place to the other. You get slight variations. You may get small joint cracks in it which allows the water to come in some place and not in the other, and the actual thickness of that where it is soft and hard will vary.

Q.—That is the explanation with regard to this number two hole; do you know of any other holes in which they discovered any moisture?

A.—I do not recall offhand where the moisture was.

Q.—How far did they go down with their borings?

A.—We went out here and started underneath the water, and still found dry material.

Q.—That has been a marvellous thing to me. I have never been able to understand it?

A.—I am afraid I will not be able to explain it, then.

Q.—Let us speak of the Gatineau Power Company's holes now, because they appear to have been made outside; they did not go under water. They stayed on dry land to make their holes?

A.—Yes.

Q.—You have spoken of hole number 2, and you went down 7 to 14 feet, and it was dry, at least, as far as seven feet, and that the hole was drilled at the level of 320. Is there any other hole you know anything about, that was discovered by the Company?

A.—I think so.

Q.—Let us know the number of that hole?

A.—Hole number 4.

Q.—At what level was it drilled at?

A.—According to our information, 320.9.

Q.—Nearly 321.5?

A.—Yes, a very wide margin.

Q.—It is one foot and one-hundredth of a foot, about a foot and a half. One was at twenty and the one was at 20.4?

A.—In that hole at the depth of nine feet, these measurements in connection with the Gatineau Power Company would be plus or minus feet?

Q.—It may be ten and it may be eight?

A.—It may be ten or it may be eight. They hit coarse sand.

Q.—Somewhere between nine or ten feet or eight or nine or ten?

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A.—Yes, and that continued pretty much to the bottom of the hole.

Q.—How far was the hole taken down?

A.—About 20 feet.

Q.—That is good bearing ground?

A.—Sand.

Q.—Was there any water in it?

A.—I presume there was, because our hole adjacent to that showed in this profile—here is their sandy layer. We got traces of  
10 it out here.

Q.—Do you know how far they went down before it got moist in that hole number 4?

A.—No, but I should say it would be moist . . . . .

Q.—After 9 feet?

A.—Yes.

Q.—That dry ground would take you down to 311, while the water is at 318?

A.—You must remember I am not swearing to these facts. At least, I am sticking to them as absolutely footages where the water  
20 came in, it is my assumption that sand would be seen.

Q.—I just want the relation of the water level to the place it was dry. Have you any other hole you can testify to of the Gatineau Company's, because I notice you did not give much time to the Gatineau Power Company's holes in your examination in chief?

A.—We thought probably you could cover them.

Q.—I would like to know what you have to say. You examined them. We went on the chance and drilled them. Have you any particulars about any other holes?

A.—I have particulars about all the holes if you think it is necessary for me to discuss them.  
30

Q.—Perhaps not. I have no doubt the Company will make some evidence about them, but broad and large, there was not much moisture found in any of those holes?

A.—Is that so?

Q.—I am asking you?

A.—I am assuming your statement.

Q.—Your investigations of your personal knowledge of the drillings made by the Gatineau Company does not permit you to  
40 answer that question?

A.—No.

Q.—And you do not know?

A.—No.

Q.—Do you know of any other where they drilled any holes, that they got down to bed rock?

A.—They got down to rock in the majority of their holes.

Q.—How far down?

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A.—It varies. Some as far as twenty feet, nineteen feet.

Q.—Were you there yesterday?

A.—Yes.

Q.—That was after the Gatineau Power Company's hole had been abandoned and left there?

A.—Yes.

Q.—Would it not have been rather an interesting thing for you to have taken something and dropped it down, just to see how low the water was in their holes?

10 A.—That phase of it did not worry me, because I thought I understood, and could explain to my own satisfaction, and to the satisfaction of people who have worked with, and know that type of material, why those beds were wet or dry.

Q.—When you were working under the water with the drill you put in, I suppose you worked from a scow or a boat of some kind, to drill down? You worked with an augur or a bit, and the further it went down, it kept turning this material up?

20 A.—How do you mean, turning it out? We pulled it out. It would advance probably four or five inches and then we would pull it out and get it, and then go down.

Q.—Naturally, everything it brought up would be water-soaked?

A.—There was water in the bottom of the holes. Don't let that mislead you. Did you ever take a piece of clay in your hand and dip it in water and bring it out? It does not have time to stick. It is just like putting a cake of soap in water and bringing it out again.

BY MR. MONTGOMERY:

30 Q.—The same as with sand?

A.—Sand will dry more quickly, though.

Mr. Ker: You found as you got out towards the centre of Meach Creek it was getting softer as time went on?

A.—This yellow clay, yes.

40 Q.—You don't know how long before the water came up that creek had been exposed, do you? Would I be right in assuming that the explanation of why it got softer as you went down, was you came nearer the restricted area where the water itself had been lodged and consequently it had not a chance to consolidate?

A.—Closer to Meach Creek?

Q.—Yes.

A.—Might I ask you to repeat the question?

Q.—Perhaps I did not word my question properly. What I want to know is, if you can tell me, you say as you went down fur-

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ther into the so-called delta of Meach Creek that you found it had a tendency to get softer?

A.—Yes.

Q.—Would that perhaps not be accounted for by the fact that as you got out further you got into a more restricted area where the water in Meach Creek themselves had not yet time to consolidate that into a harder material that it would have by being a little bit further in the water?

10 A.—There are a lot of factors entering into that. It is the high bank above the normal level of Meach Creek and a lot of factors that I cannot speak of, because I never saw Meach Creek in its original condition.

Q.—When did you first see it?

A.—In August of this year.

Q.—And you do not really know what it was like before the water was raised? You do not know how often the water came up before the Gatineau Power Company came on the river?

A.—No.

20 Q.—You don't know how often that Creek was flooded under natural conditions?

A.—I did not enquire into that at all.

Q.—You say you saw the washings that came up from the Gatineau Company's borings, as they came out of the holes?

A.—Yes, I saw samples of material.

Q.—I hope you were given every opportunity to examine them?

A.—I might say that Mr. Ralph was very courteous.

Q.—Of course, he was in the dark as much as you were as to what was going to happen when you went down?

30 A.—Well, at least as much.

Q.—I think you said you thought it would be satisfactory if filling were begun while the water was not on the property, that it would be more likely to succeed?

A.—That was the idea.

Q.—In other words, that there would be a question about it if it were filled into the water itself?

A.—At present.

Q.—That being the case, there should be no particular reason why filling should not take place on what is now dry ground?

40 A.—I do not see why you could not fill what is at present dry ground.

Q.—You do not see any reason why we should not fill what is at present dry ground?

A.—The only thing I would say is, you will retard the softening process which is apparently going on, and you may stop it permanently. Anyway, you will retard it.

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Q.—And you see no mechanical or physical reason why we should not begin to fill such land which is exposed?

A.—If you have a crust on it.

Q.—When you speak of retarding, I suppose you would scarcely venture to express an opinion as to how long that retarding would go on?

A.—It is extremely difficult to put a time limit on it, but in five years' time we have evidences of a remarkable change having taken place where it is entirely water soaked.

10

BY MR. MONTGOMERY:

Q.—That is not in five years' time?

A.—Whatever length of time, since the water was raised.

BY MR. KER:

Q.—You have evidence that in five years' time there has been no sinking on the C.P.R. right-of-way?

20 A.—I think I have given my opinion as to why that has taken place.

Q.—Because it was built before the water was raised?

A.—Yes.

Q.—Anything that can be built upon land on which the water has not raised, you think has a fair chance of succeeding?

A.—Yes, a fair chance.

Q.—Do you appreciate the fact that the C.P.R. right-of-way, before it was raised, was built upon this delta and the foundations of which were flooded every year?

30 A.—That is probably they had to pile it on the northern part—I don't know.

Re-examination

RE-EXAMINED BY MR. SCOTT, K.C.,  
OF COUNSEL FOR PLAINTIFF:

Q.—Would the ordinary spring flooding destroy or disintegrate this crust you have been speaking about?

40 A.—Well, you get a certain amount of moisture soaking in; you get some running off and you get some evaporating, and it would be neither here nor there, the amount of softening that would take place in the ordinary spring flood.

Q.—This Exhibit P-112 speaks for itself, but since we are dealing with your testimony and as you have to go out of town today, would you just indicate to His Lordship, if you know, from looking at this plan where the contour line 321.5 comes with reference to what you were advised was the piling ground between these red lines?

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A.—I don't know that the contour line 321.5 is accurately marked on here. The edge of the rock outcrop would be on the uphill side of the red line above the railroad spur. Of course, I did not take any level of this. I was not interested.

Q.—Did you take any levels in connection with the railroad spur line?

A.—They had their instrument set up there and they were doing it by stadia means, and they were giving me the elevations of the various holes.

10 Q.—And what did they tell you they were on the railway spur?

A.—320.

Q.—That is not from the top of the rails?

A.—That is from the ties.

Q.—So the ties on their holes Nos. 2 and 7 according to the information you have given would be elevation 320 on the ties?

A.—Yes. Their hole No. 1 is 321.68: that is practically 321.5. Hole No. 3 I had the elevation, 321.8. Those are practically on that contour 321.5, and it would come across from Meach Lake. That would be the approximate measurements I had taken. The water  
20 at 318 is very close to the railroad.

Q.—And just at the point along the profile BB?

A.—BB.

Q.—And as I understand it the holes you made were made further out?

A.—Yes, they were just put to complete our profile.

Q.—And it contained a proper survey of the information that they had obtained by their drilling?

A.—Yes, to complete a survey.

30 Q.—Was Mr. MacRostie with you when you sunk all these holes?

A.—I put down holes A, B and C before Mr. MacRostie came. Holes A, B and C were put down on Monday, and the remainder of them were put down on Tuesday, but Mr. MacRostie had not come until hole D was completed.

Q.—I understand you are returning to Simmons, Ontario, tonight?

A.—That is my wish.

40 Q.—You told his Lordship in your examination you had taken some samples of the borings made by you, and you had been furnished with some of the borings made by the engineers of the Company, of their holes?

A.—Yes.

Q.—And you have them in Court?

A.—Yes. They are all labelled and if anyone is interested in them they are available.

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BY THE COURT:

Q.—Did the raising of the water on Mr. Cross' land depreciate this land?

A.—Depreciate in value?

BY THE COURT:

10 Q.—In value?  
A.—I would say decidedly, yes.

BY THE COURT:

Q.—Can you tell me to when, to what extent, Mr. Cross has suffered damage?

20 A.—I do not know just how much of the total delta Mr. Cross owned originally. It would be hard to estimate the area covered by his ground, but the water has covered the largest part of that delta and obviously his ground which is covered by water has depreciated, when he wants to use it to pile lumber on to drive.

BY THE COURT:

Q.—Well, from what you have seen of the inundated or flooded ground, can you say as to just that part, what damages were caused, and to what extent?

30 A.—The rate of change of this breaking down of the surface layer (and that seems to be the material which was required the load in that delta) as I have said, that is breaking down more and more as you go out. I did not attempt to locate the principal fringe where that would be. You might say five or six feet deep of hard material, and consequently I cannot say just where that softening effect has stopped, but my contention is this, that that softening is continuing and will continue as long as the water is up to elevations of approximately 319 or 320, because it is below the level of the water, and hydrostatic pressure alone is going to cause slow penetration of water into this bed, and it is slowly softening and breaking down. If that  
40 possibility is that the spur line of the railroad will have the crust softening under it. It is not at present.

Your question, I presume, was to enable you to draw some conclusion, or to get me to say what percentage of Mr. Cross' piling ground was affected, or was it of the whole delta?

BY THE COURT:



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Q.—I mean on Mr. Cross' property?

10 A.—At present he is only able to use about one-half of the area for piling, that I was given to understand he used originally. He is only using about one-half or less at present, and although it is very close to the water level, the water will stand around amongst the sawdust and wood he has piled in there to fill in, so that I should imagine it was undesirable to try to dry lumber, because there will be dampness underneath your pile, which would soak into your wood, that is, of the one and a half acres that is left to him of the three acres.

BY THE COURT:

20 Q.—I wish you to remember that I have to give a just and equitable compensation for the loss that Mr. Cross has suffered, and I would like you to help me because it is the duty of the Judge to decide from the evidence that is made by the witnesses. I would like as much possible enlightenment upon that. Supposing that property belonged to you, what would you ask the Company to pay you for the state of things that have taken place?

A.—That is a very difficult question for me to answer because in my capacity I was not called upon to try and determine what percentage of that ground was ruined and what was not. I was trying to determine the condition of the top and why it had gone bad.

BY THE COURT:

30 Q.—I think, sir, you are a very able man, not only as an engineer, but as a geologist. I think you have one title more than the engineers who have given evidence here, and that is your knowledge is geology; now, with all that, can you help the Court? I will give you time to think about it if you wish, and you might come back tomorrow.

A.—I think I would like to give that point a bit of consideration, your Lordship.

BY THE COURT:

40 Q.—Or, if you cannot give it, you may say so?

A.—As it stands at present, there is practically none of the piling ground, from my information regarding the piling ground below the elevation of the spur line of the railroad, which is at all suitable at present. It is covered with water, and I would say that the raising of that, by putting a load on, is questionable. It might be satisfactory and it might not. The crust shows evidences of softening there. At some places you put a hole down and you get a certain

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amount of hard material, and you will put one down a short distance away and it is quite soft, so I consider that area questionable for putting a fill on in order to raise the surface above the water level. I don't know what type of beneficiation is above. They may want to put poles in and put the lumber up above the water, or they might want to put in gravel and raise it in that way and they might pile in gravel. Lumbermen will have to give evidence as to what is satisfactory and what is not. I would suggest this work as a means of beneficiation. Piles should be driven and you should find bottom somewhere about 20 or 30 feet in the average mostly over that area, but for putting a gravel fill on, I would hesitate very much to recommend doing that, because I do not think it would be permanent.

10

Now, as for the area on the uphill side of the railroad between there and the red line as indicated on Exhibit P-112, at present that ground has not softened materially. If they are going to maintain a water level of around 318, 320, or 321, whatever it is, it is going to tend to soften that ground.

20 BY THE COURT:

Q.—They have the right to do so to 321.5?

A.—That is going to put all that ground in a condition where it will pick up moisture and soften in time. I cannot say what time it will take, so that at an elevation of 321.5 there is very little of Mr. Cross' ground that he has used for piling that is not either submerged or partially softened, or beginning to soften due to the effect of this water raising. He is left with a very small amount of space that he can use for piling ground. I think we calculated about an acre and a quarter on the uphill side of the spur line, and at 321.5 there is going to be quite a large area of that flooded, or that he will be left maybe with one-quarter as much piling ground as he had originally, and that will be almost on the water's edge, so that it is not high and dry as I would think you would want lumber to be piled. It would be above the water elevation.

30

BY THE COURT:

Q.—It would be of no use to him?

40 A.—It could not be very much use to him. It would be very close to the water. He would be left with a very very small percentage of his original ground available for piling his lumber on.

BY THE COURT:

Q.—Can you tell me what the loss would be?

A.—You mean the monetary loss?

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BY THE COURT:

Q.—Yes.

A.—No, I do not know anything about that.

10 His Lordship: We have taken some time on the subject of geology and also on the subject of surveying, but what I wish to get is the value as to the loss or the damages that this plaintiff has suffered, the fair, equitable, and just damages.

(And further deponent saith not.)

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DEPOSITION OF DONALD J. MACDONELL, A WITNESS  
PRODUCED ON BEHALF OF THE PLAINTIFF

20 On this thirteenth day of October, in the year of Our Lord one thousand nine hundred and thirty-two, personally came and appeared

DONALD J. MACDONELL,

of the City of Ottawa, lumberman, aged 62 years, a witness produced on behalf of the Plaintiff, who, being duly sworn, doth depose and say as follows:

30 EXAMINED BY MR. SCOTT, K.C.,  
OF COUNSEL FOR PLAINTIFF:

Q.—Do you live in Ottawa?

A.—Yes.

Q.—I understand you are one of the superintendents of the J. R. Booth Company of Ottawa?

A.—Yes.

Q.—They are lumber people?

A.—Yes.

40 Q.—How long have you been connected with them?

A.—Fifty years.

Q.—Do you know the Gatineau River?

A.—Yes, very well.

Q.—Do you know Mr. Cross' property at Farm Point?

A.—I do.

Q.—Have you seen it more than once, several times or a great many times?

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A.—Oh, I have seen it a great many times in the last fifteen years.

Q.—Were you ever in the lumber business yourself?

A.—Yes.

Q.—Running a saw mill?

A.—Running saw mills. I have a saw mill at Low, Quebec.

Q.—That is further up the Gatineau River?

A.—About twenty miles further up.

10 Q.—Did you know Mr. Cross' property before the Gatineau Power Company raised the waters and flooded it?

A.—Yes.

Q.—Have you been up there since they flooded?

A.—I have, several times.

Q.—As a man who is engaged in the lumber business, I would like you to tell his Lordship what you find conditions to be at the present, as regards the flooding that you speak of now, with reference to his piling ground of his lumber mill?

20 A.—I visited the place during the last three months, I think in June, July and August.

Q.—Of this year?

A.—Of this year. I recollect before the flooding it was considered a fairly good piling ground, and on my last three visits I found that the top soil was soft and mucky where formerly they used to pile lumber, and under conditions today, I would not consider it a suitable place to pile lumber.

Q.—What is the effect of damp or a wet piling ground on lumber piled above it?

30 A.—Where it is damp and soggy, my experience has been, where I have been superintendent for J. R. Booth for 38 or 40 years ago, we filled in a place called Dow's Lake. We filled in twenty-five or thirty acres, and for several years afterwards it necessitated taking in gravel mostly every spring to build up our tracks. They would sink and work.

Q.—As they would sink?

40 A.—And work along with the softness of the ground. It meant that years afterwards, every spring, we would have to build and shore up our tracks. It applied the same way with our lumber piles, where we would build a bottom for our lumber pile, after removing that lumber, the following year the bottom would be all out of kilter, it would be all canted, which would mean we would have to build it up and straighten it up again, even up to a very few years ago. Even up to three years ago. We have abandoned that portion about three years ago.

Every time we have taken a pile of lumber away it meant that the men had to go back over the ground and build up those bottoms, as they canted or worked.

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Q.—Speaking of Farm Point, you know the waters have come up over a large portion of that ground?

A.—Well, that was pointed out to me, to the railway tracks or spur line that goes into the mill. I was pointed out where the water was raising up to that spur line and beyond a little bit.

Q.—Supposing that water had been two or three feet higher than when you saw it during the summer months at Mr. Cross' ground going up to elevation 321.5, what would you say?

10 A.—I would say it was absolutely out of commission. The ground would be absolutely out of commission for any purposes.

Q.—You are still in the employ of the J. R. Booth Company?

A.—I am.

Q.—Would you recommend to your president, or your general manager, or whoever it is you reported to, using that area for piling ground if the waters were up to elevation 321.5?

A.—Certainly not.

Q.—How would that affect the saw mill business at Mr. Cross', at Farm Point, if his piling ground were gone from there?

20 A.—Well, it would be, to my mind, like taking a horse away from the cart. A cart is no use without the horse, or a horse would be no use without a cart. The mill would be no use without a piling ground.

Q.—You know that that mill was operated by the water coming down from Meach Creek?

A.—Yes, by the water coming down from Meach Creek.

Q.—I understand you mentioned this name, Dow's Lake, where you did some filling at one time?

A.—Yes.

30 Q.—What kind of place is that?

A.—It was the backwash from the Rideau Canal.

Q.—Was it similar to what has happened at Mr. Cross' place, when they had put the waters up to elevation 321.5?

40 A.—I would say yes, similar to that. Originally, some called it a lake; others called it a dam. There was a roadway built across at the north of the backwash. This was in the early days, and the Rideau Canal flooded in and formed a kind of swamp. We filled in with fill, mostly gravel and stone taken from what we called at that time Spark's estate yard, situated along now what they call Somerset street. We were two seasons or more with cranes and steam shovels taking this fill from Somerset street up to the dam. For a number of years afterwards we laid probably six or eight miles of track in this yard. I am speaking of the whole yard. There would probably be three miles in this section flooded; every spring we would have to take up loads of ballast to build up our tracks again.

Q.—Was there any water lying where you filled in?

A.—Right close to our yard the Federal District Commission

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had built a roadway across the dam sometime in 1908 or 1909. Their soundings then were from a foot to twelve feet, an average of about nine feet of fill. That would be further out in the lake than where our yard was.

Q.—But where you started filling in, was the water above the ground?

10 A.—It started from a foot I should say, to maybe six or seven or eight feet. The further out the deeper it got. That section was in little pockets here and there. We filled in from the solid ground out, I would say, probably the length of an acre and a half or two acres, in twelve acres long.

Q.—Did you find conditions satisfactory after you had done this filling which you have just described?

A.—No. It caused more or less trouble continuously, particularly with our pile bottoms. As I said before, would this fill, if the pile remained on the bottom, say, eighteen months, and we removed that pile, it necessitated building it up again. It would either cant one way or the other.

Cross-examination 20

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

Q.—Where was that you were speaking of?

A.—In the old days we called that the St. Louis dam. It is close to the Experimental Farm.

Q.—Near Ottawa?

A.—It is in Ottawa.

Q.—What is it being used for now?

30 A.—The Federal District Commission converted that portion we filled in into a park.

Q.—It is a city park?

A.—Into a city park.

Q.—It was under water before?

A.—Yes, forty years ago.

Q.—When was the filling done?

A.—That filling was put in in 1921 or 1922 or thereabouts.

Q.—Were you engaged in that work?

40 A.—I was then inspector of lumber, and I was also at times in charge of some of the men.

Q.—Did I understand you correctly to say that that was subsequently used for lumber purposes?

A.—No.

Q.—You say that was eventually turned into a park? It is now a park by reason of the Federal District Commission improvements in Ottawa?

A.—Yes.

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Q.—You said the loss of the piling ground was like a cart without a horse?

A.—Similar. Put it that way.

Q.—Supposing I knocked your horse over with my motor car and killed him, do you think I should of necessity have to pay you for your waggon? Could you not get another horse?

A.—That is a question for the Court to decide, not me.

Q.—On the other hand you used a very apt analogy, and I would like you to draw it to a point. Is it not possible to replace a horse?

10 In other words, is it not possible to replace a piling ground.

A.—There is nothing impossible.

Q.—I understand you said you were operating a business at Low?

A.—Yes.

Q.—What is the name of that business?

A.—MacDonell Conyers Limited.

Q.—You are then, the Mr. MacDonell through whose property we ran a transmission line?

20 A.—Yes.

Q.—Am I not right in stating we were going to run it through your piling ground?

A.—No. You prohibited us from making use of the yard for a piling ground.

Q.—It was in the vicinity of your piling ground?

A.—We were building on it.

Q.—And you had considerable argument with the Company about it?

A.—Yes.

30 Q.—And as I remember the evidence in that case it was your intention to fill up the land to make it available for your piling ground, or sawdust?

A.—Quite right.

Q.—Is your business still operating?

A.—No.

Q.—What happened to it?

A.—You made an assignment.

Q.—You are now working for the J. R. Booth Company?

A.—Working for Booth.

40 Q.—In any of your investigations of Mr. Cross' location, you did not take any water levels of any kind? You don't really know anything about that?

A.—No.

Q.—Could you give me an idea of what normal piling ground Mr. Cross had? Let us take it above the present water level. What would be the area?

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Mr. Scott: Since the flooding or before the flooding?

BY MR. KER:

Q.—You have seen the present level of the water, you have been up there since the water has been raised?

A.—I have seen the water in different stages each time I went up. The first time the water was quite close, in fact under the ties leading to the mill. Another time I went out the water had receded  
10 somewhat.

Q.—In a general way you know where the water is being held in relation to that land of Mr. Cross at the present time since the Gatineau Power Company Development?

A.—I could not say that.

Q.—When were you there last?

A.—In August.

Q.—Let us take August.

A.—I think if I recollect right the water was quite a few feet  
20 away from the spur line.

Q.—I am speaking now of land not submerged: how much would you estimate there remained of piling ground when the water was at that level in August? How many acres? Three or four, two or three, or one?

A.—Oh, no.

Q.—How many acres piling ground would there be there?

A.—I would estimate the last time I saw it and what was not submerged by water. . . .

Q.—I am speaking of what was not submerged?

A.—I would not say over an acre.  
30

Q.—So above the level of the water when you saw it, there was about an acre of piling ground?

A.—Yes, I should say so.

Q.—Not more than two acres?

A.—There would not be two acres.

Q.—You found a dampness on that piling ground?

A.—I did.

Q.—On the portion that was above the water?

A.—Above the water.

Q.—Was it dry weather?  
40

A.—A fairly dry day.

Q.—Of course, I suppose you noticed the physical condition behind that piling ground? It is low with a slope immediately behind it, is it not?

A.—Behind, I would say that would be the west side, or the north side of the spur.



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Q.—And higher up the top of the hill 70 feet there is a dam which impounds all the water?

A.—I did not take particular notice of that.

Q.—As to those two acres you speak of as being above the water, would that be a place which, naturally after a rain you would find would be affected by water running down from the upper level?

A.—Not to any great extent.

Q.—You would not think so?

A.—Not from rains.

10 Q.—From ordinary seepage out of that dam?

A.—No, I would not think so. If I recollect right, the water from the dam was flowing further the other way, at the lower end of the property.

Q.—I am speaking of the dam up on the hill.

A.—I do not think it would affect that high up portion you speak about.

Q.—Would you attribute that dampness to the river water?

A.—Yes, I would, the raising and lowering of the water.

20 Q.—How large a percentage of that land which was then above the water did you find was damp?

A.—What do you mean?

Q.—Let us say two acres, or one acre, whatever it was, was it all damp and wet?

A.—I won't say I went over it inch by inch.

Q.—I quite understand that.

A.—From a casual glance I would say where it was not exposed or where the water did not come up, it was of a sappy nature.

Q.—You do not know what level that was?

30 A.—I do not.

Q.—It will be considerably above the water anyway?

A.—Yes.

Q.—A foot or two?

A.—Close to the spur line.

Q.—You spoke of certain filling in which had been done, I think you said by the Booth Company?

A.—Yes.

Q.—When was that?

A.—About 1891 or 1892.

40 Q.—I understand that this land which you say had been filled in was the land which was subsequently made into a park?

A.—Two years ago it was made into a park.

Q.—But before it was made into a park what was it?

A.—It was a lumber pile.

Q.—It was a piling ground?

A.—It was a piling ground.

*In the  
Superior Court*  
No. 82.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
D. J. MacDonell  
Cross-examination  
Oct. 13th, 1932.  
(continued)

- Q.—And it was used as a piling ground after it had been filled in?
- A.—For forty years.
- Q.—And it had been filled in on six to seven or eight feet of water?
- A.—From nothing, out to seven or eight feet.
- Q.—What sort of filling was used in that?
- A.—Gravel and rocks; mostly gravel and loam taken from the farm.
- 10 Q.—And it was quite an extensive filling; you said two acres by twelve?
- A.—I should say that.
- Q.—About twenty-four acres?
- A.—About twenty-four or twenty-five acres.
- Q.—It lasted as a piling ground for 40 years?
- A.—The first two years we had some trouble with it, as I said before, when we laid out tracks; as we filled in we laid tracks, and after that it would necessitate mostly every spring bringing in a train load or two of gravel to build up our tracks which had sunk.
- 20 Q.—It was your tracks that did most of the sinking?
- A.—Both the tracks and the lumber. I would not consider in that portion of the yard that we could put up a permanent lumber piling ground. In the higher portion of the yard where there was firmer ground it is very seldom we interfered with it at all.
- Q.—That was the part that would be out of water when you began to fill?
- A.—Yes.
- Q.—Did you drive any piles?
- 30 A.—No, just went on filling.
- Q.—You went on for about forty years with it as a piling ground?
- A.—Yes, I should say 30 or 40 years.
- Q.—And 25 or 30 acres were affected?
- A.—I am just giving you a guess?
- Q.—I want to know in a general way what the area was?
- A.—I am basing it on a million feet that we used to pile. I figured we could pile anyway between 1,800,000 to 2,000,000 in that portion.
- 40 Q.—You have had a good deal of experience in the lumber business; broad and large, piling grounds attached to lumber mills are very frequently made on filled land, are they not?
- A.—Not in all cases; in some cases.
- Q.—I have noticed sawdust piled up and logs piled around, and water going around close by the mill yard in the lumber business; am I right in saying that one expects the piling ground is ground of any kind which may be available in close proximity to the mill?

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(continued)

A.—Around the mill at times, used for the purposes of filling.

Q.—You remarked that the land at 321.5, whatever was covered, would be out of commission for any purpose?

A.—I don't know what you are speaking about when you say 321.5?

Q.—That is the land which is now out of water. If the water goes up over it, you say naturally it would be out of commission for any purposes?

10 A.—Yes.

Q.—Do you see any particular difficulty, taking the land which is now not submerged, in filling that in?

A.—In my opinion it would not warrant the expenditure by F. T. Cross, for the capacity of the mill. It would not warrant any great expenditures in trying to improve that portion of the area that is covered by water, that is, I should judge, the capacity of the mill would be anywhere between three and four million feet and going to any expense in trying to build up that portion of the yard that is flooded would not be very profitable.

20 Q.—Apart from the question of what you think the cost would make it prohibitive, it is possible?

A.—I say there is nothing impossible.

(And further deponent saith not.)

*In the  
Superior Court*  
No. 83.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
John Omanique,  
Examination  
Oct. 13th, 1932.

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DEPOSITION OF JOHN OMANIQUE, A WITNESS PRODUCED ON BEHALF OF THE PLAINTIFF.

30

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

JOHN OMANIQUE,

of Barry's Bay, lumberman, aged 58 years, a witness produced on behalf of the Plaintiff, who, being duly sworn, doth depose and say as follows:

40

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

Q.—You are not on the Gatineau?

A.—No.

Q.—And you have not had trouble with the Gatineau Power Company?

*In the  
Superior Court*

No. 83.  
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(continued)

A.—No.

Q.—Are you in the lumber business?

A.—I am.

Q.—In a different part of the country?

A.—Yes.

Q.—How long have you been in the lumber business?

A.—Thirty years.

10 Q.—How long did you have the control and operation of a saw-mill?

A.—Thirty years ago. It is a little over thirty years since I started. I had a mill about five years and I dropped it for four years and then went on again.

Q.—How important a mill was it? How many feet did you handle a year?

A.—When I started, about 4,000 feet a day.

Q.—And for what portion of the year would that go on?

A.—About two or three months or four months.

Q.—Then, how big did that go to?

20 A.—We are sawing now from 100,000 to 120,000 feet a day.

Q.—During what part of the year?

A.—We have been sawing six months, but this year we have only sawn about three.

Q.—So at that rate it would be about sixteen or eighteen million feet a year during those months?

A.—About fourteen or fifteen million we sawed last year. That is the biggest season we have had.

Q.—I presume you had to pile that lumber?

A.—We did.

30 Q.—What kind of ground is required for a piling ground to season out lumber?

A.—We try to get as high ground as we can and as level as we can, and as solid as we can.

Q.—With respect to its being level and solid, why is that?

A.—Naturally, if you don't get good even ground or the same weight, your pile will settle one way or the other and make your pile crooked, that is, if it is good lumber, say good quality of white pine, hardwood, basswood, and it is sawn, it won't keep so well. It gets black and stains a lot.

40 Q.—Why does the fact of whether the pile is level or not bring that about?

A.—If it is not level, in wet weather, if your pile is put up there and falls back a little bit, the water will beat into it and your pile is supposed to be put up a little forward with a cover on, so the weather cannot beat into the pile and run through it.

Q.—When it is put up with a slight inclination?

A.—To the front.

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(continued)

Q.—That is to prevent the water from beating into the pile?

A.—Yes.

Q.—If the pile gets out of plumb, what effect has that on the lumber?

A.—It warps the lumber.

Q.—And what effect does that have?

A.—None of us like to buy warped lumber, that is, for building. We like to have it pretty true.

10 Q.—When the bottom of the pile happens to be damp, what effect has that on the lumber?

A.—It spoils the lumber.

Q.—Does the dampness only affect the lower areas, or how far does the effect go?

A.—In damp weather, of course, I never had that much experience to state, because we have never piled lumber in wet ground.

Q.—Have you seen lumber that had been piled in this fashion, and the effect it had on that lumber?

A.—No, I cannot say I have.

20 Q.—Do you know Mr. Cross' mill at Farm Point?

A.—Yes.

Q.—Have you been there once or more than once?

A.—I think I have been there about four times.

Q.—When were you there last?

A.—I was there in August.

Q.—This last August, 1932?

A.—Yes.

Q.—Had you been there before the waters came up?

30 A.—No, I was never there before the water came up. That is before the dam was in.

Q.—You had never been there before the Chelsea dam was in?

A.—No.

Q.—When you had been there in August, do you know to what elevation the water was?

A.—The water was quite low when I was there in August.

Q.—Can you tell us in feet, according to the gauge, how high up it was, whether it was 317 or 318?

A.—No, I could not just say. All I know is, it was not up to the mark where I was shown the water had raised in near it.

40 Q.—Was there much of this soft land around the mill that was flooded when you were there?

A.—No, there was not much of it flooded then.

Q.—Was there in front of the mill between the mill and the river that was flooded, when you were there?

A.—There was a soft place there that was flooded.

Q.—You were shown where the water had come?

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(continued)

A.—Yes, I was shown by their surveyor where the water would go, that is, in high water.

Q.—Was that surveyor Mr. MacRostie, who is present in Court?

A.—Yes.

Q.—Is that the gentleman who showed it to you?

A.—I think he was one of the men there.

Q.—Assuming that to be the elevation at which the water was held, what effect would that have on the piling ground available there?

10 A.—He could not use it.

Q.—And if the water were to be held at two or three feet higher than what it had been usually held at, what effect would that have on the ground?

A.—It would affect his ground in places because it is not level there. The ground runs on the slope.

Q.—Is there any other ground there that you could suggest as being suitable to replace it as piling ground?

A.—I do not see any.

20 Q.—You looked about?

A.—Yes, I did.

Q.—In view of what was pointed out to you, as to where the water came, and the possibility of its being held at a controlled elevation of 321.5, that is, two or three feet higher than it has been usually held in the last five years, what would your view be as to the possibility of continuing a saw mill operation there?

30 A.—I do not see how it could be used. You could not use it for piling, and that is the main thing in the lumber business, you have to have some place to pile your lumber. That is where it has to dry, especially if it is hardwood. Hardwood needs a little more care than either spruce or hemlock. I have handled both. I have handled a lot of hemlock and spruce, and we find hemlock is very hard to handle, that is, in drying.

Q.—From what you saw, what would be your opinion as to the suitability of this place before the flooding for a saw mill operation?

A.—I thought it was a very nice place. It is a very agreeable place and a cheap place to handle. I thought it was about as cheap a place to get stuff into a mill that I ever saw in my life.

Q.—Did you visit the other sawmill at Mileage 12?

40 A.—I was down at Mileage 12.

Q.—What would be your opinion of that place before the flooding?

A.—Before the flooding it was all right. You could get down there pretty handy, you could get logs in from both ways, that is, I would call it from the west side, from across the track, and also across the river, because it was low enough to get into.

Q.—And since the flooding?

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A.—If the water raises up and down I do not see how we can get across, because the ice would not carry the slush.

Q.—With the place as you saw it, was there any room left there for a sawmill?

A.—No, not that you could get at.

Q.—Did you see the place where he used to operate a mill at Alcove?

A.—Yes, I was up there, but I did not take a great deal of notice of that.

10 Q.—What would the effect of the raising and lowering of the waters of the Gatineau have on the possibility of getting logs across the river?

A.—I do not see how he could get them across, even with a log bridge. I do not think so, because the water works up and down. We have trouble there in handling logs on the creek with the raising and lowering of the water. We have lots of trouble. We have to build a bridge every time there is a thaw.

Q.—This variation of the level affects the ice?

20 A.—Sure, because it goes up and down, and you cannot hold your road.

Q.—Were you ever at Cross' mill at any time when the water was higher than it was, when you were there in August?

A.—I was there three years ago when the water was up on the ties. Instead of following the track you had to go round.

Q.—The water was up on the ties of the railway siding?

A.—Yes. It was wet there. Anyway, I could not get in. We could not go that way, we had to go round.

Q.—Was that the first time you went?

30 A.—No, the second time. The first time I went through, I think it was in April, but it was frozen yet.

Q.—In these last questions I said, Mr. Cross' mill—I meant his mill at Farm Point, and not the mills at Alcove or at Mileage 12?

Cross-examination

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

Q.—You say when you saw the water up near the siding or on the ties, it was in the spring?

40 A.—I think it was in May if I remember right.

Q.—That is about high water time, is it not?

A.—I don't know. I know I could not get in there just then. I had to go around it. I remember that well.

Q.—As a matter of fact, you never tried to get in at the same time of the year before ever the Gatineau Power Company built its dam, did you?

A.—No.

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(continued)

Q.—So you do not know whether the water came up from normal?

A.—I do not.

Q.—Under natural conditions before ever the dam was built in the spring?

A.—I do not.

Q.—I did not quite understand what you meant about the question of logs and the ice in the river; what was your remark about it?

10 A.—Any water raising, I would say on the river, that works up and down in the winter time when you are hauling logs, it is hard to get across, because you may be hauling there today, and tomorrow the water would rise and make slush, and you could not get across there.

Q.—That sounds all right, but do you know that there were ever any logs taken across the ice on that river, in that time, before the Gatineau Power Company came on the river?

A.—I understand there was. Mr. Cross has brought logs across there. He bought logs from farmers there, as far as I understand.

20 Q.—Is it your impression that at the present time there is no way of bringing logs across the river in the winter time?

A.—If the water raises I do not see how he can get across. I know from my experience in logging, if the water works up and down, we cannot work.

Q.—That is probably so, but I am asking you whether as a matter of fact, at the present time there would be any difficulty in bringing logs across the river on the ice?

30 A.—As I said before, if the water varies—I don't know how the water is held on the Gatineau in the winter, but I say if it is, you could not haul.

Q.—That would be in reference to the Mileage 12 and the Alcove mill you are speaking of?

A.—Well, down there.

Q.—You use the expression that it was one of the cheapest places you ever saw to get over into the mill?

A.—From what I could see I thought it was very cheap. Mr. Cross took me around there, above there, and showed me the site where the farmers live and the stuff coming down that little creek and I thought it was a very nice place to get stuff in.

40 Q.—The Company has not interfered in the slightest degree with him getting stuff in?

A.—I don't suppose they have, but what is he going to do when he gets up there?

Q.—It is a piling ground that sticks in your mind?

A.—That is the main thing around a sawmill. We look for a sawmill to be handy.

Q.—I think you said, and it sounds reasonable, that a man



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would look for as level a piece of ground as possible to pile his lumber on?

A.—Yes. I have always looked at it that way. I am piling, and I have done some filling, and I had some cheap lumber, hemlock, which is very cheap to handle. I would pile it on the fill, and we had a track through there, and I piled it off the track. Before we got to the piling it started to lean back and now the pile is quite out of place altogether.

10 Q.—I would like you to tell me frankly as to this: if you had a nice little water power running down a hill, just an ideal place to locate a lumber mill on, of necessity you have to be guided by the kind of land you have in the proximity for that piling ground, have you not?

A.—Yes, you certainly have.

Q.—Mr. MacDonell, who preceded you as a witness, said it was a fairly good piece of piling ground. I think you observed that it was not any too level?

20 A.—What I mean, there is a slope there runs up where it gets higher.

Q.—If you had your choice of a piling ground, you would not say that was ideal, without any reference to the flooding of the river?

A.—I don't know about that. We cannot have many choices around a piling ground, because we can never get a mill where we can get the ground.

Q.—You have to rely on whatever ground may be there if you are going to put the mill at a desirable place, have you not?

A.—Yes, we have.

30 Q.—I suppose it is perfectly right that you should pile your piles up as evenly as possible?

A.—Yes.

Q.—But those piles of lumber stay out winter and summer under all sorts of weather, do they not?

A.—They certainly do.

40 Q.—Do you really think that if they weathered the elements for a summer or two or perhaps ten, or five, I don't know how long, that the odd dampness that would come up from perhaps having a little bit of low land under the piling ground would really make much difference to the quality of the lumber?

A.—I would figure it would spoil a quarter of the pile from the bottom on account of the dampness.

Q.—You do not set these up on piles?

A.—We set them up as high as we can. Lumber wants air from the bottom. It wants good air. We found that out. We used to pile to low without raising it up and blocking it.

Q.—There is an art in piling?

*In the  
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(continued)

A.—Yes, very much.

Q.—I suppose when you have to pile on a piece of ground that is not very desirable, you get it up as high as you can?

A.—We blocked it up. Where it is uneven we raised it up behind. As long as your ground is lower, it is no trouble to get it up.

Q.—You are presently employed by the Booths?

A.—I am sawing for Booth. I have my own mill, but I do their custom sawing.

10 Q.—You do sawing for Booth?

A.—Yes.

Q.—In your own saw mill?

A.—In my own saw mill.

Q.—So it is really all Booth's lumber you have been sawing?

A.—Mostly, lately.

Q.—The fifteen million feet of lumber you had the good fortune to have this year, was Booth's lumber?

A.—It was Booth's lumber. Only a million feet of it was my own.

20 Q.—You are not in the lumber business to the same extent?

A.—No. I used to be.

Q.—Where do you say your operations are carried on now?

A.—At Barry's Bay.

Q.—That is a long way from Ottawa?

A.—108 miles.

Q.—You never have carried on your business in the Gatineau River?

A.—I never was up in the Gatineau River.

Q.—That is a pretty flashy river?

30 A.—There are nice grounds up there, nice scenery.

Q.—The last time you saw it was in August of this year?

A.—Yes.

Q.—Was that when Mr. MacDonell was there at the same time?

A.—No, must Mr. Cross.

Q.—Mr. MacDonell was not with you?

A.—Mr. MacDonell and I were never there together.

Q.—And the levels at which the water might go to, were pointed out to you by Mr. Cross or his engineer?

40 A.—That was before the engineer was there. I don't remember, in March before that, I think.

Q.—You thought if the water was up at the level at which they pointed it out to you, there would not be much of a piling ground left?

A.—Not much left, no. That is true.

(And further deponent saith not.)

*In the  
Superior Court*

No. 84.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
D. A. Morrison,  
Examination  
Oct. 13th, 1932.

DEPOSITION OF DAVID A. MORRISON, A WITNESS  
PRODUCED ON BEHALF OF THE PLAINTIFF

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

10 DAVID A. MORRISON,

of Farm Point, Sawyer, aged 57 years, a witness produced on behalf of the Plaintiff, who being duly sworn doth depose and say as follows:

EXAMINED BY MR. W. B. SCOTT, K.C.,  
OF COUNSEL FOR PLAINTIFF:

20 Q.—I understand you have been in the employ of Mr. Freeman  
T. Cross?

A.—Yes.

Q.—The Plaintiff in this case?

A.—Yes.

Q.—How long have you worked for him?

A.—It would be 24 years.

Q.—When the flooding came up at Farm Point, what was your position with Mr. Cross. I understand you were his foreman, were you not?

30 A.—In the later years I was foreman. When I first started I  
was sawing for Mr. Cross?

Q.—In the lumber business?

A.—In the lumber business.

Q.—Prior to the flooding by the Gatineau Power Company, what can you tell His Lordship about the piling ground there? Was it a suitable piling ground for the lumber business he carried on?

A.—It was very suitable for a lumber yard, at least, for the lumber he cut. It was a very suitable place for a piling ground when I went to him first. It was all right before the Gatineau Company flooded him out.

40 Q.—Since the Gatineau Company flooded him out, to use your own words, what has been the condition as regards the piling ground?

A.—There is nothing to pile on. His piling ground is absolutely gone.

Q.—Has that condition of affairs been getting worse year by year since they started flooding?

A.—I could not say for it being worse. After it came up we

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could not pile on it, and we piled nothing since, so I cannot say how bad it is, but it is no better.

Q.—You are not an engineer, so perhaps I should not ask you about levels or anything of that kind.

A.—No, I am not an engineer.

Q.—This elevation 321.5 means nothing to you?

A.—Oh, there is no doubt at 321.5 it would be all under water. The lower part where the spur goes into the mill, where he piles his lumber on, would be under water.

10 Q.—Where he piles his lumber at elevation 321.5 would be under water?

A.—I would think so. Of course, I have never taken any levels, but I would judge they would be under water.

Q.—If Mr. Cross' piling ground is taken away (and I am speaking to you now as a practical foreman of a lumber mill) what would happen to his saw mill?

A.—Well, he cannot operate. He has no place to put his lumber, so therefore he cannot saw.

20 Q.—I understand you worked for Mr. Cross for twenty years?

A.—Yes.

Q.—Can you tell His Lordship something about the effect of dampness or wetness on lumber, when it is piled? I am speaking now of sawn lumber?

A.—Well, piling lumber in a damp ground, it would affect the lumber. In place of drying out there would come a mildew on it, and that mildew would get black and go through the lumber and stain. It would go like a stain and would practically go through the lumber. We have seen it go through.

30 Q.—And would a customer or a purchaser, if he found mildew or stain. . . .

A.—He would turn it down.

Q.—I understand the saw mill is not operating now?

A.—No, it is not.

BY THE COURT:

Q.—To your knowledge, was there any lumber turned down?

A.—In the yard?

40 BY THE COURT:

Q.—Yes.

A.—Well, he has some there that has been turned down; I would say down towards where the dampness would be there are some portions, maybe three to four thousand feet, I would judge.

BY THE COURT:

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(continued)

Q.—Which had been absolutely refused?

A.—Yes.

BY THE COURT:

Q.—Would you call it a dead cull?

A.—You might call it a dead cull.

10 BY MR. SCOTT:

Q.—That is still there?

A.—Yes.

Q.—I suppose you and your employees are no longer working there?

20 A.—Oh, no, we are out of work altogether. It has affected about thirty families there. You might say it has taken their bread and butter from them on account of the International flooding. There are about thirty families that are affected there with the International flooding. There is no work going on.

BY THE COURT:

Q.—The Defendant?

Mr. Scott: The International Paper Company are the predecessors of the present Defendant, the Gatineau Power Company.

30 Mr. Ker: We purchased from the Canadian International Paper Company Limited.

BY MR. SCOTT:

Q.—I presume it varied from year to year, but do you happen to remember what Mr. Cross was cutting there, taking the average prior to 1926, prior to the flooding?

A.—He might cut from three to four million feet a year.

Cross-examination

40

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

Q.—So you feel, Mr. Morrison, that it is the Company's fault you are not employed now?

A.—I cannot see anything else.

Q.—When did you stop working?

Q.—I might say I am almost a year now out of work, with the exception of just an odd day.

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Q.—And do you really know what year it was that the water came up to what is substantially its present level?

A.—I guess that would be in 1927.

Q.—It was in March, 1927?

A.—I think so.

Q.—Did I understand you to say that since the water had come up, Mr. Cross had done no piling?

A.—Not where he formerly piled.

Q.—Are you speaking of the part above or below the spur?

10 A.—I am speaking of both parts, both above and below. He piled his wood on the southeast side, and he piled his lumber on the northwest side.

Q.—Are you speaking of the part above or below the road which runs into the power house?

A.—I have reference to both parts, one side for the wood. The spur that runs into the mill. There is a spur that runs from the main line into the mill. He used both sides.

Q.—On the creek side?

20 A.—On the creek side.

Q.—And on the other side?

A.—And on the other side. He used both.

Q.—He was piling on both sides?

A.—He was piling wood on one side and lumber on the other.

Q.—Wood on the creek side of the siding?

A.—Exactly.

Q.—And lumber on the side above?

A.—That is right.

30 Q.—I don't know whether I understood you correctly, but is it my understanding that you testified that on the side, not on the creek side of the siding, but on the above side of the siding, Mr. Cross has not piled any lumber since the water went up?

A.—No.

Q.—He has not?

A.—He has not piled any lumber, except a little piece from where his crossing goes into the power house, because he could not pile there. There was water there.

Q.—He is piling closer to the mill?

40 A.—He is piling closer to the mill. It costs him more money. He has to pay more insurance, as he has taken closer to the mill where he did not use to.

Q.—He has still some place to pile his lumber?

A.—He has nothing left.

Q.—I am speaking of today; the condition has always been the same for the five years the water has come up?

A.—That is what I am telling you. The condition of his piling now is, the insurance people do not want him to pile there any longer.

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Q.—But he is still piling?

A.—He has not piled lumber for about a year now.

Q.—About a year?

A.—Well, it must be a year since he quit selling.

Q.—But for at least four years after the water came up to the point which it is not any higher than now, he was still carrying on?

A.—Well, he carried on, but on a small scale.

Q.—Why? The lumber business was not so good?

A.—He did not have the area to pile on.

10 Q.—Do you mean to tell me there is not an area there on which he could pile the whole output of this mill, and has been even since the water was raised?

A.—No, he has not.

Q.—How much has he had in the last four years?

A.—I guess last year about two million feet.

Q.—He is still in the lumber business?

A.—Last year.

20 Q.—Four years after the water was up, he was still in the business, piling two-thirds of his capacity?

A.—It was about two million last year.

Q.—And getting a piling place for it?

A.—As I say, we had to pile in close to the mill, where he could not pile any more.

Q.—He was perfectly able to get his lumber out of the mill?

A.—He got this part out. He was up against it. He could not pile any more.

Q.—That was four years after the water was raised?

A.—That would be four years.

30 Q.—But really he never was piling lumber on the creek side of the siding before 1926, it was wood he was piling?

A.—He piled wood on the creek side.

Q.—And on the river side of the road that runs down into the power house, he was piling wood there, he was not piling lumber?

A.—Yes.

Q.—In fact, he never utilized as a lumber piling ground much of the creek side of the siding, did he?

A.—Oh, no, most of it was on the upper side.

Q.—Do you know what the level of the siding is?

40 A.—Oh, no.

Q.—You have been living in Mr. Cross' place at Farm Point all your life or for the last number of years?

A.—Yes.

Q.—Has your work been devoted to the lumber business at Farm Point exclusively?

A.—Well, pretty much at Farm Point.

Q.—Did you ever go and look after any business up at Venosta?

*In the  
Superior Court*  
No. 84.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
D. A. Morrison,  
Cross-examination  
Oct. 13th, 1932.  
(continued)

A.—No, I was a while at Picknock.

Q.—You were employed as a sawyer?

A.—At first.

Q.—In the Farm Point mill?

A.—Yes.

Q.—That mill was burned down in 1928, was it not?

A.—Yes. I think it was 1928 it was burned down.

Q.—It was a year after the water was up the mill was burned?

A.—Yes.

10 Q.—And it was replaced by Mr. Cross immediately after?

A.—Yes, it was replaced.

Q.—Am I right in stating that when that lumber mill was burned, the portable mill that you could carry around, that was down, one was at Mileage 12 and the other Alcove; the Mileage 12 portable mill was also destroyed in that fire, because it was stored in the lower part of that mill?

A.—Yes.

20 BY THE COURT:

Q.—Do you remember in what year that mill was burned?

A.—In 1928 I guess it was burned.

BY MR. KER:

Q.—It was just about the year after the water came up?

A.—I think so.

30 Q.—You spoke of lumber having been turned down. That was before this flooding, was it not?

A.—Oh, no.

Q.—When was it?

A.—Each year he was having lumber turned down. Each year there was lumber being turned down.

Q.—There is never a year in a good lumber business that lumber is not turned down?

A.—I don't know about that.

Q.—And Mr. Cross has suffered the same way as everybody else in that respect?

40 A.—He may have had some turned down sometimes, I suppose, hardwood. He has been cutting a great deal of hardwood.

Q.—A good deal of ties, too?

A.—Well, he has cut ties, but, of course, the ties were shipped on the green.

Q.—Was not a great deal of his business devoted to ties?

A.—Take the last year, he had quite a bit of it in ties.

Q.—Quite a lot of it in ties?



*In the  
Superior Court*

No. 84.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
D. A. Morrison,  
Cross-examination  
Oct. 13th, 1932.  
(continued)

A.—Yes, lots of it.

Q.—And what percentage of his business do you think in the last years has been devoted to ties? Fifty per cent?

A.—Yes.

Q.—Practically his business has been pretty largely devoted to ties, even before the Company came up?

A.—He had a big pile of lumber as well.

Q.—But ties, of course, do not need any piling ground, they are shipped out green?

10 A.—They are shipped out green.

Q.—Well, then, why should he be prevented from carrying on the business at Farm Point for the tie part of it; he does not need a piling ground. Even if it had been taken from him, he could still do a large part of his business in ties?

A.—I do not think he could sell a tie, though; I do not think anyone wants ties.

Q.—So it is not the fault of the raising of the water that his tie business has gone bad?

20 A.—That is all right.

Q.—And it is not the fault of the raising of the water that you have been put out of a job?

A.—I think it must have been, because I cannot see anything else.

Q.—I am sorry if it is the case, but it seems to me the Gatineau Power Company is not altogether to blame.

A.—I think they must be in this case.

Re-examination

RE-EXAMINED BY MR. SCOTT, K.C.,  
OF COUNSEL FOR PLAINTIFF:

30 Q.—Were you up at Farm Point on Monday of this week, Thanksgiving day?

A.—No, not on Monday.

Q.—Were you there on Saturday?

A.—Neither Saturday nor Monday.

Q.—Were you there on Sunday?

A.—I was not there on Sunday either. I was on the Pontiac district those three days.

40 Q.—I will not ask you about elevations, but taking the average level of the water at Farm Point since the flooding has come about by reason of the Gatineau Company—I am talking now about the average level, I am not asking for figures of elevation at all, but supposing that were about three feet higher than you find it there, as regards the piling ground, what effect would that have?

A.—There would not be anything to pile on. It would be covered with water. I don't know just for about 321.5, but I think it would be covered.

*In the  
Superior Court*  
No. 84.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
D. A. Morrison,  
Re-examination  
Oct. 13th, 1932.  
(continued)

Q.—Did I understand you rightly to say that prior to the flooding by the Gatineau Company, Mr. Cross piled lumber on both sides of the spur?

A.—He piled lumber on one side and wood on the other.

Q.—What do you mean by wood?

A.—I guess he must have lost there with the Gatineau flooding anywhere from three to four hundred cords of wood.

Q.—I am not asking about what he has lost? He used to pile wood on the lower side of the spur?

10 A.—Yes.

BY MR. MONTGOMERY:

Q.—Cord wood?

A.—Yes.

Re-cross-  
examination

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

20

Q.—We have the spur running through and then we have the creek on one side of it and underground on the other side?

A.—Yes.

Q.—On the creek side cord wood was piled?

A.—Yes.

Q.—And I suppose some of that was lost every spring when the water came up before ever the Company came on?

A.—No.

30

Q.—Could you let me know how much area, including that portion on the creek side of the siding, there was which was used for wood, and the portion on the other side of the siding which was used for lumber altogether; what was the area in that part before the Company raised the water?

A.—I don't just know.

Q.—Would it be two acres?

A.—I think it would be two to three acres.

Q.—Of piling ground?

A.—Really, I don't know.

40

Q.—Under normal conditions two or three acres of piling ground?

A.—There should be.

(And further deponent saith not.)

*In the  
Superior Court*

No. 85.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
W. T. Maxwell,  
Examination  
Oct. 13th, 1932.

DEPOSITION OF WILLIAM THOMAS MAXWELL, A WIT-  
NESS PRODUCED ON BEHALF OF THE PLAINTIFF

On this thirteenth day of October, in the year of Our Lord  
one thousand nine hundred and thirty-two, personally came and ap-  
peared

10 WILLIAM THOMAS MAXWELL,

of Cascades, Quebec, carter, aged 63 years, a witness produced on  
behalf of the Plaintiff, who, being duly sworn, doth depose and say  
as follows:

EXAMINED BY MR. SCOTT, K.C.,  
OF COUNSEL FOR PLAINTIFF:

- 20 Q.—I understand you used to be in Mr. Cross' employment?  
A.—Yes, I was with him.  
Q.—How long were you with him?  
A.—About twenty years.  
Q.—You are not working for him now?  
A.—No.  
Q.—What was your job with Mr. Cross?  
A.—I mostly had a bunch of men with me in the yard loading  
ties and loading cars.  
Q.—You were working for him in the lumber business?  
A.—In the lumber business.  
30 Q.—You were a foreman?  
A.—Yes, foreman of the yard.  
Q.—You are familiar with Farm Point?  
A.—Oh, yes.  
Q.—Since you were with Mr. Cross for about twenty years, you  
knew it before and after the flooding, I presume?  
A.—Yes.  
Q.—Before the flooding, what would you say with respect to  
his piling ground; had he a suitable piling ground?  
A.—We found it very suitable.  
40 Q.—And since the flooding?  
A.—Well, I was over there a short time after flooding in the  
summer. I only live a mile away from it. I would be quite often  
up around the yard. I would not say it was a suitable piling ground  
now.  
Q.—And if the water were three or three and a half feet higher  
than it is at the present time, what would you say about it; would  
that make things worse?

*In the  
Superior Court*

No. 85.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
W. T. Maxwell,  
Examination  
Oct. 13th, 1932.  
(continued)

A.—It would simply leave him nothing, as far as I can see.

Q.—In the springtime, did the water of the Gatineau River bother or worry you at Farm Point?

A.—Only one year. I guess it must have been about 22 years ago, the year of the very high water, it did bother us for about two weeks.

Q.—That is the only time?

A.—That is the only time in the time I was there.

Cross-examination 10

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

Q.—You are not in Mr. Cross' employ now?

A.—No.

Q.—You live at Farm Point?

A.—At Cascades.

Q.—When did you leave his employ?

A.—In 1927.

20

Q.—That was after the water was up?

A.—Yes.

Q.—His mill was running then?

A.—Yes.

Q.—You, of course, do not know anything about where a certain level of 321.5 would be on that ground, do you?

A.—No, I do not. I have no idea of that.

(And further deponent saith not.)

30

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40

*In the  
Superior Court*

No. 86.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
W. Daugherty,  
Examination  
Oct. 13th, 1932.

DEPOSITION OF WILLIAM DAUGHERTY, A WITNESS  
PRODUCED ON BEHALF OF THE PLAINTIFF

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

WILLIAM DAUGHERTY,

10

of Masham, Quebec, sawyer, aged 50 years, a witness produced on behalf of the Plaintiff, who, being duly sworn, doth depose and say as follows:

EXAMINED BY MR. SCOTT, K.C.,  
OF COUNSEL FOR PLAINTIFF:

20

Q.—You used to work for Mr. Cross, the Plaintiff in this case?

A.—Yes.

Q.—For how many years?

A.—I was twenty years working for him.

Q.—You are not working for him now?

A.—No, not just now.

Q.—When did you leave his employment?

A.—In August, 1930, somewhere about there.

Q.—I understand you were working for him in connection with his lumber business?

A.—Yes.

30

Q.—And you were working for him before the flooding was done by the Gatineau Power Company?

A.—Yes.

Q.—I want to ask you what work you did for Mr. Cross at Carmen Lake? The outlet of Carmen Lake runs into the Meach Creek?

A.—Yes, it does. I built a dam there for Mr. Cross.

40

Mr. Ker: May I ask, my Lord, that this evidence be taken under reserve of the objection that your Lordship took cognizance of in the early part of the case?

His Lordship: Yes.

BY MR. SCOTT:

Q.—Can you tell us what year that was approximately?

A.—Somewhere in 1925 or 1926, somewhere around that. I would not just say.

*In the  
Superior Court*  
No. 86.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
W. Daugherty,  
Examination  
Oct. 13th, 1932.  
(continued)

- Q.—Before the flooding by the Gatineau Company?  
A.—I could not just say when it was.  
Q.—What was the purpose of this dam?  
A.—It was to hold storage water for his power and for driving purposes, as far as I could understand.  
Q.—Were you in charge of this work?  
A.—I was in charge of that work.  
Q.—How many men did you have working for you?  
A.—Some days there would be four, some days six.  
10 Q.—How long did it take to build this dam?  
A.—We were working on it all summer.  
Q.—Was there any other work going on, or was the whole of the work on that dam?  
A.—We built another dam.  
Q.—You did not build the other dam at the same time as you were building the Carmen Lake dam?  
A.—The same summer.  
Q.—When you were working at Carmen lake you were not doing any other work, you were not cutting trees down?  
20 A.—No.  
Q.—Can you give us some idea of the length of this dam, its height and width and the general nature of it?  
A.—About 32 feet long?  
Q.—About how high was it?  
A.—Twelve feet high, three or four feet wide.  
Q.—What was it made of?  
A.—Cement.  
Q.—Did you build any other dam for Mr. Cross just previous,  
30 or after that?  
A.—We were building one on Spring Lake.  
Q.—Do I understand rightly that the water from Spring Lake eventually worked down to Meach Creek?  
A.—Meach Creek comes down the same stream.  
Q.—Were you in charge of building a dam there?  
A.—Yes.  
Q.—How many men did you have working for you?  
A.—Just the same gang.  
Q.—Between four and six?  
40 A.—Between four and six men, some days four and some days six.  
Q.—How long did it take you to construct that dam?  
A.—We were just working the same summer. I would not say how long we were at either of them.  
Q.—Can you give us any idea of the dimensions of that dam, how long or how high was it?  
A.—It would be about ninety-six feet long, about eight feet

*In the  
Superior Court*

No. 86.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
W. Daugherty,  
Examination  
Oct. 13th, 1932.  
(continued)

high, it would be about twelve feet wide at the bottom and about six feet at the top.

Q.—What was it made of?

A.—Logs and stones.

Q.—Did you or your gang do any work either previously or subsequently on the river bed of Meach Creek itself with regard to removing boulders or projections?

A.—Yes, we did.

10 Q.—What was the purpose of that? I am now talking about clearing up Meach Creek?

A.—For driving purposes.

Q.—To facilitate driving?

A.—Yes.

Q.—What were the purposes of these two storage dams you have just described, the Carmen Lake dam and the Spring Lake dam?

A.—They were storage dams for holding the water.

20 Q.—Did they improve conditions for Mr. Cross' business at Farm Point?

A.—Yes.

Q.—Were those done under Mr. Cross' instructions?

A.—Yes.

Q.—Did you have anything to do with bringing gravel from the east side of the Gatineau River to Cascades around 1925?

A.—I rigged up for the job. I did the rigging for the job.

Q.—Under Mr. Cross' instructions?

A.—Yes.

30 Q.—And did you have some men working with you on that?

A.—Yes, I had a little gang on there too.

Q.—A little gang would be about two or three men?

A.—Just about the same, four, five or six men.

Q.—And you tell us that was done in 1925?

A.—Some time about that; I would not say—in 1925.

Q.—How long did that take you and your little gang?

A.—I was there four weeks.

Q.—Can you give us any idea how much you took over?

A.—No.

Q.—You were just preparing?

40 A.—I was just rigging up, getting the pit in shape for drawing.

Q.—Do you remember what time of the year it was.

A.—No. It was sometime in the fall of the year.

Q.—Did you have to pay this gang yourself, or were they taken care of by Mr. Cross?

A.—Mr. Cross was taking care of them.

Q.—Do you know what these men were receiving per day?

A.—No, I do not.

*In the  
Superior Court*

No. 86.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
W. Daugherty,  
Cross-examination  
Oct. 13th, 1932.

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

- Q.—When you left Mr. Cross' employ, where had you been working?
- A.—I was working for him.
- Q.—Where?
- A.—At Farm Point.
- Q.—His mill was running when you left?
- 10 A.—Up till I left.
- Q.—In 1930?
- A.—Yes.
- Q.—These storage dams that you speak of that were built were on a considerably higher level than the Gatineau River?
- A.—Yes.
- Q.—They are up on the top of the hill?
- A.—One of them was on the top of the hill, the other was not so high.
- Q.—And their purpose was to bring the water into Meach
- 20 Creek?
- A.—To Meach Creek.
- Q.—And then, Meach Creek started and fell down the hill and ran the power of the saw mill?
- A.—Yes.
- Q.—When you hauled out stones and did the work of cleaning out the bed of the Creek, where was that work done? Was it on the very bottom or on the level of the Gatineau?
- A.—It was higher up.
- Q.—It was higher up above the dam?
- 30 A.—Yes.
- Q.—Of course, those dams you speak of, have in no way been affected by the level of the Gatineau River?
- A.—Not that I know of.
- Q.—And any work you did of hauling out stones could not possibly have been affected by the work of the Gatineau River?
- A.—No, not there.
- Q.—And the same applies to the Spring Lake dam, which is very much higher than the river?
- A.—Oh, yes.
- 40 Q.—You don't really know the exact year that gravel was hauled?
- A.—No, I would not just say what year it was.
- Q.—I notice Mr. Cross states it was in the summer of 1925 or 1926. He says, "I think the gravel was hauled in the winter of 1926 or somewhere thereabouts." That would probably be correct?
- Mr. Scott: That is as to hauling. That is a different thing.



*In the  
Superior Court*

No. 86.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
W. Daugherty,  
Cross-examination  
Oct. 13th, 1932.  
(continued)

BY MR. KER:

Q.—Do you know when the gravel was taken across the river?

A.—It was hauled that winter after I had done the work on the pit.

Q.—You did not do the taking over?

A.—No, I did not do the taking over.

Q.—They were doing some work raising the road on the west side at that time, were they not?

10 A.—Not to my knowledge.

Q.—Was not the road and the railway being relocated then?

A.—I would not say it was.

Q.—The gravel pit you speak of is very high up off the river. It is not on the river bed?

A.—It is not on the river bed.

Q.—How many feet would it be from the level of the river?

A.—I could not say.

Q.—Twenty feet?

20 A.—I guess it would be.

Q.—Fifty feet?

A.—No, I would not say it would.

Q.—It is not affected in any way by the water?

A.—No, I could not say. I have not been there since the water was raised.

Q.—You have not been there since 1927?

A.—Not across the pit.

Q.—Cannot you see the pit standing out twenty feet from the water on the other side of the river?

30 A.—It was not interesting me at all, so I did not bother.

(And further deponent saith not.)

*In the  
Superior Court*

No. 87.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
Levy Reid,  
Examination  
Oct. 13th, 1932.

DEPOSITION OF LEVY REID, A WITNESS PRODUCED ON  
BEHALF OF PLAINTIFF.

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

LEVY REID,

10

of Farm Point, farmer, 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.—On what side of the river do you live?  
A.—On the east side.  
Q.—The witness who has just been heard spoke about a gravel pit having been prepared at Cascades; did you have anything to do with the hauling of gravel from that pit?  
A.—Yes.  
Q.—When did you do hauling?  
A.—I drew it across in the winter of 1926.  
Q.—How much did you haul across?  
A.—I hauled 747 and a half yards.  
Q.—You kept track of it at the time?  
30 A.—Yes.  
Q.—In a book of your own?  
A.—Yes.  
Q.—For whom did you do that hauling?  
A.—For Mr. Cross.  
Q.—How much were you paid for doing it?  
A.—When I first started, I was drawing by the day at \$5.00 a day, and later on I changed it to by the yard, 25 cents a yard.  
Q.—How much were you paid for the whole of what you did?  
A.—I was paid \$343.81.  
40 Q.—Was anybody else doing hauling at the same time?  
A.—Mr. Cabe hauled some.  
Q.—How did the quantity you hauled compare with the quantity he hauled?  
A.—He hauled about two-thirds of the quantity I hauled.  
Q.—Was he doing that at the same time?  
A.—At the same time.

*In the  
Superior Court*

No. 87.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
Levy Reid,  
Examination  
Oct. 13th, 1932.  
(continued)

Q.—Were you the only two, yourself and Cabe, who were doing hauling then?

A.—Just the two of us.

Q.—Then you would think he hauled about 500 yards?

A.—It was about two-thirds of the amount I drew.

Q.—Two-thirds of 747½?

A.—Yes.

Q.—Where was that gravel left?

10 A.—It was left on the west side of the river and between the railroad and the highway.

Q.—What happened to it then, when the waters were raised by the Chelsea dam?

A.—The dump where it was filled was almost covered with water?

Q.—The pile of gravel that was made there was almost completely covered with water?

A.—Almost, yes.

Q.—Were you a user of electricity at your place?

20 A.—Yes.

Q.—Prior to 1926, or from 1920 to 1926, how much did the electricity cost you a year?

A.—It would average about \$50.00 a year.

Cross-examination

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

Q.—I think I remember having to pay you for a portion of your farm for flooding purposes?

30 A.—You paid me a little.

Q.—I thought it was a great deal?

A.—I did not think it was so very much.

Q.—How much was it, as a matter of fact.

A.—\$10,450.00. Am I right?

Q.—I thought it was even probably more than that. I know it was a very large sum. You had a very good farm. We did not quarrel much over it; in this hauling of the gravel you hauled it in the winter of 1926?

A.—Yes.

40 Q.—And altogether you hauled about 747 yards?

A.—Yes.

Q.—And did you keep track of the yardage?

A.—I marked it down every night right after supper, as soon as my day's work was done.

Q.—From your own estimation of how much yardage it was?

A.—I had a box on the sleigh that held two yards and a half.

Q.—You were able to measure it?

*In the  
Superior Court*  
No. 87.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
Levy Reid,  
Cross-examination  
Oct. 13th, 1932.  
(continued)

A.—It was measured about two yards and a half on the full box,  
and it was filled every time.

Q.—And Cabe did the same?

A.—Yes.

Q.—And between you, you hauled altogether about how much?

A.—I said that Mr. Cabe's was about two-thirds of mine.

Q.—And you hauled about 700 yards?

A.—His was about two-thirds.

10 Q.—Somewhere about 1,200 or 1,300 yards between you?

A.—Probably.

Q.—What was the total cost?

A.—I don't know what his was. I don't know his at all.

Q.—How did you get it across the river? In boats?

A.—In the winter time on the ice.

Q.—And you dumped on the shore on the other side?

A.—Well, between the highway and the railroad.

Q.—Was the work about to start on the highway and the railway  
in the way or raising?

20 A.—No.

Q.—You are sure of that?

A.—Yes. They did that the following year.

Q.—It was the following spring?

A.—Yes.

BY MR. ST. LAURENT:

Q.—The following spring of the following year?

30 BY MR. KER:

Q.—In the winter of 1926 the water was raised, or the spring of  
1927, so it was between the time the river froze up and 1927 that  
those roads were built, both the railway and the highway, was it not?

A.—The fill of the highway was drawn off my property in the  
winter of 1927.

Q.—The water was up then. It must have been in 1926?

A.—No, it was not. In 1927 on the highway—on the railway it  
was raised in the summer of 1926.

40 Q.—There was considerable demand for gravel about that time  
in that vicinity?

A.—Yes.

Q.—You are, of course, on the east side of the river?

A.—The east side.

Q.—You are not on the same side as Farm Point Mill?

A.—Yes.

Q.—Are you still getting electricity from Mr. Cross?

*In the*  
*Superior Court*  
No. 87.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
Levy Reid,  
Cross-examination  
Oct. 13th, 1932.  
(continued)

A.—Yes.

Q.—You are still a customer of his?

A.—Yes.

Q.—Are you still living on the part we bought from you?

A.—Yes, sir.

Q.—Who pointed out to you what a cubic yard of gravel was:  
how did you estimate it?

A.—The box was measured. It was supposed to hold 2½ yards  
of gravel.

10 Q.—To get it in shape you measured it like that?

A.—Mr. Cabe built the box.

Q.—Do you know how much a cubic yard makes?

A.—Three square feet. Is that right?

Q.—I am asking you?

A.—Well, that is what I think.

Q.—It is three square feet you were making when you made up  
that yardage?

A.—It was by the yard I was drawing.

20 BY MR. ST. LAURENT:

Q.—Is it 3 square feet, or 3 feet square? How wide was this  
box?

A.—4 feet.

Q.—And how long was it?

A.—I don't know just the length. I would say about 12 feet.

Q.—And how high?

A.—20 inches.

30 Q.—That was the box you treated as being about two yards and  
a half?

A.—Yes. I was told. I did not measure the box myself, but I  
was told that that was what the box would hold.

BY MR. KER:

Q.—You filled it with two and a half yards?

A.—I filled it with two and a half yards. I was paid for two and  
a half yards.

40 BY MR. ST. LAURENT:

Q.—At any rate, that is what you were paid for, at the rate  
of 25 cents a cubic yard, or measured in that way?

A.—Yes. The full of the box was supposed to give two yards  
and a half.

(And further deponent saith not.)

*In the  
Superior Court*

No. 88.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
E. J. Eriksen,  
Examination  
Oct. 13th, 1932.

DEPOSITION OF ERIK JENSEN ERIKSEN, A WITNESS  
PRODUCED ON BEHALF OF THE PLAINTIFF

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

ERIK JENSEN ERIKSEN,

10

of Alcove, lumberman, aged 52 years, a witness produced on behalf of the Plaintiff, who, being duly sworn, doth depose and say as follows:

EXAMINED BY MR. SCOTT, K.C.,  
OF COUNSEL FOR PLAINTIFF:

Q.—You live at Alcove?

20

A.—Yes.

Q.—And I understand you had or have a saw mill there?

A.—Yes.

Q.—Was that close to the portable saw mill that Mr. Cross used to operate at Alcove?

A.—Yes.

Q.—Close to it?

A.—500 yards, I would say—between 400 and 500 yards.

30

Q.—Since the Gatineau Power Company have raised the waters on the Gatineau River, since they started that power development at Chelsea, will you tell his Lordship what effect that has had on hauling logs across the Gatineau River during the winter time?

A.—It is not much good to cross the river. It is dangerous.

Q.—Have you had any difficulty yourself crossing the river?

A.—I had lots of bother last winter—the three last winters.

Q.—What is that due to, according to you?

A.—At night, to run the water down, the ice sinks down about 7 or 8 feet, and when you go in the morning with a team of horses there is a big crack in the ice, and you cannot get over. You have to fill it up with logs or something.

40

Q.—Does anything happen in the middle of the river on the ice?

A.—And when you come back with a lot of logs in the afternoon, the water is away up, and sometimes the middle of the river is worn away with the ice. It is dangerous to cross there. We drowned two horses last year.

Q.—You say two horses were drowned that you were using last winter?

A.—Yes.

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Q.—Has that condition been getting worse during recent years?

Mr. Ker: I object to this as leading.

(The Court reserves the objection.)

A.—Yes.

10 BY MR. SCOTT:

Q.—Your mill then being near Mr. Cross' was on the west side of the Gatineau?

A.—Yes.

Q.—And the lumber you were hauling was on the east side.

A.—It was on the east side, but we had quit it. The ice got that bad, we could not draw. I had 2,200 logs left over there; we could not draw; we had to give it up.

Cross-examination

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

Q.—Where did you ordinarily get the logs for your mill?

A.—I have lots across the river.

Q.—How long have you been operating up there?

A.—28 years.

Q.—You do not surely mean to tell me that every night the water goes up and down seven feet?

A.—Yes, it does.

30 Q.—Every night?

A.—Yes, every night, and it is worse in summer.

Q.—It may vary at week-ends, but surely it does not go up and down seven feet?

A.—Well, it does. When you go with the horses, with the sleigh, it goes over bulk of the sleigh.

Q.—You do not know, of course, how much wood Mr. Cross may have been drawing across every year?

A.—Oh, a great deal.

Q.—I am asking you?

40 A.—I don't know how much, not in feet.

Q.—When did Mr. Cross stop using the mill at Alcove?

A.—I don't know.

Q.—You are only five hundred yards away from him?

A.—I never took any notice of it.

Q.—Was it in 1924?

A.—It might have been.

Q.—It was just a portable mill anyway?

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- A.—Yes.  
Q.—Was your's a portable mill also?  
A.—Yes.  
Q.—He stopped using it at least three years before the water began to go up, did he not?  
A.—Well, I don't know.  
Q.—It was some years, anyway?  
A.—Some years. He moved to another place.  
Q.—He took it down to Mileage 12?  
10 A.—Yes.  
Q.—So I suppose it is really when the mill is there that one would suffer by the raising up and down of the water down there?  
A.—There is lots of timber across the river at Alcove yet.

(And further deponent saith not.)

*In the  
Superior Court*  
No. 89.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
A. M. Milne,  
Examination  
Oct. 13th, 1932.

20 DEPOSITION OF ANDREW MURRAY MILNE, A WITNESS  
PRODUCED ON BEHALF OF PLAINTIFF

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

ANDREW MURRAY MILNE,

- 30 of the City of Ottawa, chartered accountant, aged 37 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.—You said you were a chartered accountant?  
A.—Yes, sir.  
Q.—And my information is that some years ago you acquired  
40 the business, as such, from Mr. Blatch?  
A.—Yes.  
Q.—Have you been employed to do work in your professional capacity for Mr. Cross?  
A.—I have.  
Q.—Did he have any books?  
A.—No, he had no books to my knowledge.  
Q.—Because he has not, we find ourselves in the position (al-



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- though we are reluctant to do so, we feel we have) to divulge what you did for him in connection with Income Tax. When you first were retained to act for him, how far was his Income Tax unsettled?
- A.—It was unsettled back part of 1917, say 1917 and 1918. 1918 had not been settled.
- Q.—Had reports been put in?
- A.—For the years up to 1924 they had been put in.
- Q.—Was there one put in for 1926?
- A.—No. The one for 1926 was put in by myself. I have a copy  
10 of it here. The one for 1926 had been put in, and I put in 1927 and 1928.
- Q.—What did you put in for 1927-1928 when you started on the job?
- A.—To avoid the penalty under the Income Tax Act, I simply filed a blank form.
- Q.—Dummy returns?
- A.—Dummy returns.
- Q.—And returns had been put in up to 1926 inclusively?
- A.—Yes.
- 20 Q.—Have you a copy of the dummy returns you put in for 1927-1928?
- A.—I have.
- Q.—Will you show them to us so counsel for the Defendant may see them, and we will see whether it will be necessary to file any of those as exhibits?
- A.—The Income Tax Act requires the filing of a return, whether the income is obtained or not, otherwise you are subject to a penalty, so to avoid the penalty, we simply file the blank form.
- 30 Q.—Will you show me the report for 1926?
- A.—Yes.
- Q.—That has on the back of it a statement, and that statement contains the net income, per Auditor's report, \$62,890.72, does it not?
- A.—Yes.
- Q.—I understand you were able to make some adjustment, and that Income Tax was not actually paid on that \$62,890.72?
- A.—No, it was not.
- Q.—Will you show me the detailed statement that accompanied that regular form?
- 40 A.—This is the statement that went with the 1926 return.
- Q.—You are showing me a statement for 1926?
- A.—Yes.
- Q.—I understand you have in Mr. Blatch's papers the similar statement for the preceding years?
- A.—Yes.
- Q.—Will you just hand them to me?
- A.—From 1921 to 1925, inclusive.

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Q.—And as it is now about time for the Court to rise, will you leave these here till Counsel for the Defendant may have an opportunity of looking at them before we attempt to file them?

A.—Yes.

Q.—There is one other question I would like to ask you: Have you, in the form of the copy of letter you sent to Mr. W. L. Scott, a statement of what you actually settled for, for Income Tax, and will you put that with the other papers, so Defendant's Counsel may look at them?

10 A.—Yes.

Q.—And also memos of the amounts that were paid under your direction for Income Tax?

A.—Yes.

Q.—And after the adjournment I will ask you to give some explanation as to how you worked out this adjustment for the years in which you put in only the dummy report?

A.—Yes.

20 BY MR. ST. LAURENT:

Q.—Having put these documents that we referred to this morning before my learned friends in order to give them the opportunity of seeing what is in them and to see if there is anything they think they should have in the record, I will leave you to their tender mercies.

BY THE COURT:

30 Q.—I understand you referred to the Income Tax Statute?

A.—Yes.

BY THE COURT:

Q.—Can you tell me the section?

A.—No. If I had the Statute I could turn it up for you. It requires the returns to be filed within a certain date. They accept for that purpose a blank return, as long as it is signed by the taxpayer, although the statement covering it is not made, otherwise they can  
40 charge a penalty of so much a day.

Cross-examination

CROSS-EXAMINED BY MR. MONTGOMERY, K.C.,  
OF COUNSEL FOR DEFENDANT:

Q.—You have shown us a statement of the Income Tax paid by Mr. Cross for such of the years, from the period of 1917 to 1927 inclusive as requiring the payment of tax?

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A.—No.

Q.—Can you tell us when that adjustment was made?

A.—Yes. The papers were originally the early years, up to and including 1926, were made at intervals from 1917 to 1926, but the actual matter was not closed at that time. In October of 1929 I think the matter was closed. I have the date here if you want the exact date.

Q.—Say October, 1929?

A.—Yes.

10 Q.—That, of course, means a large amount charged for interest and so on?

A.—That is the case. Some payment had been made on that, but the payment Mr. Cross made applied to these taxes.

Q.—Will you please file that as Exhibit D-135?

A.—Yes.

Q.—And you have also shown us a carbon copy of a letter addressed, I presume, by you to Mr. Scott, which shows the income with respect to which that taxation was assessed?

A.—Yes.

20 Q.—You might perhaps produce that as Exhibit D-136?

A.—Yes.

Q.—You have also exhibited to us the financial statements showing the assets and liabilities of Mr. Cross for the years 1921 to 1926 inclusive, which I note were prepared, and are signed by George L. Blatch, F.C.A., to whose practice you succeeded?

A.—I purchased his practice.

Q.—And can I take it that you are more or less familiar with the statements?

A.—Yes.

30 Q.—Will you produce the statement for 1921 as Exhibit D-137?

A.—Yes, I produce the statement for 1921 as Exhibit D-137.

I produce statement for 1922 as Exhibit D-138.

I produce statement for 1923 as Exhibit D-139.

I produce statement for 1924 as Exhibit D-140.

I produce statement for 1925 at Exhibit D-141.

I produce statement for 1926 as Exhibit D-142.

40 Q.—One would find it rather difficult, would they not, to tie in the information as shown in Exhibits 137 to 142 inclusive with the income reported in Exhibit D-136?

A.—In reply to that question I would say that the 1920 and 1921 income can be definitely tied in with this statement.

The 1925-1926 years was a compromise agreement, and that was an arbitrary amount, and was agreed to by the Tax Department, and accepted as such.

Q.—The yearly financial statements do not contain any earnings account, do they?

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A.—No, there are no earnings account. There is no statement of turnover or volume, or anything of that kind.

Q.—All it shows is the assets and liabilities for each year with the surplus compared one year with another?

A.—Yes, but they are made on a consistent basis.

Q.—For instance, this statement in the surplus as it differs one year from another would reflect the capital gains and losses as well as income gains and losses, would it not?

10 A.—No, not necessarily, and not entirely, in this way, that if the amount of actual cash reinvested in the capital asset has been added to that asset account, then, these statements would reflect the profit or loss for that period.

Q.—Take for instance, if he sold a limit, we will say, which he was carrying at \$10,000, if he sold it for \$20,000, that would be reflected in the statement for the year in which the transaction occurred, but would not be income, certainly not within the meaning of the Income Tax Act?

20 A.—That is the case, and these Income Tax figures have had those amounts eliminated, so his non-operating profit is not included in these amounts on which he paid taxes.

Q.—I assume that was part of your duties to take those items out?

A.—Yes.

Q.—I might also say money that he withdrew for living expenses or that he spent on the education of his family or anything of that kind, they would be reflected in the surplus account, but there is nothing to show them as income.

30 A.—They would be reflected by a decrease in the surplus account, and the Income Tax for purposes of these figures, I consider he drew from his business \$4,000 per annum.

Q.—Of course, these statements cover, not only the properties and the operations with which we are interested, but his entire properties and his entire operations?

A.—I do not know just exactly which properties you are interested in, but they do include the total operations of Mr. Cross, as far as I knew them.

40 Q.—Perhaps we can piece them up in this way: is there anything in any of these statements to show what profit Mr. Cross made, if any, in his Electric Light business?

A.—No.

Q.—It is impossible from these statements to get any light on that?

A.—These statements do not reflect back in any way, other than it is contained in the total.

Q.—As to the lumber business, I suppose one could pick out rather better, although perhaps not exactly?

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A.—I think it would have to be guess work at this stage of the game to do it?

Q.—Let us take the year 1921, Exhibit D-137, that is, the year for which Mr. Cross reports by far the largest income made by him in any of the periods from 1917 to 1928 inclusive, and I might say, 1917 to 1931 inclusive?

A.—Yes, at any time.

Q.—The statement to which I have just referred Exhibit D-137 for the year 1921, is the earliest that you have here?

A.—In that connection there are statement from 1919 to 1920, but we were unable to present to you the actual statement, but we have the figures if you care to have them. We have those from the bank records.

Q.—Statements you furnished to the Bank?

A.—The Bank's statements we have here correspond exactly with these statements. They were made from these statments, and we have them from 1919 and 1920. We have the other statements which correspond with the statements which you have.

Q.—Dealing with the statement for the year 1921, the first I have had an opportunity to look at, where it shows income of \$41,148.86 can you break down that figure at all?

A.—Yes, I have something here which may add a little to what you have, and it will give you the basis. To give an explanation, I would have to go into 1919, 1920 and 1921, because the three were tied up in one, and it was the adjustment of the three that resulted in these figures being reached.

Q.—You may do it your own way. All we want are facts?

A.—I think you will find the total of this statement is somewhere in the neighborhood of \$83,000, and I think you will find that this adds to \$83,000. I simply had those profits allocated to different years, the reason being that by getting it spread over three years rather than having one, that takes in one year, I brought it into the lower class of taxation, and that is all that really happened in those years. The amount is substantially the same.

Q.—So that really while you had them spread to break them down, you start with the combined figure of three years, of \$83,000 and split that up?

A.—Yes. They would not allow me to split it up as much as I wished to, but that was the compromise.

Q.—The thing to have done would have been to split it in even amount over three years and that would change the rate of the tax?

A.—Yes, and that is what we did in 1925, 1926 and 1927.

Q.—Was this all done in October, 1929?

A.—Around that date. It took some little time to do it, and I think the whole thing lasted possibly over a five month period?

Q.—In the year 1929?

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A.—Yes.

Q.—As when this adjustment was made in respect to 1919, 1920 and 1921?

A.—Yes, and they would not consider dealing with old tax until such time as I had brought Mr. Cross' returns up to date, so that had to be done.

10 Q.—If it is simpler for you to do it that way, you can take the combined income for the years 1919, 1920 and 1921 and assist us in breaking that up? Would it be possible to break it up in the sense, showing from what branch of his business, we will say, trade income was derived?

A.—I will have to answer that in this way: first of all, it was no concern of mine in the first place to do it, and I have looked at it from that angle, and whether or not it can be done, frankly I do not think it can be done.

Q.—And in any case, there is nothing in any figures you have here which purports to do it?

20 A.—There is nothing in any of the figures that I have ever seen. That is a copy of the letter.

Q.—You are showing me a letter stating that this adjustment was reached in October, 1929?

A.—Yes.

This is the reply to their letter in which they say it must be done by the 23rd, so we were not much ahead of time.

Q.—The Income Tax authorities were apparently pressing the matter?

A.—There are dozens like that. I have not got them but I have seen them.

30 Q.—They are apparently reproaching Mr. Cross with not having lived up to his promises?

A.—Yes.

Q.—If you cannot give us the different sources of the income, just show me what you can give us in the way of breaking down?

A.—I don't know that I can give you anything further than what you have, except what is contained in this Bank statement, and the memorandum as made up by myself, which I think has some bearing on the subject, if you care to have it; according to this first statement of 1919 . . . . .

40 Q.—We have not dealt with that. If you are going to refer to it it might be convenient to follow Mr. St. Laurent's suggestion and file it.

A.—I have it for the same years as this statement.

I file as Exhibit D-143 a statement that I obtained from the Dominion Bank at Ottawa purporting to show Mr. Cross' affairs for the period ending September 8th, 1919.

I file as Exhibit P-144 statement for August 29th, 1920.

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Q.—With the assistance of these statements, you were going to give us some information that you thought might be of interest?

A.—The statement of September, 1919, shows that Mr. Cross has a surplus of \$169,500.

Eliminating all the others, although they are correctly reflected until you come to September, 1926, that statement shows a surplus of \$286,026. The difference is an increase in the surplus in the seven years of \$116,526.

10 Using those figures, and basing them on the Income Tax returns, it was allowed that Mr. Cross drew \$4,000 per annum for living expenses, which would be a total of \$28,000. There are certain other expenses. As far as these items are concerned, the only information I have to support them is Mr. Cross' statement, that there are special travelling expenses, losses he sustained in the Toy Factory at Farm Point, speculations in gold mines, pleasure automobiles, and pay-  
20 ment of the Income Tax. The whole totals in the neighbourhood of between \$60,000 and \$70,000, which would mean that if these items had not been drawn out, he would have had a surplus of approximately \$180,000, that is an increase in the surplus. One-seventh of that would show a surplus of between \$25,000 or \$26,000 per annum for the seven-year period.

To make my position clear with regard to that, there is a matter of other capital profits and losses, in the case of one mill that burned. The reason I have not allowed for it is, that the figure is still contained in this statement. He had no insurance on it, and lost the whole cost of that mill, a very considerable amount.

30 The information I have is, that it would cost somewhere in the neighbourhood of \$50,000. As this mill has been carried in these figures and depreciation written off, it does not need to be considered in other capital loss, and as far as other capital surpluses are concerned, the other item that he would have would be the item in connection with Paugan Falls, which was not taxed for Income Tax purposes, which would go in here, but then, there is also the expense in connection with acquiring that land, which, up to date, I am advised was about equal to the recovery money, so that it would not in any way affect this total.

Q.—Is that right, do you think?

40 A.—That is the information I have. Whether it is right or not, I cannot say.

Q.—I understood he was paid some \$26,000, that they had paid the farmers from whom he acquired the properties direct, that they gave him the difference between the amounts paid out and his contract, amount to some \$26,000. You do not know as to that?

A.—Well, I have had different opinions on that, and frankly I don't know.

In addition to that amount, usual rates of Income Tax depre-

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ciation have been allowed which ranged from five to seven thousand dollars per annum, so this amount of \$25,000 or \$26,000 is in addition to depreciation.

Q.—The period you have covered by this explanation is a period of how many years?

A.—Seven.

Q.—Apparently it was not treated that way in the income reported for taxation, or adjusted for taxation purposes, because I note that for the years 1922, 1923 and 1924 no taxable income is reported, that is, it reports less than the total taxable amount of \$2,000?

A.—Yes, but those losses would be reflected in the figure I have given.

Q.—Do you treat the profits arbitrarily by dividing by seven the total increase in the surplus over those years?

A.—Yes.

Q.—And then deduct losses which you fix as being applicable to specific years; would you deduct that from the arbitrary average amount?

A.—No, they have been deducted before arriving at that arbitrary average amount.

Q.—I am still not clear as to why the amount is allotted for the years 1919, 1920, 1921, and nothing allowed for 1922, 1923 and 1924?

A.—In which case? In the Income Tax?

Q.—I am dealing with that just at present. I am just trying to reconcile your explanation with your letter D-136. I am sure you can do it.

A.—You mean as to this figure I have just mentioned of \$186,000?

Q.—You have shown that would give an average of so much per year over two or three years?

A.—Yes.

Q.—But apparently it was not treated in that way for Income Tax purposes?

A.—I will answer that this way: the reason for that is this, that at the time of making up this return, I did not know all these things, and they were not given to me, and had the department known of them they possibly would have taxed on a larger amount, but I did not know of them, and this was done in good faith, but these amounts undoubtedly have come out of Mr. Cross' surplus, and therefore if these amounts were added to these there will not be a very great difference.

I think these add to about \$120,000, and if you add on \$60,000 you will find they won't be very far out. They will be out some thousand dollars, but the thing is just arbitrary in the sense that there is



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no complete record. There is no balanced book or anything of that kind?

Q.—Let us go back to our starting point. We have perhaps wandered apart. I think this enquiry started in the year 1921 as to how that profit of \$41,148.86 was made up?

A.—I think I said, when you asked me that question, to explain that I would have to take into account 1919, 1920 and 1921. The total of those amounts for that year is submitted in the statements that were given to the Income Tax Department, were about \$83,000.  
10 This amount is around \$83,000. We simply took those amounts that were reflected to the Income Tax, and if I may show you this sheet, the amount shown there was \$58,030.30. What we did was this, we reduced the inventory in that year by \$40,000. That will bring it to exactly \$18,030.80.

Q.—That is for the year 1919?

A.—Yes, and this is the 1919 column. If the inventory is reduced in 1919, it must be increased in 1920, which was done, and that brought it down to \$17,700, but I have not got the working sheets.

20 Q.—It would bring it up?

A.—It brought it up, yes, that is right, to that, and they would not let me show certain items which we wanted to, and they brought it back to this \$23,000. They increased it by \$6,000.

Q.—By writing down the inventory in one year, and adding it on to the inventory in another was more or less of an academic process to try and equalize the years for taxation purposes?

A.—Yes.

Q.—And it did not really reflect anything in connection with the lumber business?

30 A.—No, nor further it did not follow that these exact amounts were made in the years that were shown here.

Q.—It was really an attempt, so far as it could be, to equalize the earnings over, in this case three years, so as to bring it into the lowest possible scale of tax?

A.—Yes.

Q.—If you cannot tell us what amount, if any, was derived from the lighting business, or from the lumber business, I suppose much less can you tell us what was derived from the lumber business at Farm Point, or Alcove, or at Mileage 12?

40 A.—I don't know.

Q.—And it is impossible to give that from any records that are available?

A.—I do not think there are any available records that will give you that information.

Q.—Because the lumber business includes, not only Farm Point, Alcove and Mileage 12, but also includes Mr. Cross' lumber operations at a number of other plants, does it not?

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A.—Yes, I understand so.

Q.—Then, if you cannot give us how much profit, if any, was made in any one of these departments, or the one we are interested in as contrasted in those in which we are not, perhaps we might, at least, get at the relative importance of these different operations as disclosed by the inventories of, let us take 1921 first—I do not think the bank statements for 1919 and 1920 would assist us there, would they?

10 A.—They will be the same as this.

Q.—They do not split the things up. We do not find any analysis of the mercantile assets, or anything of that kind?

A.—Well, I think you do.

Q.—Let us look at them. Perhaps I have overlooked them?

A.—There are the mercantile assets. You mean as to the break-up of each of the mercantile assets?

Q.—Yes.

A.—They are shown as a total.

Q.—So there are no statements for 1919 and 1920?

20 A.—No.

Q.—Which would show the breakup as between the different mills?

A.—Of course, I do not know whether those mills that are there were in existence in 1919.

Q.—Nor I don't suppose in 1920 you know anything about what happened?

A.—I do as a matter of fact, having a knowledge of the country, but not from any knowledge I have from his records.

Q.—You know the country personally?

30 A.—Yes, having had a summer cottage at Farm Point last year.

Q.—Do you use electric light in the summer?

A.—I was an electric light consumer of Mr. Cross.

Q.—Do you occupy one of his cottages?

A.—I occupy a cottage belonging to the Gatineau Power Company.

Q.—You might just tell us what are the different points at which he was apparently lumbering during the year 1921 covered by the statement?

40 A.—I have no knowledge other than what is shown in that statement.

Q.—That is what I mean. I say apparently lumbering as shown by that statement?

A.—Well, this mentions St. Pierre de Wakefield, Low Township, Picanock, Venosta and Stag Creek together, Farm Point and then Stag Creek separately; and then, lumber piled at Chelsea, Farm Point, and Low.

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Q.—The first group, I take it, is logs and the second group lumber?

A.—I would think so.

Q.—Including pulpwood?

A.—Yes.

Q.—Take the logs first, and give your figures for anything covering Farm Point, Alcove and Mileage 12. I understand Mileage 12 is sometimes referred to as Kirk's Ferry?

10 A.—At Farm Point the logs shown in creek, \$4,000.

Q.—There are no logs shown in respect to Alcove?

A.—No, I do not think so.

Q.—\$4,000, and that is contrasted with the logs and pulpwood at other points, amounting to how much?

A.—About \$60,000.

Q.—\$4,000 as contrasted with \$60,000 at points other than Farm Point, Alcove and Mileage 12. Mileage 12, as a matter of fact, does not appear in that?

A.—I do not think so.

20 Q.—Just as a matter of record, the largest operations that year were apparently at Picanock?

A.—Yes.

Q.—Will you give us the comparative figures in regard to lumber?

A.—The lumber is shown, at Farm Point 480,000 feet; at Alcove 135,000 feet. The total is 1,125,000 feet. It is about fifty per cent at Alcove and Farm Point.

Q.—And the other two that go to make that 50 per cent were Chelsea and Low?

30 A.—Yes.

Q.—And as regards logs and pulpwood, Farm Point with \$4,000 as against other points, how much?

A.—The total is about \$60,000.

Q.—So that the operations at Farm Point and at Alcove apparently were very much smaller?

A.—That is in the one year.

Q.—Then, I assume there was a profit on the lumbering business, the profit in the absence of any explanation to the contrary, would presumably run in proportion to the operations?

40 A.—I don't know that I can answer that.

Mr. St. Laurent: We object to this evidence as not appearing in any way from the statement.

BY MR. MONTGOMERY:

Q.—You spoke of the quantities of lumber. I think you have already said there were 480,000 feet piled at Farm Point?

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A.—Yes, and 135,000 feet at Alcove.

Q.—That is 480,000 feet out of a grand total of 1,125,000?

A.—Yes.

Q.—At all points?

A.—Yes.

Q.—Would you, as a matter of record, give us the valuations shown for the water power at Cascades?

A.—It shows on this statement at \$8,000.

10 Q.—And that figure is carried through in the power statement, is it not?

A.—That is carried through for the purpose of arriving at income, in this way. That must be kept on the same basis.

And I think the statement shows the basis on which those fixed assets have been figured. It could be carried at a dollar, or any amount. From the income tax point of view it would not make any difference.

Q.—You will note, if you wish me to draw attention to it, the statement in the report prefaces the figures signed by the auditor?

20 A.—Yes.

Q.—It would appear that he valued the water powers. You might perhaps read the extract?

A.—It says the water powers are valued by Mr. Cross and the Paugan valuation is the actual balance due upon the completion of the agreement of transfer of certain lands adjacent to the falls.

Q.—So that this first statement you have shown us gives the value of these water powers with a note of the auditor that the valuation is Mr. Cross' valuation?

A.—Yes.

30 Q.—\$5,000?

A.—Yes.

Q.—And the valuation at Farm Point, and the other assets, including the cottages with which we may be concerned, will be found under the heading of "Real Estate and Fixed Assets"?

A.—Yes, under the total.

Q.—Under the heading of Fixed Assets?

A.—Yes.

Q.—I just want you to indicate where we can find them if we want them?

40 A.—That is right.

Q.—We were going to 1922, were we not, and I assume your answer is the same for 1922, that there is nothing in the statement, or nothing in the records which you have seen or which you think are available, which could enable us to ascertain what the profit or loss was in connection with the electric light business, or what was the profit or loss in connection with any one of the lumber mills?

A.—No, I do not know of anything that could give you informa-

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tion as to the profit on these. I think it might be possible to secure information with regard to volume, but I do not think as to profit.

Q.—Well, then, let us take the best information we have and show the relative importance of the operation of these different mills? Electric light we can forget. There is nothing in these statements which can assist us in any way?

A.—No, I do not think so.

Q.—The only thing it would show would be quite a considerable amount of accounts receivable from the electric light?

10 A.—I think there is something shown in this statement.

Q.—And that does not assist us very much without knowing how far the arrears went back?

A.—No.

Q.—At what points were they operating in that particular year? As regards logs? Logs at what sites?

A.—We have logs at Picanock, Venosta and Stag Creek, Farm Point, Low, Alcove.

Q.—They are valued at a dollar a log?

20 A.—A dollar a log.

Q.—And there are 30,000 logs, or \$30,000 in the aggregate?

A.—Yes.

Q.—And of those 30,000, Farm Point had 3,500 both logs and dollars?

A.—Yes.

Q.—And at Alcove had 4,000?

A.—Both logs and dollars.

Q.—Then we come to pulpwood and they are outside points. Stag Creek is all the pulpwood, some \$7,000.

30 A.—Yes.

Q.—In this particular year the lumber seems to have been principally at Farm Point?

A.—\$16,500 and \$1,500 at Alcove.

Q.—And \$3,750 at Low?

A.—Yes.

Q.—Then, we get in addition to that sum, \$19,333 of stock, made up of lumber slabs, etc. at Perras siding?

A.—Yes.

Q.—That, I suppose, is another lumbering point?

40 A.—Well, that is the Picanock?

Q.—Again, in 1922, the operations at Picanock, so far as the account is concerned, would appear to have been considerably the larger?

A.—He had the largest industry at those points.

Q.—Have you a record of where these different points are? It is admitted that none of this lumbering business at points like Picanock, Stag Creek and Venosta have anything to do with this

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case. I assume, without going over it, your answer in a general way as to the 1923 statements would be the same. They do not enable us to ascertain profit and loss on the electric light, nor can we get anything more than the inventories at each lumbering point?

A.—We have the electric light accounts, only they would not have any bearing on profits. The same thing would apply to all these.

10 Q.—The accounts receivable, and of course, you have already explained that without knowing what the arrears were, you could not say anything as to that.

A.—It has no bearing.

Q.—You cannot draw any conclusions from it?

A.—No.

Q.—Except that apparently the business is growing tremendously, or the arrears were piling up because the amount was increasing?

A.—Yes, that is substantially the case.

20 Q.—Will you give us the information with regard to inventories at the respective points shown in the 1923 statement?

A.—The logs were all at Picanock.

Q.—That is \$24,000 in the river and \$26,000 on booms, carried at \$20,000?

A.—Yes. The lumber shows a total of \$19,000.

Farm Point, 200,000 feet, \$5,000.

Alcove, 40,000 feet, \$1,000.

Mileage 12, 60,000 feet, valued at \$1,500.

Q.—Perras siding which you have told us is the same as Picanock was much the largest operation?

30 A.—I do not say it is the largest operation. I say it has the largest industry.

BY THE COURT:

Q.—Where is Picanock?

A.—Near Gracefield.

Mr. Ker: It is forty miles up the Gatineau River.

40 BY MR. MONTGOMERY:

Q.—The 1924 statement does not show us any details with regard to the electric light profit or loss, or as regards profit and loss in each particular mill?

A.—The same thing applies.

Q.—You might give us the inventories?

A.—The logs were sawn on the Moore limit, and were carried at \$35,000.

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Q.—Where is the Moore limit.

BY MR. KER:

Q.—That is Picanock?

A.—I think so. I don't know, but I believe it is.

Q.—It is not at Farm Point?

A.—It is not at Farm Point.

10 The lumber was carried at \$53,960.23 of which \$600 was at  
Farm Point and \$200 at Alcove.

BY MR. MONTGOMERY:

Q.—Once again, as far as inventories are concerned, considerably more than half of them are at Perras siding, which we understand is Picanock?

A.—Yes.

20 Q.—You make the same statement as regards 1925. We can't  
obtain any information?

A.—Yes.

Q.—You might give us the valuation on the different inventories at the different points?

A.—The logs total \$5,230 and were located at Low.

Q.—Low has no connection with either Farm Point, Alcove, or  
Mileage 12?

A.—No.

Q.—There are no logs shown in respect of either of these three  
points, Farm Point, Alcove or Mileage 12?

30 A.—No.

Lumber and ties, \$23,000, of which 37,050 were represented at  
Farm Point. I would rather think that these items belong there, but  
that I don't know definitely. I think the wood would belong to Farm  
Point. Wood, \$1,000. Ties \$300. The balance is shown as being at  
Low or Perras.

Q.—And Picanock again is much the largest inventory?

A.—Yes.

Q.—The last year of which you have a record is 1926?

40 A.—Yes. This shows that the lumber, logs and ties total,  
\$74,262, of which \$25,250 was at Farm Point. \$8,342 was at Mileage  
12, and the balance was at Perras and Low.

Q.—By the way, that statement at the end purports to show a  
net gain of \$62,897?

A.—Yes.

Q.—Which is not right?

A.—Not in my opinion.

Q.—You can detect a whole lot of errors in the thing, can't you?

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A.—I think there are some.

Q.—Just glancing at the end, there are one or two things I could not understand at all?

A.—I do not say there are any errors in the mathematical figuring of it. I think the figures are right. I think the mathematics of it are all right.

Q.—There is just one thing I notice here, the liability to the Banks of \$27,000 mentioned in the foot note, does not appear to be carried into the liabilities as shown on the statement?

10 A.—Well, it is not a liability, because it was a collateral security.

Q.—The footnote states: "The Banks also hold notes to the amount of \$27,000 signed by Mr. Cross against which no property is held at this time." It sounds very much like a liability to me?

A.—But I do not think that is the case, although frankly I am not in a position to answer that, because I believe it would have been included in the liabilities had that been the case.

20 Q.—Look at the statement for the year before 1925 and see if you do not find it shows a liability?

A.—You will also notice in that year there is an asset for the same amount, both of which have been taken out.

Q.—Where is that shown?

A.—Under Bank balance.

Q.—Of the assets?

A.—Yes.

Q.—Mercantile assets?

30 A.—Yes, under mercantile assets. As far as that was concerned, it is simply a cross-entry, and I do not think it has any effect on the transaction.

Q.—So what was shown for the year 1926 as net income was afterwards shown in those years, when you made an adjustment, as \$10,000 instead of \$60,000?

A.—He paid income tax on \$10,000 for each of the years 1925, 1926 and 1927.

Q.—You might perhaps check one of those?

I think you will find they are the same, not only inventories, but fixed assets of the plant. I am speaking of the plant at Picanock, etc., which is very much larger than his plant at Farm Point?

40 A.—In this statement of Farm Point, including all of the fixed assets is \$55,355.

Q.—That is the 1926 statement?

A.—Yes. The amount of the Picanock was \$47,431.25.

Q.—And Perras.

A.—Perras, \$4,400.

Q.—And the \$55,000 you have spoken of at Farm Point includes



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not only the lumbering assets, but also the electric light, etc., does it not?

A.—Yes.

Q.—I take it that the valuation shown opposite the electric light plant and power house includes not only the power house, but also the distributing system? You don't find that on the statement?

A.—No, it is not recorded on that statement.

10 Q.—You would take it in the absence of some explanation to the contrary, that the electric light plant improved the total plant?

A.—I would say that, in answer to that, any additions which were made during this year were absorbed in those operations, and were not capitalized. If he built a transmission line, or anything of that kind, the asset was not changed, it was simply absorbed in the operation, otherwise, I think that contains the total asset at the time it was set upon the books.

Q.—In any event, it is the only asset shown in connection with the electric lighting plant?

A.—Yes, I think so.

20 Q.—I notice in the general statement for the year 1926 there is shown as an asset, making up that surplus, limits \$18,000?

A.—Yes.

Q.—Would those be the same limits that are shown as an asset in the mercantile assets?

A.—I would think so.

Q.—I just wanted to draw your attention, in case we are both mistaken. You will notice \$22,141 shown as mercantile assets, sundries, is the item which you referred to as the \$18,000. It looks at first sight as if there was duplication of that item?

30 A.—I do not think there is. I don't know whether I can explain it.

Q.—That does not appear in the 1925 statement?

A.—It appears in the mercantile assets.

I cannot answer that. I don't know. It does not appear, though.

Q.—We appreciate, Mr. Milne, that you have told us these figures do not necessarily represent that the income they show was necessarily earned in the particular year?

A.—No.

40 Q.—In any event, I presume the figures are the best you can give us: 1917 income, \$6,664.55?

A.—Yes.

Q.—In 1918 none, which, I take it, is in any event less than \$2,000?

A.—Yes. It was not taxable.

Q.—In 1919, \$18,030.80?

A.—Yes.

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Q.—In 1920, \$23,796.77?

A.—Yes. That is the amount on which he paid tax.

Q.—In 1921, \$41,148.86?

A.—Also the amount on which he paid tax.

Q.—And you have told us those last three years were really to be taken as one, and it is subdivided?

A.—Yes.

10 Q.—And for the following years, 1922, 1923 and 1924, Mr. Cross had apparently no taxable income?

A.—Well, he paid no tax.

Q.—Your statement does not show any taxable income?

A.—My statement does not show any taxable income.

Q.—And you were apparently able to satisfy the Dominion there was no taxable income for those years?

A.—Yes.

Q.—Which would mean that the profit was less than \$2,000, or that there was a loss?

A.—Yes.

20 Q.—And in the three following years, 1925, 1926 and 1927, you say you had that arbitrary adjustment of \$10,000 for each year?

A.—Yes.

Q.—And that included all his reported profits from any sources whatsoever, that is, from Picanock, Paugan or presumably every other source?

A.—Yes.

30 Q.—I will just go over the year 1926, as that happens to be the year when the plans were approved, that we are interested in; you might just state for the record the values which are fixed, and which, following the preface to the 1921 report, I think it was, are stated to have been Mr. Cross' valuations. Will you tell us, for instance, what the value of Farm Point is shown at there? The total assets of everything he had at Farm Point?

A.—After deducting the depreciation, Farm Point is valued at \$55,355 in this statement.

Q.—And what does that include?

A.—That includes lot 23-B.

Q.—It includes the land and all the cottages?

40 A.—Cottages, machinery, workmen's cottages, fifty acres of land, saw mill, machinery and fixtures, electric light and power plant, and an ice house.

Q.—And I see it includes two frame cottages, 24 workmen's cottages, and so on. The cottages are the rate of depreciation. Applied to this is two and a half per cent, according to this statement?

A.—Yes.

Q.—There is six years' depreciation shown at that rate. Why six years?

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A.—We started this statement from 1919. I think there was nothing the first year.

Q.—In 1917 and 1918 there was apparently no depreciation?

A.—There was no depreciation. Whether there were any cottages or not, I could not tell you.

Q.—Whatever the reason may be, six years is all that is charged off, but they were charged anyway at the rate of two and a half per cent?

A.—Yes.

10 Q.—As to the 24 workmen's cottages, the total value is shown as \$23,300 less \$2,295. The saw mill is shown at \$3,000 less five years' depreciation at ten per cent, leaving a net value of \$1,500.00?

A.—Yes.

Q.—The electric light plant and power house as shown has a gross value of \$25,000 less depreciation, five years at five per cent, \$6,250, or a net value of \$18,750?

A.—Yes.

Q.—As far as you can see, that includes distribution system?

20 A.—No, I did not say that. I said I thought the original cost of the distribution would be included in that, but anything that was added from 1919 on I do not think is included in that, because I think he used the valuation out of his yard and it was written off for expense.

Q.—That, of course, you can only guess at?

A.—It is more than a guess in this way, the asset account has not been increased for a number of years, therefore any additions cannot have been added.

30 Q.—At Kirk's Ferry, which I take it is the same as Mileage 12, will you tell us what the total property at Kirk's Ferry or Mileage 12 was valued at in that statement by Mr. Cross?

A.—That is lot B-16, a frame house, \$1,500, less depreciation of \$225, net \$1,275.

Q.—At Alcove?

A.—Alcove is made up of electric mill and five acres, less five years' depreciation of 10 per cent. The total is \$5,500. The depreciation is \$2,750 and the net amount the same, \$2,750. The machinery and fixtures are carried at a thousand dollars, less five years' depreciation of ten per cent, net amount \$500.

40 Q.—You draw my attention to an item of \$15,000 at Cascades? My information is that those are the timber limits under Range 12, and 600 acres at Range 11?

A.—Yes.

Q.—The total value given them is \$15,000?

A.—Yes.

Q.—Perhaps under water powers you will show us the amounts, the different values in 1926?

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A.—The water power shows Cascades, \$5,000, Quyon \$3,000, that is on the Ottawa River; Farm Point, \$12,000, and additions to Farm Point in 1926 expended \$8,300.

Q.—You don't know what those additions were?

A.—I don't know.

Q.—I am asked to record the valuation showing the acreage, and the valuation shown on the land at Farm Point. His Lordship has asked that question several times as to the acreage?

10 A.—The only item here as to Farm Point that I see valued is  
50 acres of land at \$40—a total of \$2,000. There is a lot there besides.

Q.—And the cottages besides?

A.—Yes.

Re-examination

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

Q.—So that we may have this perfectly clear, have any of these figures you have been stating in answer to Mr. Montgomery's questions been your valuation of any of those assets?

20 A.—No.

Q.—You have been merely reading figures off the statements you were using when you were adjusting his income tax?

A.—Yes.

Q.—Under the practice of the Income Tax Department when once you have started to depreciate an asset against which they allow depreciation, are you allowed to modify the basis from year to year?

A.—No, for this purpose in particular it was kept the same way to avoid any confusion.

30 Q.—But under the practice of the Income Tax Department when you start to depreciate a thing, will they allow you to write it up at any time, to start over again?

A.—No.

Q.—You have to keep it on, on the same basis?

A.—Yes.

Q.—And carry along the depreciation you have taken up for previous years?

A.—Yes, that is, maintain your asset and increase your reserve?

40 Q.—With respects to assets against which no depreciation is  
allowed: Why do you say it does not matter whether you carry  
them at \$5,000 or at \$1,000?

A.—For this reason: when a man has no books and you are trying to arrive at his earnings for the year, if you take his fixed assets at the beginning of the period and his fixed assets at the end of the period on the same basis, and provided he has made no capital expenditure during that year, the income or loss, as the case may be, will be reflected by the increase or decrease in his surplus, so that the

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fixed assets could be carried, for instance, all his fixed assets could be carried at one dollar the first year as long as they were carried at one dollar the end of the year, as long as there was no cash outlay on any new fixed asset in the period, and a change in his current assets or current liabilities would show his profit or his loss.

Q.—In accounting is it a well-known practice in a great many concerns, that valuable assets are, in fact, carried at a dollar?

A.—In many cases.

10 Q.—Would the amount of stock on hand as to inventory at a place of business on any given date necessarily reflect the amount of business done at that place?

A.—No.

Q.—That inventory is an actual accounting and ascertaining of the value of stock on hand at that time?

A.—That is what it is supposed to represent.

Re-cross-  
examination

RE-CROSS-EXAMINED BY MR. MONTGOMERY, K.C.,  
OF COUNSEL FOR DEFENDANT:

20 Q.—This dollar valuation, whether the valuations are yours or not—I think I drew your attention first to the statement in the 1921 account as to the sources of those valuations, and now, Mr. Auditor adds his own opinion, does he not?

A.—Yes.

Q.—Will you read that into the record?

A.—This is Mr. Blatch.

Q.—Mr. Blatch is your predecessor?

A.—He is not my predecessor exactly.

30 Q.—You are his successor?

A.—Not necessarily. I am not responsible for any of Mr. Blatch's actions. That is the point I wish to make.

Q.—Will you read that into the record?

A.—“ I am of the opinion that fair valuations have been placed on the various assets. No allowance, however, has been made for depreciation on plant and buildings.”

Q.—So we have a statement of valuations where it is furnished by Mr. Cross, and accompanied by Mr. Blatch for what it is worth, that the values, as far as he can ascertain, are fair values?

40 A.—Yes.

Q.—In 1922, will you see what it says as regards the different values shown in the statement?

A.—The report in 1922 reads as follows:

“ The above statement has been prepared by following the one made up by us last year adding new assets, allowing depreciation on buildings, plant, furniture and book debts and read-

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justing the accounts, bills receivable, bills payable and other liabilities, as at October 31st, 1922. All information has been supplied by Mr. Cross and Mr. Perry, the bookkeeper. I believe the values are reasonable."

Q.—You might read the auditors' report for 1923?

A.—The auditors' report for 1923 reads as follows:

10 "That above statement has been prepared by following the one made up last year, adjusting assets and liabilities, allowing further depreciation on buildings, plant, machinery and book debts, and omitting property in the name of Mary E. Cross. All information has been supplied by Mr. Cross. I believe the values are fair and reasonable."

Q.—Now for 1924, there is a similar statement. It states with a similar preface as to how valuations are made up, does it not?

20 A.—Yes, and he states, "All information has been supplied by Mr. Cross", and then it goes on to say, "I have inspected the mill and stock of lumber at Perras, Quebec, and believe the values are fair and reasonable".

Q.—1925 contains a similar statement, does it not, except there is nothing said about values?

A.—There is nothing said about values. He says, "All information has been supplied by Mr. Cross."

Q.—There is no reference as to valuation?

A.—No.

Q.—And 1926 completes it?

30 A.—1926 is substantially the same, except he does not give his own opinion as to the valuation.

Q.—And he states, "The above statements were prepared from information supplied by Mr. F. T. Cross, following up the statement of 1925"?

A.—Yes.

Q.—These statements you have shown us, I understand stop at 1926. Have you similar statements for 1927, 1928 and 1929 and 1930?

40 A.—The statements for both the earlier or later dates, I was unable to find them, if there are any. I do not think Mr. Blatch made statements for Mr. Cross after that date. I took the matter up with the Tax Department, and they did not have them at that time. If I had them I could not find them. We had some trouble finding those, as a matter of fact.

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

Q.—Once again, you have been reading from these documents that Mr. Montgomery has filed as exhibits, and which bear the signature of Mr. Blatch?

A.—Yes.

Q.—Do you take any responsibility for his statement or his opinion?

10 A.—No.

(And further deponent saith not.)

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DEPOSITION OF CHARLES O. FELLOWES, A WITNESS  
PRODUCED ON BEHALF OF PLAINTIFF

20 On this thirteenth day of October, in the year of Our Lord, one thousand nine hundred and thirty-two, personally came and appeared

CHARLES O. FELLOWES,

of the city of Ottawa, Bank Manager, aged 52 years, a witness produced on behalf of the Plaintiff, who being duly sworn doth depose and say as follows:

30 EXAMINED BY MR. ST. LAURENT, K.C.,  
OF COUNSEL FOR PLAINTIFF:

Q.—I understood you to say you were a Bank manager at Ottawa?

A.—Yes.

Q.—Of what bank?

A.—The Dominion Bank.

Q.—How long have you been manager of that Bank at Ottawa.

A.—Since 1911.

Q.—Continuously?

40 A.—No. I was at the war.

Q.—Were you there from say 1920 to 1927?

A.—Yes.

Q.—Do you know Mr. Cross?

A.—Very well.

Q.—Did he do business with your Bank during that period?

A.—From the beginning of 1920 to the last two or three years,—  
1929, I think.

*In the  
Superior Court*  
No. 90.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
C. O. Fellowes,  
Examination  
Oct. 13th, 1932.  
(continued)

Q.—Did you bring down with you your ledger sheets of his account with your bank?

A.—Yes.

Q.—And did you go over those sheets, making up from year to year the amount of money he deposited into his account?

A.—I made up from my turnover book his deposits per month.

Q.—Will you state for the purposes of the record what were the amounts of his deposits from year to year for that period. I do not think we need it monthly?

10

Mr. Montgomery: I object to this question as immaterial.

(The Court reserves the objection.)

A.—The deposits from 1920 to 1926, both years inclusive, amounted to \$1,033,361.

Q.—Would that be new money or renewals?

A.—New money.

Q.—Can you say for what amount he was indebted to your Bank in 1921, on his direct account?

20

A.—My recollection is that Mr. Cross owed us in the neighbourhood of \$160,000.

Q.—Was that all direct, or partly direct and partly indirect?

A.—Partly direct, and partly trade.

Q.—Can you split it up to show how much was the direct and how much was the trade?

A.—Not absolutely, but I think the direct was about \$90,000, between \$90,000 and \$100,000. I have done that without consulting my records. That is my recollection of it.

Q.—And I presume, you were following that account quite closely?

30

A.—Yes.

Q.—What had become of the direct liability by 1926?

A.—It was completely paid off.

Cross-examination

CROSS-EXAMINED BY MR. MONTGOMERY, K.C.,  
OF COUNSEL FOR DEFENDANT:

Q.—Do you know from what sources the liability was paid off?

40

A.—From lumber sales.

Q.—Do you know that?

A.—Well, in the main.

BY THE COURT:

Q.—Was your Bank the only bank with which Cross was dealing?



*In the  
Superior Court*

No. 90.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
C. O. Fellowes,  
Cross-examination  
Oct. 13th, 1932.  
(continued)

A.—So, I understand, Your Lordship.

BY THE COURT:

Q.—Are you sure?

10 A.—I always understood it was the only bank. We do not carry accounts, as a rule, that are dealing with two banks. He might have had a small personal account of a few dollars for household expenses or something like that. I am quite sure he had not any commercial or business account.

BY MR. MONTGOMERY:

Q.—That million dollars you talked to us about was spread over seven years?

A.—Seven years.

Q.—And that, I suppose would represent the gross amount of bills deposited, and so on?

20 A.—Yes.

BY THE COURT:

Q.—From 1920 to 1926?

A.—Yes.

BY THE COURT:

Q.—It represents the gross amount of bills deposited?

30 A.—Not renewals.

BY THE COURT:

Q.—Drafts deposited in connection with his lumber business, and everything of that kind, except renewals?

A.—Except renewals.

BY MR. MONTGOMERY:

40 Q.—You told us about the loan having been cleared off; that was not in 1926?

A.—No, the amount was paid off. The two loads were paid off after 1926.

Q.—I thought the Dominion Bank had a mortgage on his property subsequent to that?

A.—Yes. We did not relinquish that. We intended to do more business with him, perhaps.

*In the  
Superior Court*  
No. 90.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
C. O. Fellowes,  
Cross-examination  
Oct. 13th, 1932.  
(continued)

Q.—So after all his loans had been completely paid off, you continued to hold a mortgage on his properties?

A.—Yes.

Q.—That is an extraordinary kind of security, I should think. What was the amount of that mortgage?

A.—I have forgotten.

Q.—\$40,000?

A.—I really forget what the amount was.

10 BY THE COURT:

Q.—What was the mortgage on?

A.—On all his properties.

BY THE COURT:

Q.—On his real estate?

A.—On his real estate.

20 BY MR. MONTGOMERY:

Q.—Taken, I suppose, in the first place as additional security?

A.—As additional security.

Q.—Do you know when that was discharged?

A.—It was discharged since 1929, or in 1929.

Q.—As a matter of fact, that mortgage was only discharged, was it not, in September, 1929, when it was replaced by a mortgage in favour of Mr. Scott's client, Mr. Plante? That is correct, is it not?

A.—I do not know who replaced it. I know we discharged the  
30 mortgage.

Q.—Was that when you ceased to do business with Mr. Cross?

A.—Yes.

Q.—He closed up his account with you, or you closed up his account?

A.—He went to another bank.

Q.—That is extraordinary, that a man with such large deposits, you should allow to slip away from you like that. You look to be a pretty experienced manager, Mr. Fellowes. You don't look as if you lose many good accounts?

A.—Mr. Cross wanted to handle the situation, and we did not care to, so he went to the Bank of Montreal and got it there.

Q.—And it was at that time that your mortgage was paid off, and you do not know from what source the funds were obtained to enable the discharge to be made?

A.—The funds came from the Bank of Montreal, to pay off the Bank. My recollection is that it was Mr. Cross' cheque from the Bank of Montreal.

*In the  
Superior Court*  
No. 90.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
C. O. Fellowes,  
Cross-examination  
Oct. 13th, 1932.  
(continued)

Q.—So there were liabilities at that time which that mortgage was there to secure?

A.—Yes.

Q.—In September, 1929?

A.—Yes.

Q.—So your Bank and Mr. Cross parted company at that time?

A.—Oh, yes.

10 (And further deponent saith not.)

*In the  
Superior Court*  
No. 91.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
Mrs. Thos. Howell,  
Examination  
Oct. 13th, 1932.

DEPOSITION OF MRS. THOMAS HOWELL, A WITNESS  
PRODUCED ON BEHALF OF PLAINTIFF

20 On this thirteenth day of October, in the year of Our Lord one thousand nine hundred and thirty-two, personally came and appeared

ELIZABETH BLACKFORD,

of Ottawa, Ontario, wife of Thomas Howell, 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.—I understand you occupied Mr. Cross' hotel at Farm Point for a certain number of years?

A.—From 1922 to 1928.

Q.—How was it up to the time the waters of the Gatineau River were raised?

A.—There was nothing whatever the matter with it until the water was raised. It was in wonderful condition.

Q.—In good condition?

A.—

40 Q.—How was the cellar prior to the time the water was raised?

A.—Well, it was quite dry. We used to keep it for storage.

Q.—You used to use it for storage?

A.—For storage.

Q.—How many months of the year did you occupy the hotel?

A.—From the 1st of May until the end of October.

Q.—At what rental?

A.—At \$400 per year. We used to take it by the year.

*In the  
Superior Court*  
No. 91.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
Mrs. Thos. Howell,  
Examination  
Oct. 13th, 1932.  
(continued)

Q.—You used to take it by the year and occupy it only during the summer season?

A.—Yes, or as long as we could possibly stay there.

Q.—From the spring until the fall?

A.—Yes, until the late fall.

Q.—While you were there, was it occupied by anybody else during the winter months?

A.—No.

10 Q.—It used to be closed during the winter?

A.—It was closed.

Q.—Did you go back in the spring of 1927?

A.—Yes.

Q.—That was the first spring after the waters were raised?

A.—Yes.

Q.—What was the condition then?

A.—Everything was very damp, and the cellar had a lot of water in it. The grounds were half under water.

Q.—Was there anything besides water in the cellar?

20 A.—Yes, ice, until June.

Q.—Ice stayed there until June?

A.—Until June.

Q.—How was it the next year?

A.—Well, it was more damp than the first year.

Q.—That was in 1928?

A.—Yes. Then we decided to give up.

Q.—For what reason did you decide to give up?

A.—The floors were too damp. Down stairs we could not use the rooms, they were too damp.

30 Cross-examination

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

Q.—You went in in 1922?

A.—Yes.

Q.—You never suffered from any ice in the cellar at any time?

A.—No, it was quite dry. There was no dampness there whatever anywhere near the hotel until the water was raised.

Q.—How do you account for that?

40 A.—On account of the raising of the water, because the water is so much higher. Even on the ground, the roadway, the water is more or less always there. It seems to have seeped through the earth.

Q.—What roadway are you speaking of?

A.—The front roadway.

Q.—The main highway?

A.—The main highway.

Q.—Which runs just in front?

In the  
Superior Court

No. 91.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
Mrs. Thos. Howell,  
Cross-examination  
Oct. 13th, 1932.  
(continued)

A.—Just in front of the hotel, and the lane going into the house all seems to be damp.

Q.—You state the highway itself is damp?

A.—All by the hotel it is, where it seems to seep through. Of course, the bank is very much washed away since the water has been raised.

Q.—Of course, the road is between you and the river?

A.—Yes.

10 Q.—And you are, at least, on the level of the road, are you not, in the hotel, or higher?

A.—Well, we are higher really, I think.

Q.—So if the road is not damp, why should the house be damp?

A.—Water must seep through the earth somehow to go into the cellar.

Q.—After a rain, before the water was raised, did you not find dampness?

20 A.—We never had water in the cellar. The house was never damp. Going back in the spring, the house was always dry. We could use the beds right away. It made no difference.

Q.—You don't know anything about whether the drains were working right, do you? How much water would there be in the cellar?

A.—I cannot say. I was down there very little myself. I know my husband was.

Q.—Did you ever see any ice in the cellar yourself?

A.—Well, my husband brought it up and showed the guests that were there.

30 Q.—That would indicate there was quite a lot of water in the cellar?

A.—Well, there was quite a lot of water.

Q.—I was trying to find out, if the cellar was higher than the river, how it could possibly be?

A.—I do not think the cellar would be higher than the river.

Q.—I suppose if the cellar were higher than the river there should not be any reason for water?

A.—I really could not tell you.

Q.—As a matter of fact that hotel is still occupied yearly?

40 A.—Yes, there are people there.

Q.—Each year since you left?

A.—Yes.

Q.—Do you know what rent they are paying?

A.—No.

Q.—You don't know anything about it?

A.—I don't know anything about that.

(And further deponent saith not.)

*In the  
Superior Court*

No. 92.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
Lester Rawson,  
Examination  
Oct. 13th, 1932.

DEPOSITION OF LESTER RAWSON, A WITNESS PRO-  
DUCED ON BEHALF OF THE PLAINTIFF.

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

LESTER RAWSON,

10

of Farm Point, Quebec, hotel keeper, aged 44 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.—I understand you and Mrs. Rawson have been occupying Mr. Cross' hotel at Farm Point for some time?  
A.—Yes, for the last three seasons.  
Q.—That would be 1930, 1931 and 1932?  
A.—That is correct.  
Q.—At what rental?  
A.—The first year at \$300.00 a year, the next year at \$200 and the last at \$150.  
Q.—Why the reduction?  
A.—Well, we found the general condition of the place did not warrant us carrying on business to the extent of meeting the rental that was asked. The condition was such we could not do it.  
30 Q.—What was the condition of the cellar, for instance?  
A.—We have never been able to use it since we have been there.  
Q.—Why?  
A.—Owing to its damp condition.  
Q.—Is that condition of things confined to the cellar, or does it extend to any other part of the house?  
A.—To the lower rooms of the house.  
Q.—How does it affect them?  
A.—The dampness creates a musty, damp atmosphere, and you  
40 cannot use the rooms as guest rooms at all.  
Q.—Has it affected the carpets in any way?  
A.—It causes them to be mouldy, that is, between the floor and the carpets.  
Q.—Has there been any effect on the doors in the hotel?  
A.—Yes. The doors in the lower part, that is in the lower rooms, are warped. The casings are warped so that the doors do not close properly.

In the  
Superior Court

No. 92.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
Lester Rawson,  
Examination  
Oct. 13th, 1932.  
(continued)

Q.—Is it the same condition as when you arrived there?  
A.—No. I would say it was due to settling more each year.  
Q.—It is due to the settling of the building more and more each  
year?  
A.—Yes.  
Q.—On what sort of foundation does that building rest?  
A.—As I observed a rock foundation, or stone foundation.  
Q.—It is built on a stone wall?  
A.—Yes, I would say so.  
10 Q.—And in your opinion it is gradually settling?  
A.—Yes, it is. At least, it has in three years.

Cross-examination

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

Q.—That is a pretty old building, is it not?  
A.—Yes, it is an old building.  
Q.—And it is closed up each year between the time you go in  
20 and the time you go out?  
A.—Yes.  
Q.—At least, during the times you go out and come in?  
A.—Yes. We do not occupy it the complete year.  
Q.—How many months in the year altogether do you occupy it?  
A.—From about the first of May till the last of October.  
Q.—But business has not been as good during the last few years  
as you would have liked to have had it?  
A.—Oh, no.  
Q.—I suppose you are not alone in that?  
30 A.—Oh, no.  
Q.—Is there actually any water in the cellar?  
A.—To be frank with you, this year, for instance, along in May,  
I went down to look at the cellar. In fact, Mrs. Rawson came along  
with me. We wondered if we would be able to store something. We  
knew it was damp. I have never made any effort, however, because  
we felt that the general condition of it was such we had not thought  
it wise to use it, but we went down this year really intending to use  
it if it was possible, and it was too damp altogether. What I mean  
by damp is, the floor was such that you could take a stick and stick  
40 it in it.  
Q.—It is an earth floor?  
A.—I suppose there has been a floor more substantial than  
earth in it at some time or other.  
Q.—But not since you have been there?  
A.—Not since I have been there.  
Q.—Has it the appearance of ever having had a cement floor  
on it?

*In the  
Superior Court*

No. 92.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
Lester Rawson,  
Cross-examination  
Oct. 13th, 1932.  
(continued)

A.—I would not like to say that, because I have never seen it.

BY MR. ST. LAURENT:

Q.—There is no trace of a cement floor now?

A.—I have not seen any cement floor at all.

BY MR. KER:

10 Q.—When you speak of the cellar, you would like to convey the idea that it was never intended to be a tenantable portion of the house?

A.—No. It is a cellar which you would use for storing purposes.

Q.—There is no entrance to it inside from the outside verandah?

A.—There has been an entrance from the inside, but we have never used it, but there is a place you can go under; there is what I would call a drop door.

20 Q.—Apparently that was abandoned before you came there?

A.—No, it has never been tampered with in any shape or form.

Q.—In any event, the only entrance you have had from the time you have been there is an entrance directly from outside?

A.—Yes.

Q.—I don't suppose you know the level of the cellar, the base of the cellar?

30 A.—No, but as I look at it, and as any ordinary layman would look at it, it would appear that at one time the cellar was functioning as a cellar, and it was perfectly dry, but with the raising of the water there is no chance for it to drain out, you understand.

Q.—I would like to be perfectly frank with you. I am trying to find out why it should be damp. As far as I understand, the base of the cellar is above the water. Do you know anything about drainage in it at all?

A.—No, I myself, I don't know anything about the drain, but to me it would appear that the raising of the water had blocked it. There must have been a drain some time, but it must have blocked up.

40 Q.—And if that is the case, it would seem to be the fault of the drain, rather than the fault of the raising of the river?

A.—There is no outlet.

Q.—Is it not a fair inference that we may notice really something wrong with the drain?

A.—As I said before, I don't know anything about the drain. It is only from my observation.

Q.—But the house is quite considerably higher than the water?

A.—I don't know as to the level of the cellar.



*In the  
Superior Court*

No. 92.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
Lester Rawson,  
Cross-examination  
Oct. 13th, 1932.  
(continued)

Q.—As a matter of fact, I suppose, you, like all tenants this year, anticipated having a reduction in your rent?

A.—I will tell you, naturally that is good business if we do so, but you must advance a good reason for it in order to get it.

Q.—Did you advance the same reason this year that you did the previous year in order to get another reduction of \$50?

A.—We were not able to use two of our main rooms on the lower floor, and we were obliged to give them up, we could not use them even for ourselves, they were in such a condition, we could not use  
10 them, there seemed to be a cold damp from them.

Q.—It is a pretty old building, is it not?

A.—Well, it is an old building, but a very substantial building.

Q.—And it is all warped, somewhat, in the way of doors, and even before you took it?

A.—When we first went there the doors would function properly.

Q.—Was there any settling then?

A.—There may have been. We made no observation as to settling.  
20

(And further deponent saith not.)

*In the  
Superior Court*

No. 93.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
Mrs. L. Rawson,  
Examination  
Oct. 13th, 1932.

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DEPOSITION OF MRS. LESTER RAWSON, A WITNESS  
PRODUCED ON BEHALF OF PLAINTIFF

---

30 On this thirteenth day of October, in the year of Our Lord one thousand nine hundred and thirty-two, personally came and appeared

MARY MACALISTER,

of Farm Point, Quebec, wife of Lester Rawson, aged 47 years, a witness produced on behalf of the Plaintiff, who, being duly sworn, doth depose and say as follows:

40 EXAMINED BY MR. ST. LAURENT, K.C.,  
OF COUNSEL FOR PLAINTIFF:

Q.—You have heard what your husband has said about the hotel at Farm Point?

A.—Yes.

Q.—Is there any further information you can add to what he gave the Court?

*In the  
Superior Court*

No. 93.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
Mrs. L. Rawson,  
Examination  
Oct. 13th, 1932.  
(continued)

A.—No, it is just the same thing. We both realized the condition together.

(No cross-examination.)

(And further deponent saith not.)

*In the  
Superior Court*

No. 94.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
Alexander Austin,  
Examination  
Oct. 13th, 1932.

10 DEPOSITION OF ALEXANDER AUSTIN, A WITNESS  
PRODUCED ON BEHALF OF THE PLAINTIFF

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

ALEXANDER AUSTIN,

20 of Wakefield, Quebec, carpenter, aged 63 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.—It appears, Mr. Austin, that we forgot you when we were examining the other witnesses who spoke about their use of electricity, and that you have been waiting since, and that you do not want to come back?

A.—No. I would like to get home.

Q.—Where do you live?

A.—At Wakefield.

Q.—For what purposes were you using electricity?

A.—I was using it for lighting and for pumping the water, and for general household purposes.

Q.—What were you paying?

A.—Last year we paid to Mr. Cross about \$40.

40 Q.—When were you put on a meter?

A.—I cannot remember the date, but when the others were put on. I always had a meter when the meters were on.

Q.—Was there a time after they had been on for four or five years that they were taken off again?

A.—I think they were off for a while. They were supposed to be taken off for testing.

Q.—And you do not remember how long they were off?

*In the  
Superior Court*

No. 94.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
Alexander Austin,  
Examination  
Oct. 13th, 1932.  
(continued)

A.—No, I cannot remember.  
Q.—They have been put back since?  
A.—They were put back since.

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

Cross-examination

10

Q.—Are you the Mayor of Wakefield?  
A.—I was two years ago, not now.  
Q.—I see your name in a resolution by the Council requesting  
that if Mr. Cross does not give better lighting service, the matter  
will be referred to the Quebec Public Service Commission, on the  
2nd March, 1928. Were you Mayor then?  
A.—Yes.  
Q.—You were paying \$40.00?  
A.—About that. I cannot remember the exact amount.  
Q.—You are still on Mr. Cross' service?  
A.—Oh, yes.  
(And further deponent saith not.)

20

*In the  
Superior Court*

No. 76.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
F. T. Cross,  
(Recalled)  
Examination  
Oct. 14th, 1932.

CONTINUATION OF DEPOSITION OF FREEMAN T. CROSS  
EXAMINED ON BEHALF OF THE PLAINTIFF

30

On this fourteenth day of October, in the year of Our Lord,  
one thousand nine hundred and thirty-two, personally came and  
reappeared

FREEMAN T. CROSS (Recalled)

a witness already examined, now recalled for further examination,  
who being duly sworn doth depose and say as follows:

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

40

Q.—Before my learned friends continue with their cross-ex-  
amination of you, there are a few questions I would like to ask you  
concerning your lumber business, so that in their cross-examination  
they can cover the whole field. I understand you did some business  
at Picanock?

A.—Yes.

Q.—How did you get interested in that district? When did  
you buy a property up at Pickonock?

*In the  
Superior Court*  
No. 76.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
F. T. Cross,  
(Recalled)  
Examination  
Oct. 14th, 1932.  
(continued)

A.—In the fall of 1920.

Q.—What kind of property was it?

A.—Bush property.

Q.—At what cost?

A.—\$20,000.

Q.—From whom?

A.—From Mr. Richard Moore, as a deposit on account.

10 Q.—I understand you were to pay stumpage, as you took the  
stump off?

A.—Yes.

Q.—And the \$20,000 was to serve to guarantee the stumpage?

A.—Yes.

Q.—What rate was the stumpage?

A.—\$5.00 per 1,000 feet.

Q.—That was in the fall of 1920?

A.—In the fall of 1920.

Q.—Did you go in there and wait?

A.—Yes.

20 Q.—Did you spend any other money on the property?

A.—I built a mill. I built four complete camps, some for 150  
men, equipment, bunk houses and logging outfit, roads, and bridges.

Q.—Roughly, how much expenditure did mean?

A.—It ran into about \$60,000 or \$70,000.

Q.—The whole thing.

A.—Yes.

Q.—The \$20,000 deposit for the stumpage and the preparations?

A.—Yes.

30 BY THE COURT:

Q.—Including the \$20,000.

A.—Yes.

BY MR. ST. LAURENT:

Q.—What happened to the bush?

A.—The following year in the spring it took fire.

Q.—A forest fire?

40 A.—A forest fire.

Q.—And what happened to the improvements you had made?

A.—The improvements were completely swept away. There  
was not a camp; there was not even the top of the dam.

Q.—The dams were burned to the water line and it cut them off  
on the water level. They were wooden dams.

Q.—Did you operate at Picanock?

A.—I operated at the mill. It was in operation for one year, and

*In the  
Superior Court*  
No. 76.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
F. T. Cross,  
(Recalled)  
Examination  
Oct. 14th, 1932.  
(continued)

on the second cut the mill that burned down was about half the cut in the Creek, in the river.

Q.—That was about the year 1922?

A.—1922.

Q.—The forest was burned in 1921?

A.—Yes.

Q.—And the mill was destroyed in 1922?

A.—In 1922.

10 Q.—That burned your cut in the river?

A.—That burned my cut in the river. Then I had the \$20,000 deposit on that limit and the hardwood and the pine burned in the spring of the year.

Q.—Burned standing?

A.—Burned standing. In the river I had to put up a large mill, or else I found myself in the position that my timber would be destroyed, to leave it the second or third year to take it out, so I invested in a large mill at the beginning.

Q.—After the destruction of the first one?

20 A.—After the destruction of the first one, I found myself in this position, even when I had the large mill to take care of the hardwood. The fire went through it and the sap was cooked in the timber. You could take up the slab boards and break them like a pipe shank. I sold it as a low grade lumber for \$15.00. I had a contract for high grade hardwood at \$45 a 1,000.

Q.—You had a contract for high grade hardwood at \$45 a thousand, and after you got it out all you got for it was about \$15?

A.—Yes.

30 Q.—Was that because of the damage it had suffered through the fire?

A.—Through the fire.

Mr. Ker: I submit, my Lord, that this evidence is entirely irrelevant.

(The Court reserves the objection.)

BY MR. ST. LAURENT:

40 Q.—When your first mill was destroyed, was it insured?

A.—Not for a dollar.

Q.—How much did you have to invest to put into this second mill which you say was a large mill, because you wanted to hurry and get the stuff out?

A.—From \$55,000 to \$60,000.

Q.—Just how long did you operate at Picanock?

A.—Six or seven years.

*In the  
Superior Court*  
No. 76.  
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Q.—Did you, or did you not, ever get enough out of Picanock to cover the losses you had made when you went in there?

A.—I did not figure I had made a dollar at Picanock.

(Same objection.)

(Same reserve.)

10 Q.—From what sources did you get the money which you invested in this Picanock enterprise?

A.—Every dollar came from Farm Point, North Wakefield and Mileage 12.

Q.—Where was North Wakefield?

A.—North Wakefield and Farm Point.

Q.—But where is North Wakefield?

A.—It is five miles north of Farm Point.

Q.—Is it the same place that is called Alcove?

A.—It is the same place as Alcove.

20 Q.—When did you commence to employ Mr. Blatch to prepare statements for you?

A.—In 1913 or 1914, somewhere thereabouts.

Q.—Is he the first person you brought up to Farm Point to prepare statements, or did any one go up there to look the place over before he went up?

A.—Before Mr. Blatch went up the bank manager went up looking for a loan.

Q.—Who was looking for a loan? Was it the bank manager or was it you?

30 A.—I was looking for a loan, and the bank manager advised me to get an auditor to go up and look it over.

Q.—How much of a loan were you getting at that time?

A.—\$35,000.

Q.—And it was at that time you got your first statement written up by Mr. Blatch?

A.—Yes.

Q.—Was it at that time that you gave him these figures as to what fixed assets you had?

A.—Yes, that is what I had at that time.

40 Q.—Did you ever have those figures changed?

A.—Not very much.

Q.—From what we have seen, the first time the Cascades Water Power came into the statement was in 1921; how did that figure get there?

A.—He might have asked me what he would put it in for. I said, "Put it in for the amount that is on the statement".

Q.—I notice from the statement that the boarding house was

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already in the statement before the water power was put in?

A.—Yes.

Q.—Did you acquire that boarding house at the same time as you got the Cascades water power?

A.—The whole thing was got in the one purchase.

Q.—The purchase, which was shown in the enquete before the supplementary declaration, as having been made for \$28,000?

A.—Yes.

10 Q.—Had you made any addition to the building that went with that purchase?

A.—Yes. I put a twelve-foot verandah, both an upper and lower verandah, around the boarding house.

Q.—What reason had you for putting in this figure of \$5,000?

A.—Well, no reason, only he just asked what he would put it in for and I said put it in for \$5,000.

Q.—That stood that way right through all the statements?

A.—Well, as far as I know it was carried forward by the auditor.

20 Q.—One of your foremen were examined yesterday about the construction of the dam on Carmen Lake? What was that for?

A.—For storage for water, and driving logs in the Meach Creek.

Q.—He also spoke of a dam built during the summer at Spring Lake?

A.—Yes, for the same purpose.

Q.—What, approximately, was the cost of each one of these dams?

A.—\$1,500 Carmen Lake, and \$1,800 for Spring Lake.

Q.—Who did the loading of the gravel which was hauled by Levy Reid and Mr. Cabe?

30 A.—I had a foreman by the name of Mr. Bisson who did the loading and the cleaning out of the pit, putting the machinery in to get ready for a large operation to take the gravel out of the pit.

Q.—I understand the pit had been stripped during the summer by Mr. Daugherty?

A.—Yes.

Q.—When you commenced the hauling, the foreman you had in charge of the loading and the other work there was Mr. Bisson?

40 A.—Yes, well, Mr. Daugherty just stripped a piece out to put in the wooden loader for the sleighs to go in, and as soon as the ice would form in the river to load. Mr. Daugherty placed the machine, Mr. Bisson placed the chain running back in the pit, probably 250 feet long. As he was going back he had to clean my place in the winter time, the sides, in order to get back to where the good gravel was, at the back of the pit.

Q.—How many men did Bisson have with him?

A.—Six or seven men.

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Q.—Working all the time when the hauling was being done by Reid and Cabe?

A.—Yes.

Q.—Mr. Bisson is here?

A.—My son phoned me he is coming down on the early train, or my son is bringing him down by car this afternoon.

Q.—He is to be here?

A.—He is to be here this afternoon.

10 Q.—What was Bisson's wage?

A.—\$6.00 a day.

Q.—And what were the wages of the men working under him?

A.—\$3.50 a day.

Q.—What were the wages paid to Daugherty when he was in charge of the work building the Carmen Lake dam and the Spring Lake dam?

A.—I gave Daugherty \$5.00 a day for a period of about fifteen years, and then he got up to \$6.00 a day.

20 Q.—You do not remember whether it was at \$5 or \$6 a day that he was being paid?

A.—In the later years he had \$6.

Q.—He was being paid \$6 a day at the time these dams were being built?

A.—Yes.

Q.—And the labourers working with him—he said he had 3 or 4 men?

A.—\$3.50; there are some of those labourers who worked with him who were getting \$4.50 and the others down to \$2.50. The wages I paid my workmen all the time were for what services they gave.

30 Q.—From \$2.50 to \$4.50 a day?

A.—From \$2.50 to \$4.50 a day, that is, for the labourers who worked with Daugherty.

Q.—In these statements there was some reference to your operation at Venosta. How long did you operate at Venosta?

A.—A little steam mill was put in for the winter, just about four or five thousand logs, just the one winter.

Q.—When was that?

A.—In 1921 or 1922—1921, to the best of my knowledge.

40 Q.—Then there was also a reference to operations that were carried on at Low?

A.—Yes.

Q.—How long did you operate at Low?

A.—I purchased Low in 1919, and I continued on till 1927.

Q.—How large an operation was that at Low?

A.—It was not a very large mill; about ten or fifteen thousand feet a day.

Q.—How much a year?



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A.—It would run from a million to a million and a half feet, and then pulp wood as well—the pulp wood besides that.

Q.—Did that go along regularly all the time, or did you have any misfortune in the operation there?

A.—The pulp wood went very bad with me. I bought in a large quantity of pulp wood, paid a high price for the pulp, and it was sold at \$18 a cord, green wood, and it dropped, before I got it out, to \$4 a cord. The majority was shipped at \$4 a cord.

10 Q.—How much had you paid for it?

A.—I had paid \$12.

Q.—How many cords of it had you?

A.—I forget the figures. Those figures that were in the statement were figures prepared by Perry, the bookkeeper, and those figures would state.

Q.—Was it a few hundred cords, or a few thousand cords?

20 A.—A few thousand cords. A large quantity of pulp wood. Another misfortune I had, Stag Creek was a flashy river. The Stag Creek mill was right on the creek, and there was a heavy storm, and the boom broke away, and there was quite a lot of pulp wood went out. The bookkeeper has an estimate.

Q.—Was it a few cords?

A.—It ran into a thousand cords, perhaps more.

Q.—Something around one thousand cords?

A.—Yes.

Q.—It went out?

A.—Into the Gatineau River.

Q.—Was it a complete loss?

A.—Oh, yes. I never got a stick of it.

30 Q.—There is a place referred to in the statement as Quyon. Did you ever operate at Quyon?

A.—No.

Q.—That was a property you bought?

A.—Yes.

Q.—Have you ever done anything with it?

A.—No, I never spent a dollar on it, only for the purchase.

Q.—Before we leave Low entirely, you operated there about seven years?

A.—Yes.

40 Q.—And during that period you had these two losses, one where a certain quantity of pulp wood went out and was lost and the other where you had sold pulp wood at \$18 and purchased it at \$12 and the market dropped before you delivered it, and you only got \$4 for it?

A.—Yes.

Q.—When was that?

A.—That was in 1921.

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Q.—That was the time there was a rapid slump in lumber and pulp wood prices?

A.—Yes. It went down practically overnight. The market went down in 1921.

Q.—As a result of everything connected with Low, did you make or lose money with it?

A.—I do not figure I made any money at Low. I never figured I made any money at Low, taking in my losses that I had.

Q.—How do you figure you came out at Low?

10 A.—Oh, well, as I said, it might be drawing the lines close, but breaking even, as it were.

Q.—With respect to your limits or timber lands, when you were examined on discovery, you said something about it being possible to get cord wood out by truck?

A.—Yes.

Q.—Did that apply to all of the areas?

20 A.—Probably some of my bush lands would run with the highway, that is, the road, perhaps a little corner or a few acres that would be available for a truck. There is very little bush you can drive in and get out cord wood, except where the road or the highway runs through a part of it. That is the only way you can run with a truck in timber lands.

Q.—What portion of those timber lands would be accessible to truck transportation: a quarter or half?

A.—It would not be five per cent.

Q.—With respect to the account which was filed as Exhibit No. 85, being the account of E. J. Derry, photographer, Hull. At whose requests were those photographs made?

30 A.—Myself.

Q.—For what purpose?

A.—For this case.

Q.—For the purpose of your litigation?

A.—Well, nothing else. I never had a photograph in my life taken of my real estate till then.

Q.—Looking at Exhibit 78, the receipt of Mr. Major, advocate of Hull, \$57.55, can you tell us what that was for?

A.—That was in Mr. Lafleur's office.

Q.—You did not get it personally?

40 A.—Through Mr. Lafleur's office.

Q.—The instructions were not given directly by you. You did not go to see Mr. Major or write to him yourself?

A.—To my knowledge it was through the office. I might have gone to see him or I might have phoned him, or written him, but he sent the bill in to me.

Q.—And your understanding of it is, that it was something done through Mr. Lafleur's office?

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A.—Oh yes, absolutely.

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

Q.—You spoke of P-85, being an account from E. J. Derry for photographs in Hull. I see this account is for \$271.65, of which \$180 is for photographs in 1926?

A.—I could not say. That is the total bill.

Q.—I take it the bill speaks for itself?

A.—Yes.

Q.—Of course, in October, 1926, the water had not been raised in the Gatineau River at all?

A.—No.

Q.—So consequently this case certainly was not in existence at that time?

A.—It was well under way.

Q.—Do you say this pending case was well under way in 1926?

20 A.—In the summer of 1926 they were lifting the highway right in front of my property.

Q.—I see the balance of the bill is for 1927, 1928 and 1930, and one account of September, 1931. This pending case was instituted in the early part of 1931; these previous photographs then had not really anything to do with this pending case, had they?

A.—I understand they were used in the case. At least, I did not take him up a second time to do work over again he had already done.

Q.—What were the photographs in 1926, up to \$180, to prove?

30 A.—There is one of them there.

Q.—Have the photographs representing this \$180 that were taken in 1926, been, in any way, produced in this case?

A.—Yes. I was just after looking at one.

Q.—To an amount of \$180, have you produced photographs taken in 1926 in this case?

A.—I could not say whether they are produced. I would not expect they are all here.

Q.—Has that account been paid?

A.—Yes.

40 Q.—When?

A.—I could not say the date it was paid. It is all paid. It is marked paid, is it not?

Q.—No, it is not marked paid?

A.—Well, it has been paid.

Q.—Are you sure? When was it paid?

A.—In fact, I paid him at different times, three or four differ-

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ent times. He was up two or three times on the work and I paid him as he sent in his bill.

Q.—In other words, when his work in 1926 was done, I suppose you paid that \$180?

A.—Whatever it was at that time.

Q.—You do not know anything about what this small account of Mr. Major's is for?

A.—No, not altogether.

10 Q.—You don't know anything about this?

A.—No, I don't know what work he did for the office.

Q.—You were operating your Farm Point mill in 1920?

A.—Yes.

Q.—And you were operating at Alcove in 1920?

A.—Yes.

Q.—And then, you proceeded to go to the Picanock in the same year?

A.—Yes.

20 Q.—I understand the Picanock is a small river running into the Gatineau very much higher up than Farm Point?

A.—Between 25 and 40 miles from Farm Point.

Q.—And is your mill right on the confluence of the Picanock and Gatineau?

A.—It is right on the Picanock of itself.

Q.—How far up the Picanock?

A.—It is about four miles from the Gatineau.

Q.—From the mouth of the Gatineau?

A.—Yes.

30 Q.—So the mill would probably be 45 miles from Farm Point?

A.—It would be thirty-five miles by my car from Farm Point to Picanock—about 38 miles.

Q.—Up the river?

A.—Yes.

Q.—Is that the same designation as Perras?

A.—The same thing.

Q.—That is the same place?

A.—The same place.

Q.—Where is Venosta?

40 A.—It is about 20 miles from Farm Point.

Q.—Twenty miles above Farm Point?

A.—Yes.

Q.—It is on the Gatineau?

A.—No, it is in on the Venosta road.

Q.—It is not on the Gatineau River at all?

A.—No.

Q.—And where is this place, Stag Creek?

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A.—It is on Stag Creek close to the Gatineau, and close to the highway.

Q.—How far is Stag Creek away from Farm Point?

A.—About 15 miles.

Q.—Up the river?

A.—Yes, up the river.

Q.—The mill you speak of as being at Low, where is that mill?

A.—That is the Stag Creek mill.

10 Q.—So you really had the Farm Point mill, the Alcove mill in 1920 or 1921, and you had the Picanock mill and the Venosta mill and the Stag Creek mill—did you say Stag Creek was the same as Low?

A.—The same as Low.

Q.—In that list of mills the only two which are concerned, insofar as your claims in this case are made out, are the mills at Farm Point and Alcove, and later at Mileage 12 when you established yourself there?

A.—Yes.

20 Q.—You still own all those lumbering places at Venosta, Picanock and those other places?

A.—I own three portable outfits of steam. There is only one mentioned all through my statement.

Q.—But you still occupy the Picanock mill?

A.—I am still owner of the Picanock mill.

Q.—And you are still the owner of the mill at Venosta?

A.—It is one of those portable mills. I just sawed the one year about four or five thousand logs.

Q.—You still own that mill and the site?

30 A.—I have not the site. It was just a little moveable mill for that point, for that winter.

Q.—This Venosta mill was a portable mill?

A.—Yes.

Q.—Where is it now?

A.—Up at Perras.

Q.—At Picanock?

A.—That is the same.

Q.—And the Stag Creek mill. Do you still own that?

A.—No, I don't own the Stag Creek mill.

40 Q.—Did you sell the Stag Creek property?

A.—Yes.

Q.—When did you sell it?

A.—In 1927 or 1928.

Q.—Of course, the sale or the purchase of the Stag Creek mill has nothing to do with this case?

A.—I purchased it . . . . .

Q.—Stag Creek property is not in question in this case?

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- A.—No.
- 10 Q.—I understood you to tell your counsel that you had had some very hard luck on the Pickowock River?  
A.—Hard luck.  
Q.—Your mill burned down in 1920. Have you rebuilt it?  
A.—Yes.  
Q.—Some of your limits were burned, too?  
A.—Yes, they were destroyed, the biggest part of them.  
Q.—And your bunk houses and everything else?  
A.—They were all gone.  
Q.—You built it up the following year?  
A.—Yes.  
Q.—And replaced it in almost as good condition?  
A.—Much better.  
Q.—And it has not burned down since?  
A.—Oh, yes.  
Q.—It was burned again?  
A.—It was burned again.
- 20 Q.—At Picanock?  
A.—The Picanock mill burned again.  
Q.—When?  
A.—In 1928 or 1929, somewhere thereabouts.  
Q.—The Farm Point mill also burned down in 1928?  
A.—That would be 1929.  
Q.—In 1927, the following year, your Picanock mill burned down?  
A.—Yes.  
Q.—Did you rebuild it?  
A.—Yes.
- 30 Q.—It has not burned down since that occasion?  
A.—The third mill is built.  
Q.—About the same time?  
A.—The mill that is there now is just two portables, brought in to finish up the operations. There was about a million and a half feet in the river when the mill burned.  
Q.—In the year 1926 you had your second mill in operation at the Picanock, the one you replaced the first one that was burned. The plant was all there in 1926, was it not?  
A.—In 1925 the plant was there.
- 40 Q.—But it was still at Picanock until 1926?  
A.—Till the fire took place.  
Q.—You apparently considered it a good enough location for the lumber business after the mill burned down in 1920 to replace it with just as good or better mill?  
A.—I explained that before. When the first fire took place I was involved with a lot of money in there, and a lot of money's

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worth in the river, therefore, I had to put up a large mill, not for what was in the creek, but, the burned timber, if I did not get it out in a year or probably two years, I would be at a greater loss, so that is the reason the large mill was put up. I thought I could overlap and account for the expenditure in the one year, and a small mill could not be built. To understand what went wrong, the timber went wrong itself, even, on the site and in the power house, the power broke early in the summer, and the birch was cooked to the sap. It did not dose, but it became brittle and went for number 3 lumber.

10 Q.—What I would like to know is, whether or not in the year 1926 you were still operating your Picanock mill?

A.—Yes, in 1925 or 1926, I operated it as soon as I got it up, to finish the cut, and then I went in strong, so it must have been operating.

Q.—You were still carrying on business at Picanock in 1926?

A.—Yes.

Q.—And were you carrying on business at Low or Stag Creek at the same time?

A.—Yes.

20 Q.—Venosta was operating, too?

A.—Just the one year. The year 1921 was a matter of a few thousand feet.

Q.—In 1926, was it a good year for the lumber business?

A.—A fair year, yes—1926 was an average year.

Q.—Since 1926, have you still been carrying on the lumber business?

A.—In a very small way.

30 Q.—Just what do you mean by a very small way? Have you been operating your Picanock mill?

A.—In a small way. It is a small mill, and in a small way.

Q.—If you are operating your Picanock mill in a small way, it is because of the fact the lumber business is not good, not because of the fact of the Gatineau Power Company having flooded it?

A.—The Gatineau Power Company did not affect the Picanock mill, except for capital.

Q.—The operations of the Picanock mill being carried on since in a small way is due to what fact? To the general depression in the lumber business? The lumber business is not very good?

40 A.—No, not very good.

Q.—Have you been operating at Farm Point since 1926?

A.—Yes.

Q.—Up to 1928 when it was burned?

A.—Yes.

Q.—Then you rebuilt it in 1928?

A.—Yes.

Q.—And you operated it afterwards?

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A.—I think you are a year out. It was 1927 the mill was burned at Farm Point. It was the same year the water came in on my property—no, the fire took place in 1927.

Q.—At what time of the year?

A.—On the 8th June.

Q.—You rebuilt it the same year, or the following year?

A.—The same year.

Q.—You still carried on the operations there?

A.—Yes.

10 Q.—Practically up to the present time?

A.—Well, under very strenuous difficulties. We paid some 300 odd dollars for demurrage for cars on the track, to get it out of Farm Point.

Q.—For how many years after 1926 did you operate the mill?

A.—Up to a year and a half ago.

Q.—You could not rebuild it after the water came up, of course?

A.—My logs were in the creek. I had not half that summer's cut sawed on the 8th June.

20 Q.—You said Mr. Blatch, your auditor, began in 1913 or 1914 to do your auditing?

A.—Yes.

Q.—I see on your auditor's 1921 statement particulars which he states he got from you, is that correct—particulars of valuations?

A.—No.

Q.—His statement is not correct?

A.—Well now, the value at Farm Point to me—let me explain that just for one moment.

30 Q.—I am not asking you about the value at Farm Point. I see in your 1921 statement your auditor says, referring to Cascades; the item is, Boarding house \$4,500, lots 18a, 19b, 22a, 23a, 23b, 24b, etc., in the 11th Range, 600 acres. The boarding house is given at \$4,500. I understand these building lots are timber limits?

A.—Yes.

Q.—Those timber limits are valued altogether at \$15,000?

A.—Yes.

Q.—The boarding house is valued at \$4,500?

A.—Yes.

40 as \$5,000?  
Q.—Then we have under the words, " Water Powers " Cascades

A.—Yes.

Q.—So that \$5,000 with the boarding house makes \$9,500?

A.—Yes.

Q.—And those two properties together are the properties which you purchased from Moore (Mrs. Byrnes)?

A.—Yes.

Q.—In 1916?



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A.—Yes.

Q.—For how much?

A.—\$2,800.

Q.—So, if you are carrying them for \$9,500, you are not really putting them in at the nominal value, are you?

A.—The boarding house, there are quite a lot of improvements.

Q.—You told me you put two verandahs?

10 A.—I had to figure those as frozen assets till they were worked out. And when they asked me, I said it was immaterial to me, to put them in.

Q.—You did not consider the boarding house a frozen asset of \$4,500? What do you mean by frozen assets?

A.—It is capital you cannot take in for banking purposes. They want liquid assets. They don't want frozen assets. I was trying all the time to keep down those frozen assets.

Q.—To get away from whom?

A.—To get away from showing in the statement any more than the purchase price.

20 Q.—But you have shown them here at four times the purchase price?

A.—That might be quite so.

Q.—I can understand a man putting in a dollar as the nominal value of his property when he puts in the value after three or four years. How do you account for the fact that you put it in at three or four times the value for Bank purposes?

A.—What year was that?

Q.—1921.

30 A.—That might be Mr. Perry. He might have thought he was doing a good stroke of business. It is the year 1921. I might not be aware how he liquidated the figure from the year before.

Q.—That is not what Mr. Blatch says in his statement?

A.—He took them from his bookkeeper. I thought I was doing a wonderful stroke of business to get a bookkeeper to help Mr. Blatch along.

Q.—He says the values of the plant, saw mills, at Low, Stag Creek and Picanock have been furnished by Mr. Perry, the accounts receivable have been furnished by Mr. Perry, the water powers furnished by Mr. Cross.

40 A.—That might have been quite so. Mr. Perry might have asked me how to put them in, and I might have said, to put them in at so much.

Q.—I do not want to extend this examination any longer than is necessary, but to sum this matter up, I understand these statements were made for the purposes of reflecting your assets and liability position for banking purposes, or for any other purpose you may require it.

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A.—The statement was made for banking purposes.

Q.—In order that you might secure, as you said, a loan of \$35,000?

A.—That is the first time the loan is increased from them.

Q.—The loan was increased?

A.—Yes.

Q.—I suggest to you that in that case it would be all to the good for you to place perhaps as reasonable a valuation on your assets as you could do?

10 A.—Banks don't take frozen assets much into consideration at all.

Q.—Let us refer to the 1926 statement for a moment. In 1926, you owed the Dominion Bank how much money when you paid them off?

A.—I did not owe them anything.

Q.—How much did you owe the Dominion Bank in 1926? Did not the manager of the Bank say that you had paid \$96,000 to the Dominion Bank to clear off all your loans?

20 A.—No, it was not in that year.

Q.—How much was it in 1926? You changed over to the Bank of Montreal?

A.—That is later.

Q.—Was it at the time you changed over to the Bank of Montreal that you closed out your loans to the Dominion Bank?

A.—No. I was at the Dominion Bank three or four years after that—three years anyway after I paid them off I was with the Dominion Bank.

30 Q.—Then, your account was taken over by the Bank of Montreal?

A.—Yes.

Q.—And the Bank of Montreal paid over to the Dominion Bank whatever you owed the Dominion Bank?

A.—Yes.

Q.—How much did that amount to?

A.—I think in the neighbourhood of \$45,000 or \$50,000.

Q.—I suppose in 1926 you were owing to the Dominion Bank a certain amount. You were borrowing from them in the usual course of business?

40 A.—Yes.

Q.—And in 1926 I see you have got your boarding house up to \$6,600?

A.—What boarding house is that?

Q.—The boarding house at Cascades, less mortgage \$2,100, making \$4,500.

A.—That is 1926?

Q.—Yes.

*In the  
Superior Court*  
No. 76.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
F. T. Cross,  
(Recalled)  
Cross-examination  
Oct. 14th, 1932.  
(continued)

A.—Yes.

Q.—The value you put on the boarding house is \$6,600?

A.—I did not make those figures here.

Q.—It is the case that this boarding house is shown at \$6,600?

A.—If it is in there.

Mr. St. Laurent: \$6,600 less \$657 for depreciation.

10 BY MR. KER:

Q.—It is shown at \$559.25?

A.—Yes.

Q.—So you were really, from year to year, paying some attention to the amount at which you were carrying these things, because the last time it appeared in your statement it was \$4,500 and if you worked it down to \$6,600 the first time, this is not really a frozen asset from the point of view of being carried forward every year at the same price.

20 Mr. St. Laurent: I object to the form of this question as the statement my learned friend has in his hand shows on its face how the addition of \$2,100 is made up, it being the difference out of a mortgage and the amount which he had previously on the property.

(Objection reserved.)

A.—I have not enough education to check up auditor's figures.

30 BY MR. KER:

Q.—In any event, the point I was coming to was that in 1926, you were still carrying the Cascades at \$5,000.

A.—If the figures are there.

Q.—I understand your claim in respect to that property is some \$675,000 in this case?

A.—You mean the value of the property?

Q.—You are maintaining that it is worth that to you, that you should be compensated to the extent of \$600,000?

40 A.—Yes.

Q.—Your whole deed for the Boarding house, including the Cascades water power was \$2,800?

A.—\$2,800.

Q.—In 1916?

A.—In 1916.

Q.—1916 and 1917?

A.—Yes.

*In the  
Superior Court*

No. 76.  
Plaintiff's  
Evidence.  
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F. T. Cross,  
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Oct. 14th, 1932.  
(continued)

Q.—In your declaration I see you are alleging we should pay you (I am speaking of the two storage dams, Carmen Lake and Spring Lake) you claim from us \$8,000, and in your particulars you ammend that and now, in your evidence, you reduce the \$8,000 to \$2,300, is that a fact?

10 A.—That is a fact. There is a little explanation there. Daugherty was the man who did this, and then, if you remember the question was, didn't he clean that creek out further up. That was taking the whole thing into consideration. I don't think there was anything put in for the cleaning out of the creek, in Daugherty's evidence about the dam, but fair compensation should be paid for these dams —I mean to say, for the work he put on those dams.

Q.—In any event the claim you made in your original declaration of \$8,000 is now reduced to \$2,300?

A.—Yes.

20 Q.—In paragraph 25 of your declaration in regard to the matter of gravel, it is stated that in the year 1924, to facilitate the construction of your dam, you caused a quantity of gravel to be hauled to the west side of the river at a total cost of \$2,000?

A.—Yes.

Q.—I understand now that that 1924 is not correct, that it should be the winter of 1926?

A.—In my declaration did I not say I was not sure whether it was 1924 to 1925?

Q.—As a matter of fact, was it not the year 1926?

A.—No. I am quite clear. Reid is quite right on that. The pit was cleaned out in the summer of 1925 and he drew gravel in the winter of 1926.

30 Q.—That is what I thought, so the date 1924 is not correct?

A.—No, that is not correct.

Q.—It should be the winter of 1926?

A.—It is back six or seven years. It is hard to recollect.

Q.—We are agreed that it was hauled over in the winter of 1926?

A.—Yes.

Q.—And you allege it was to facilitate the construction of the dam: what dam?

A.—The dam at Cascades.

40 Q.—The plans had been filed?

A.—There was not a man in Chelsea, in any shape or form when that pit was cleaned, and the machinery put in to that gravel, not a man on the Chelsea worked, or I did not know they were ever going to take the property.

Q.—What did you bring the gravel over for?

A.—I have already said. My declaration states.

In the  
Superior Court

No. 76.  
Plaintiff's  
Evidence.  
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F. T. Cross,  
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(continued)

Q.—Where did you leave the gravel?

A.—The men were there in 1926, at Chelsea. They came there late in the fall of the year. I went down to see the first train load of machinery from Fraser Brothers come in, and there was about six inches of snow on the ground when they came to Chelsea.

Q.—That was the Fall of 1925, the year before?

A.—No, when you go to January you go to 1926.

Q.—Six months before?

A.—No, it is only about a couple of months.

10 Q.—In the previous fall of 1925 you say Fraser Brothers brought in this machinery?

A.—Yes.

Q.—And you hauled this stuff in the early part of 1926?

A.—Well, I fixed my pit in 1925.

Q.—But you were aware at the time you hauled it, whether you fixed your pit or not—you knew this Chelsea development was going ahead?

20 A.—Well, the Gatineau Power Company was going to build a dam. I had no objection to them building a dam. I could not stop them going ahead. That did not make any difference to my damage at Cascades.

Q.—Don't you think you were taking a risk in bringing gravel over?

A.—I did not know. That was done in Mr. Lafleur's office.

Q.—Mr. Lafleur recommended you to bring gravel over?

A.—No, I did not bother Mr. Lafleur about bringing a few loads of gravel over.

30 Q.—Don't you think you were taking a chance in bringing gravel over then?

A.—I always took a chance all my life.

Q.—Why did you not leave your gravel at Farm Point instead of bringing it down to Cascades.

A.—There was not very much room in my gravel pit. I did not get into the detail of what I was going to do. It was right in my deed that I was to put the dam at Cascades. I never got the privilege.

Q.—The first dam you thought important, although you had not a development for it, so you bring over a certain amount of gravel?

40 A.—It was not that. Bisson will show you the expense of bringing over that gravel. He cleaned out the pit for my development.

Q.—Why did he clean out the pit?

A.—On both sides, for gravel, to make a store, when the ice came down the following year.

Q.—Why did they bother, when you had an engineer?

A.—I did not make my plans before I got my water power. I bought my water power first.

Q.—Did you test this ground to see if it was satisfactory?

*In the  
Superior Court*

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Evidence.  
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F. T. Cross,  
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Oct. 14th, 1932.  
(continued)

A.—I did not do that. I did not go to an engineer to test my gravel. I built it myself. It is there yet.

Q.—You did not bring the gravel to Cascades?

A.—No. In the winter time on the ice, it is very handy to dump it on the ice, to put it on the top.

Q.—Do you know exactly how many yards of gravel there were?

A.—Bisson will be here this afternoon. He loaded and Mr. Reid drew it with his team, and a man named Cabe hauled the gravel over across the river.

10 Q.—About 1,100 yards or so?

A.—I could not say that.

Q.—Can you give me any idea (I do not want it in too much detail) but taking the three years, 1924, 1925 and 1926, and the three years from then on, 1927, 1928 and 1929, have you any idea what relation those two sets of three years bore to each other in connection with your lumber business? Was there more done in the first three years, or has there been more done since 1926?

A.—Will you repeat that again.

20 Q.—You did a certain lumber business up to 1926?

A.—Up to 1926.

Q.—And you have done certain lumber business in 1926?

A.—Yes.

Q.—How did the two compare in volume?

A.—Before 1926 and after 1926?

Q.—Three years before and three years after?

30 A.—The three years before was a little better in the lumber business, the three years before 1926. You see, in 1926, 1927 and 1928 lumber began to go down a little, and in 1921 we had the heavy slump, so in 1922 and 1923 that was low, but in 1924, and going up a little in 1925 and a little more in 1926.

Q.—Then, the next three years after 1926, after the time this business began, how did your business compare for the three years after 1926 with the three years before, from the point of view of volume?

A.—In 1926 I was not in business to any extent.

Q.—You were in business in 1926, and you built your mill at Farm Point.

40 A.—I am explaining what I carried on. There was not an engine in my mill. I had to pull it up with horses and with men up to their knees in mud, trying to carry on business. For me business meant nothing in 1926, as far as I was concerned.

Q.—You did not handle anything like the amount of stuff you did before?

A.—It could not be handled, only in a small way, and in a small way that is what I did to carry on.

*In the  
Superior Court*

No. 76.  
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Mr. Ker: My Lord, in connection with the Plaintiff's examination on discovery which was conducted in one of the rooms of the Court House, various objections arose and we agreed to reserve the objections so that your Lordship could rule upon them.

10 The first objection appears at page 12 of the Plaintiff's examination on discovery. I asked the witness, with respect to the transmission line which was built down the road from Cascades to Kirk's Ferry, if he had made any application to have any approval of the Road Department or of the Quebec Public Service Commission for the construction of that line.

Mr. Scott objects to the foregoing question as being irrelevant and immaterial to the issues in this case.

I submit, my Lord, it is a question which I might fairly ask seeing the law provides that you must have the official sanction of the Quebec Public Service Commission to maintain lines of a public utility in the Province.

20 Mr. Scott: I do not know whether my learned friend wishes to argue these points now.

Mr. St. Laurent: Perhaps it would be as well to ask the witness the question and his Lordship can rule on the objection.

BY MR. KER:

30 Q.—In connection with your line from the Cascades to Kirk's Ferry which was submerged, did you ever have the permission of the Quebec Public Service Commission for the construction or maintenance of that line?

Mr. Scott: I respectfully renew my objection to that question as being irrelevant and immaterial to the issues in this case.

His Lordship: I will take it under reserve.

BY MR. KER:

40 Q.—Have you had any approval from the Roads Department or from the Quebec Public Service Commission for the construction of that line?

(Same objection.)

(Same reserve.)

*In the  
Superior Court*

No. 76.  
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Evidence.  
(Supp. Hearing)  
F. T. Cross,  
(Recalled)  
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(continued)

A.—I bought out the Great Northwestern Telegraph line which was, I think, up the Gatineau, before I was burned out. I brought that from North Wakefield into Eddy's Corners, at Hull, and before going into Kirk's Ferry I went to the Council and asked if there was any objection to serve light through Kirk's Ferry and Cascades, and they were all pleased to see me serving my customers along the highway.

10 Q.—I asked you if you had any approval from the Roads Department or from the Quebec Public Service Commission?

(Same objection.)

(Same reserve.)

A.—No one stopped me from putting it up. In fact, the Company themselves, when they saw the property, did not have any objection.

20 (And further deponent saith not.)

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Mr. St. Laurent: My Lord, both Mr. Scott and I fully appreciate the undesirability of lawyers testifying as witnesses in cases in which they are engaged as lawyers, but it happens in this case that we do have to appear as witnesses for the purpose of giving formal evidence with respect to exhibits numbers 73 and 76, which have been filed with the Supplementary Declaration.

30 I ask to be sworn merely for the purpose of giving formal evidence, and I will endeavour to abstain from saying anything that would in any other way have any bearing on the case.



*In the  
Superior Court*

No. 95.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
L. St. Laurent,  
Examination  
Oct. 14th, 1932.

DEPOSITION OF LOUIS ST. LAURENT, K.C., WITNESS  
PRODUCED ON BEHALF OF PLAINTIFF.

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

LOUIS ST. LAURENT,

10

of the City of Quebec, Advocate and King's Counsel, a witness produced on behalf of the Plaintiff, who, being duly sworn, doth depose and say as follows:

EXAMINED BY MR. W. B. SCOTT, K.C.,  
OF COUNSEL FOR PLAINTIFF:

Q.—Mr. St. Laurent, did you render an account for your services  
20 as counsel in this case, and is this the account which has been filed as  
Exhibit P-73?

A.—Yes.

Q.—That is made up in two parts, is it not?

A.—The first part of Exhibit P-73 is an account dated 27th  
January, 1932, for services as counsel in connection with this case,  
amounting in disbursements to \$427.24, and for charges or fees to  
\$4,500.

Q.—Is that charge made in accordance with the usual charges  
you make for services of that nature?

30 A.—Yes. I kept track of the services rendered, and they were  
listed in the first part of the account, and the amount charged is  
really somewhat lower than I have been in the practice of charging  
for similar work, and I even had some discussion with other mem-  
bers of my firm about it, because they reproached me with not having  
made it quite up to the usual scale.

Q.—It would have been higher if you had rendered it to the  
Gatineau Power Company?

A.—I don't know. It might have conformed more closely to my  
usual scale.

40 Q.—What does the second part of your account deal with?

A.—The second part is for expenses of \$13.30, and charges for  
\$850 as paid for services, the greater part of which were rendered by  
me in connection with the Bill 170 recited in the Supplementary  
Declaration.

The services listed in the second part of the account were also  
rendered, and the amount charged is in conformity with the usual  
scale we have been making charges for like services.

*In the  
Superior Court*

No. 95.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
L. St. Laurent,  
Examination  
Oct. 14th, 1932.  
(continued)

BY THE COURT:

Q.—I see you charge a lump sum for the different days you were engaged?

A.—Yes, my Lord, in fixing that sum I really took into account practically only the time I was absent from the office, and that added up to twenty-eight and one-half days of time away from my office in Quebec. That was practically all that was considered in fixing the amount at \$4,500.

10

BY THE COURT:

Q.—That would be somewhat a little over one hundred dollars a day?

A.—That would be, my Lord, at about \$150, and the account shows in some detail what additional time had been devoted to the matter in my own office in Quebec in the way of preparation.

Is there any further information my learned friends would like?

20

BY THE COURT:

Q.—Do you make a charge per day for the services rendered before the Legislature?

A.—It was made up on practically the same basis. If I remember correctly, there were two days when nothing else was done, when from early morning until quite late into the night the whole time was devoted to this, and the remainder was parts of an hour or two at a time.

30

BY THE COURT:

Q.—Working before the Committee?

A.—There was not very much argument before the Committee. Most of the time was spent in conferences with Mr. Cross and his other representatives and then with my learned friend and other representatives of the Gatineau Power Company, endeavouring to avoid having to go back before the Committee.

40

After one-half day's argument before the Committee, it was adjourned, and I think both my learned friends, and we ourselves, made very considerable efforts to avoid having to go back and discuss it again before the Committee.

His Lordship: Does the Defendant take exception with Mr. St. Laurent's account?

Mr. Ker: We do not take any exception to the charge of \$150 a day. We were wondering whether this came within the Special

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Superior Court*  
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Evidence.  
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Oct. 14th, 1932.  
(continued)

10 Act to charge us with anything which had really taken place—without questioning the daily rate at all, there are some charges here in 1930 and in 1931, several pages of them for services before this case was ever pending, and when the matter was before the Quebec Public Service Commission. It is our suggestion that what the Legislature had in mind was in connection with the case which was then pending before your Lordship, when this Act was passed, that we should within reason be called upon to pay something which might be fair, to assist the Plaintiff with his out-of-Court costs in connection with this pending case. Your Lordship will recollect that my learned friends had take an action some two or three years before which had lain dormant for two years before the Public Service Commission, and was desisted from by them.

It is only on that matter that we would perhaps suggest to your Lordship that this should not all be chargeable to us.

His Lordship: Have you any further questions to ask Mr. St. Laurent?

20 Mr. Ker: The only matter I would like to refer to is with respect to the Bill before the Legislature. Personally, I think we were there ourselves for a day and a half or two days. I see Mr. St. Laurent charges \$350, and he was busy, I understand, for about two days on the matter as well.

Mr. St. Laurent: There were about two days that were devoted. I think there were about two days when I did not do anything else. I do not know whether I went to the office or not.

30 Mr. Ker: I agree with that.

Mr. St. Laurent: And prior to that, there had been several days when I had been in conference with Mr. W. B. Scott or other representatives of Mr. Cross, because the Bill had been introduced several days before, and we were dealing with the situation which arose by reason of their having been introduced.

40 Mr. Ker: It seems to me that the Company might be called upon to pay for a couple of days of Mr. St. Laurent's services in connection with this Bill in the same way that we would be called upon. Our client would be called upon to pay for the same services, but whether or not the number of pourparlers that took place outside are really contemplated by the Legislature, we would have to leave that to your Lordship to decide. We think perhaps the account of \$850, seeing the matter was only before the Legislature for a day and a half . . . .

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Evidence.  
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Examination  
Oct. 14th, 1932.  
(continued)

Mr. Scott: That is not quite right.

Mr. Ker: We were only before the Legislature ourselves for two and a half days.

His Lordship: You can argue that later.

10 Mr. St. Laurent: Without endeavouring to argue the matter at all, I think perhaps I should state a little more specifically the facts in connection with the second account.

The Bill, as far as I remember, was before the Committee for the hearing of the parties only on two separate days, and on those two days I think it was very doubtful if it was able to do anything else.

20 Prior to that the Bills had been introduced into the Legislative Assembly, and we had known that they were there. We first heard they were not printed, and the text was not available, and then we did get the text some days before the hearing before the Committee, and there were several conferences, for which these charges have to do with which were had, because we had known that the Bills were going to be introduced first of all, and then, of course, we had the text of the Bills that were being introduced.

BY MR. KER:

Q.—You were counsel with Mr. Scott in the matter before the Quebec Public Service Commission, before the desistment took place, were you not?

30 A.—I was retained and asked by Mr. Scott to assist him before the Public Service Commission, and to make myself familiar with the situation, and with the record, and it was out of conferences that we had in that connection that arose the decision to desist from those proceedings and to institute proceedings in the Superior Court.

Q.—Do you remember the date those proceedings were desisted from?

40 A.—I think the notice was probably served at the end of December, 1930, or the first days of January, 1931. If I remember correctly, the case was to proceed in January, and it was just shortly before the date that had been fixed to proceed with it before the Public Service Commission that the decision to desist and to take an action in the Superior Court was finally arrived at.

Q.—Your charge of \$4,500 includes your attendance for a certain number of days before his Lordship?

A.—Yes.

That account was prepared, as the date on it shows, after the hearing before his Lordship here had been completed, and before

*In the  
Superior Court*

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Evidence.  
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Examination  
Oct. 14th, 1932.  
*(continued)*

any question arose with reference to the situation being changed by legislation?

Q.—Does it indicate just how many days you were in Montreal?

A.—I think it does. I think it does indicate the number of days I was in Montreal, but possibly it does not distinguish between such days as were spent in open Court and such time as I might come a day, or half a day, before the opening of Court, to make further preparation, and the charge would be for so many days without distinguishing whether it was in open Court or just before Court for  
10 the immediate preparation of the case.

BY MR. SCOTT:

Q.—In your opinion, does the account that has been filed, which we have been speaking about, represent work done on the petitory action, and in connection with the case?

A.—I would not like to qualify it at all. I have stated the facts, and being a lawyer in the case I would not like to bother with it.

20 BY THE COURT:

Q.—Does that account cover the rest of your fees in detail for the time you are spending in the case from the first day of Court?

A.—No. Mr. Cross both personally and through Mr. Scott asked me to continue on the Supplementary Declaration for which I am making additional charges.

BY THE COURT:

30 Q.—And that is not covered by the Act, or is it?

A.—Your Lordship will have to decide whether or not any costs incurred after the passing of the Act that are not taxable are to be included.

As counsel for the Plaintiff (and I am now stating this, not as a witness but as counsel in the case) we will ask at the end of the trial for leave to file the accounts for expenses incurred on the Supplementary Declaration; and your Lordship will determine whether or not they are to be taken into account.

40 (And further deponent saith not.)

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*In the  
Superior Court*

No. 96.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
William B. Scott,  
Examination  
Oct. 14th, 1932.

DEPOSITION OF WILLIAM B. SCOTT, K.C., A WITNESS  
PRODUCED ON BEHALF OF THE PLAINTIFF.

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

WILLIAM B. SCOTT,

10

of the City of Montreal, Advocate and King's Counsel, 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. Scott, you are a practicing lawyer, and King's Counsel in Montreal?

A.—Yes.

Q.—How long have you been practicing?

A.—Since 1912.

Q.—And you are a member of the firm of Lafleur, MacDougall, MacFarlane and Barclay?

A.—I am.

Q.—Did you have prepared under your own supervision this account which has been filed as Exhibit P-76?

A.—Yes.

30 Q.—I understand it covers professional services to Mr. Cross which you consider to be in connection with this litigation and the legislation before the Quebec Legislature last January, from the 18th November, 1930, to the 26th February, 1932?

A.—Yes.

Q.—By whom were the services for which those charges are made rendered?

40 A.—They were rendered by me, and by my partner, Mr. Chisholm, who has been present in Court, and by one of our junior men in the office, Mr. Davis. Those two gentlemen have been engaged with me throughout this litigation. In addition to that, on many, many occasions I have had to discuss various matters with my other partners, who assisted me.

Q.—In connection with what were made the disbursements listed on the pages 15, 16, 17, 18, 19 and 20 amounting to \$1,233.32?

A.—In connection with this case, and there are disbursements in addition.

*In the  
Superior Court*

No. 96.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
William B. Scott,  
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(continued)

Q.—In what connection were the disbursements amounting to \$440.17 listed on the first page made?

A.—On the first page for the year 1932, those represented disbursements made at Quebec, hotel bills and railroad fares at Quebec, opposing the legislation.

Q.—Is there any amount to be deducted from that?

10 A.—Yes, there is one item of \$140, February 22nd, 1932; \$60 should be deducted from that. Somebody else was at the hotel, and the hotel bill had come through and our bookkeeper had put it down at \$140, of which \$60 was wrong, and should be deducted.

BY THE COURT:

Q.—How much should be deducted?

A.—\$60 of expenses; \$60 should be deducted from the \$140.

BY THE COURT:

20 Q.—Should it be \$60 or \$80?

A.—It should be \$60, so the total of that page would be \$380.17.

BY MR. ST. LAURENT:

Q.—I understand the error in that connection arose in this way, that some other member of your firm was at the hotel at the same time as you were and the expenses of some other member of your firm were included in the bill, the whole of which was charged inadvertently?

30 A.—It was not another member of our firm. It was somebody else who came on account of our office.

Q.—And it was inadvertently included in this account, and when checking it up you found \$60 had to come off?

A.—Yes. I was out of town when that expense account was made up.

Q.—The charge for services amounts to \$15,270?

A.—Yes.

Q.—How do those charges compare with your usual charges for similar services to your general clientele?

40 A.—They are the same.

Q.—That amount is arrived at on the same basis?

A.—On the same basis.

Q.—Were all these services which are listed in the bill from page No. 1, and which starts on the 18th November, 1930, to page No. 14, the last item of which is the 26th February, 1932, services which you considered necessary in connection with the litigation and the legislation?

In the  
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(continued)

A.—Yes. There were, I think, half a dozen or eight items where I found through typographical error references made to some other litigation, but no charge was made for that.

Q.—When you went over the bill, after it had been typed, you discovered some seven or eight items?

A.—Something like that, which appear in here, and which are not chargeable to the Defendant Company in this case, and no figure was put in them, in arriving at this detail of \$15,270.

10 Q.—They were not taken into account in arriving at the amount of \$15,270?

A.—No.

Cross-examination

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

Q.—What were those items?

20 A.—I have just indicated to my learned friend, Mr. Ker, the entries which I mentioned a moment ago, and for which no charge was made in this account, although they are entered in the account.

Q.—Was the fee fixed before this was discovered?

A.—Oh, yes. The fee was fixed for the services actually rendered in connection with this litigation and the Legislation in Quebec.

Those items I have just been referring to, were never taken into account for the purposes of this case.

30 Q.—The account was made up in your office as it stands, and the fee was fixed for the whole account. The charge is fixed for the whole account at \$15,270, is that right? I suppose you typed out, or had this whole account typed out as it now stands and having viewed the whole account, you fixed a fee for it at \$15,270?

A.—We had a general account against Mr. Cross for professional services, some of it going back to 1926 during Mr. Lafleur's time, and we had the By-field action where he was suing this same Company. That was settled, and then there was the Paugan Falls action which was still pending, and in arriving at this charge, to the best of my knowledge and belief, and my partners' too, we eliminated the time spent on these other matters, so as not to take them into consideration in fixing the amount, but inadvertently one of the stenographers left those on this exhibit.

40 Q.—Those dates to which you refer as having to come out, I have ticked off in lead pencil against the date on the exhibit, at your dictation?

A.—Yes.

Q.—On Exhibit P-76?

A.—Yes.

Q.—It is suggested we put the dates themselves into the



*In the  
Superior Court*

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Plaintiff's  
Evidence.  
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William B. Scott,  
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deposition and perhaps that would be better. The dates are, December 1st, 1930. . . .

A.—There are sometimes two entries for the same day.

Q.—The first entry is for December 1st, December 2nd, the first entry of December 17th, the second entry of December 19th, the second entry of December 20th, the second entry of December 29th, the second entry of January 9th, 1931, the entry January 30th, 1931, part of February 19th, 1931?

A.—Yes.

10 The first item, part of February 23rd, then May 21st, and the second entry May 29th. June 1st, part of July 7th, July 9th, part of September 12th, part of September 18th.

Q.—I notice in the month of November 1930 the case was still pending before the Quebec Public Service Commission at that time?

A.—At that time there were proceedings before the Quebec Service Commission, but we considered the preparation that were made in November, the assembling of information, engineering evidence and material which we obtained in November, was all ultimately used in our petitory action, in adducing evidence to show  
20 what the value of Cascades was.

Q.—I see on December 31st, "Engaged all day on this matter." That is the Public Service Commission matter?

A.—Yes.

Q.—Then I see on January 3rd, "Engaged all day on this matter", and on January the same entry, and on January 5th again, "engaged further preparing for trial". That is all in connection with the Public Service case.

A.—Yes, but it was to become useful.

30 Q.—I see on the sixth, "Engaged greater part of the day preparing for trial"—engaged all day on the 7th; "Engaged all day on this matter", on the 8th, engaged all the afternoon, and greater part of afternoon with Mr. St. Laurent?

A.—Yes.

Q.—What was the rate per day?

A.—You will remember, Mr. Ker, you asked me for particulars about this last March, and I wrote you a letter. I said it was worked out, when Mr. Chisholm and I were out of town together at a total charge of \$200?

40 Q.—Per day?

A.—Yes, when Mr. Chisholm and myself were out of town.

BY THE COURT:

Q.—For both?

A.—Yes, the total was \$200 per day.

BY THE COURT:

*In the  
Superior Court*

No. 96.  
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Cross-examination  
Oct. 14th, 1932.  
(continued)

Q.—For both?

A.—The total was \$200 per day for both, that included both of us.

BY MR. KER:

Q.—And in the city?

A.—During the time we were in Court, I told Mr. Ker that we were charging for Mr. Chisholm, Mr. Davis and myself in Court  
10 \$175 a day, at a rate not exceeding \$175 a day, and for attendances in Quebec opposing this legislation which was introduced by the Defendant, I made a charge not exceeding \$200 a day while out of town.

Q.—Plus expenses in each case?

A.—Yes.

BY THE COURT:

Q.—Were you alone, or was Mr. Chisholm with you?

A.—In opposing the legislation I had the benefit naturally of  
20 Mr. St. Laurent's services as counsel in the matter. I was actively engaged. This legislation was brought down into the House on the evening of the 2nd February 1932, and from then until the House prorogued we had some merry battles.

For office preparation we have charged at the rate of \$100 a day, and this include services sometimes of Mr. Chisholm, Mr. Davis and myself, so that we are not charging more than \$100 a day in all.

I may state, in order to complete my deposition with reference  
30 to the accounts, we have filed in the case an account rendered to us by Dr. P. B. Mignault, for consultations and services. His bill is for \$500 for professional services rendered in connection with the Petitory Action which is referred to in paragraph 28 of the Supplementary Declaration.

BY MR. ST. LAURENT:

Q.—At whose request were those services rendered?

A.—Those services were rendered at the request of Mr. St.  
40 Laurent and myself in connection with this case.  
(And further deponent saith not.)

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*In the  
Superior Court*

No. 97.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
G. H. Earle,  
Examination  
Oct. 14th, 1932.

DEPOSITION OF GEORGE H. EARLE, A WITNESS PRO-  
DUCED ON BEHALF OF PLAINTIFF

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

GEORGE H. EARLE,

10

of Wakefield, Quebec, motor car dealer, 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.—Where do you live, Mr. Earle?

20

A.—Wakefield.

Q.—And you said your business was a motor car dealer?

A.—Yes.

Q.—How long have you been in that business?

A.—Since the fall of 1916.

Q.—Have you always resided at Wakefield?

A.—Yes.

Q.—Did you use electricity?

A.—Yes.

30

Q.—Did you use it only for your residence or for your place of business?

A.—My place of business principally.

Q.—Did you also use it for your residence?

A.—Yes.

Q.—What was your average for electricity for the years, say, from 1920 to 1926?

A.—Including the house and shop, inclusive?

Q.—Yes, for the two.

A.—My shop ran about \$120 a year, and my house, the minimum, with the discount, would be around \$16.

40

Q.—Your shop ran about \$120, and your house ran about \$16?

A.—Yes.

Q.—I notice in the meter reading statement that is of record as Exhibit P-106, the account, stated at that time as the current account, was \$3.90. Did your shop bills run equally, or were there some months they were considerably higher than others?

A.—About six months every year they would be higher.

Q.—What months would those be?

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Superior Court*  
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Examination  
Oct. 14th, 1932.  
(continued)

A.—During the fall and early winter, and then it would slop off, and then, when the battery business would start in the spring, it would go up again.

Q.—And the average for the year for the shop would be about \$120?

A.—About \$120.

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

Cross-examination

10

Q.—Are you still living in Wakefield?

A.—Yes.

Q.—Are you still taking current from Mr. Cross?

A.—Yes, sir.

Q.—And paying about the same?

A.—Well, we pay by the meter now. By the way, when you asked me that, I have not got a blacksmith shop now. We just have the battery charger.

20

Q.—But you are still doing business?

A.—Yes, absolutely.

Q.—Have you any accounts that were ever rendered to you, or receipts for accounts?

A.—From whom?

Q.—From Mr. Cross' system?

A.—No, I do not think I have.

Q.—You have not any, even recent ones?

A.—No more than the meter readings.

Q.—Were accounts not rendered to you?

30 A.—Mr. Cross and I have not straightened out our accounts for a couple of years.

Q.—Is that the way things used to go on before 1926?

A.—This last time it was my fault. He came about a year and a half ago and wanted to straighten them up and I was just leaving with a new car to deliver it, and I said some other time, and I have not clicked with him since.

Q.—So your accounts were only collected spasmodically?

A.—Yes.

Q.—Were the meters read regularly?

40 A.—Do you mean recently, or around 1926?

Q.—Well, generally, has the meter reading been regular?

A.—Recently, yes.

Q.—Before that, around 1926?

A.—Not so often.

Q.—Were no bills rendered to you before 1926?

A.—No, no bills.

Q.—Would the reading of the meter tell you virtually your ac-

*In the  
Superior Court*

No. 97.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
G. H. Earle,  
Cross-examination  
Oct. 14th, 1932.  
(continued)

count was so much?

A.—Well, Cross would come in with possibly a little book, and say how much is my account, and I would tell him. I would say, how much is my light account? And he would tell me, and I would give him credit for it, and he would give me a cheque for the difference.

Q.—How do you mean he would give you credit for it?

A.—Against his current account with me.

10 Q.—Against his current account with you for motor car and repairs?

A.—We were in the blacksmith business, horseshoeing and all such other stuff.

Q.—He was a customer of yours?

A.—Absolutely. That is the idea.

Q.—And you sort of adjusted between you?

A.—Yes.

Q.—Do you keep books yourself

A.—Yes.

20 Q.—Your books would show how your adjustment worked out with Mr. Cross during the period up to 1926 and after?

A.—That is six years ago?

Q.—Yes.

A.—I imagine I have them yet, 1926, that is six years ago. They might be destroyed. I think they are available.

Q.—But you never got any receipts?

A.—No. I considered it a receipt when I gave him credit.

Q.—Did you render him accounts?

A.—No.

30 (And further deponent saith not.)

*In the  
Superior Court*

No. 96.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
William B. Scott,  
(Recalled)  
Cross-examination  
Oct. 14th, 1932.

DEPOSITION OF WILLIAM B. SCOTT, K.C., A WITNESS  
RECALLED ON BEHALF OF PLAINTIFF

---

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

10 WILLIAM B. SCOTT (Recalled),

a witness already examined, now recalled, who, being duly sworn, doth depose and say as follows:

Mr. Scott: I now identify Exhibit No. 75 as being the bill of the Honourable P. B. Mignault for \$500 for professional services which were rendered to my firm in connection with the Petitory Action, in October and November, 1931.

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

Q.—This was some nine months or so after the present action was instituted?

A.—After the Petitory Action was instituted?

Q.—As a matter of fact, after the Petitory Action was taken, was it not?

A.—No.

30 Q.—I understand the hearing on the Petitory Action was during November, 1931?

A.—Well, it was in September and November, 1931, and January, 1932.

Q.—But it was some time after the institution of the action?

A.—It was after the institution of the action.

(And further deponent saith not.)

40

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*In the  
Superior Court*

No. 98.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
John Dean,  
Examination  
Oct. 14th, 1932.

DEPOSITION OF JOHN DEAN, A WITNESS PRODUCED ON  
BEHALF OF THE PLAINTIFF.

---

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

JOHN DEAN,

10

of Farm Point, Quebec, farmer, 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:

20 Q.—I understand you are the Mr. Dean who sold to Mr. Cross that certain piece of land up on the hill at Farm Point, which is described as being the uncultivated land surrounded entirely by the cultivated land?

A.—Yes.

Q.—You said in the Deed to be about five acres?

A.—Yes.

Q.—Did you go back there recently to show a surveyor what were the boundaries of that piece of land?

A.—Yes.

Q.—With whom did you go back?

30 A.—Mr. Cross was there. I think Mr. Lewis was called the surveyor.

Q.—Did you take him all around the boundary of that piece of land?

A.—Yes.

Q.—Is it easily distinguishable from the cultivated land?

A.—Yes.

Q.—When did you do that?

A.—It was last Saturday.

40 Q.—Will you file the registered copy of that Deed which is of the 23rd March, 1916, from John Dean to Freeman T. Cross, before Louis Bertrand, Notary, as Plaintiff's Exhibit P-113?

A.—Yes.

Q.—It is described in the Deed as measuring five acres, more or less, in superficies and forming part of lots 25-a in the 16th Range of the said Township of Hull, and bounded as follows: northerly by the Carmen road and by all other sides by the cultivated land on said lot?

*In the  
Superior Court*

No. 98.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
John Dean,  
Examination  
Oct. 14th, 1932.  
(continued)

A.—That is right.

Q.—That is the land you showed to Mr. Lewis the other day?

A.—Yes, that is the land.

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

Cross-examination

10

Q.—What was the price? It is stated to be \$500, is that correct?

A.—That is correct.

Q.—How much would that be an acre?

A.—Oh, I don't know.

Q.—You would not venture any opinion as to what the land was worth an acre?

A.—No, I would not.

Q.—At any rate, the price was \$500?

A.—Yes, that is what Mr. Cross paid me.

Q.—That would be about \$100 an acre?

A.—I suppose.

20

(And further deponent saith not.)

*In the  
Superior Court*

No. 99.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
N. B. MacRostie,  
(Recalled)  
Examination  
Oct. 14th, 1932.

DEPOSITION OF NORMAN B. MACROSTIE, A WITNESS  
RECALLED ON BEHALF OF THE PLAINTIFF.

30

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

NORMAN B. MACROSTIE (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:

40

Q.—When you were examined before, you made evidence of the values of the items as depreciated by you in Exhibits P-65 and P-66?

A.—I did.

Q.—And I asked you to make up on the same basis the fair valuation of the items in P-67 which are to be deducted from the totals of P-65 and P-66; have you done that?

A.—I have done so. This is my own copy.



In the  
Superior Court

No. 99.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
N. B. MacRostie,  
(Recalled)  
Examination  
Oct. 14th, 1932.  
(continued)

The item \$53,000 when depreciated becomes \$39,663.10, that is, using the same percentages of depreciation as used in the former exhibits.

Q.—You show me a copy of Exhibit P-67 as it was, and you have written on it in pencil opposite each item how much in the other exhibits you depreciated the percentage of depreciation, and you have also added in pencil the extension showing the fair value after that depreciation is taken off?

A.—That is what I did.

10 Q.—Will you write over the percentages, “Rate of depreciation”?

A.—Yes, I do so.

Q.—Will you file that as Exhibit P-114?

A.—Yes.

Q.—There was one question Mr. Montgomery asked you, I believe, to get information about: it was the amount of expenditure on the electric lighting system in addition to the salary of the girl who takes care of the accounts, and of the man who reads the meters. Did you get that information?

20 A.—I have it, including that. I have every item.

Q.—Will you show that to Mr. Montgomery so that he may see if it fulfils the purpose for which he required it?

A.—Yes. Starting with the 10th day of July, 1930—I might explain that those items are all paid by cheque, and that is the copy of the stub. The only other items that are paid is accounted for by an item in pencil at the bottom covering items which the stenographer put in for stamps and such other items during the two years. Those items total \$2,841.84 for twenty-seven months.

30 Q.—Does the \$2,800 odd include the girl's and the meter reader's salary?

A.—Yes, everything paid by us, exclusive of power charges to the Gatineau Power Company.

Q.—And how much of that \$2,800 is for the salary of the meter reader?

A.—\$12.00 a week for 27 months.

Q.—117 weeks?

A.—117 weeks. That is \$1,404, and twenty-seven times twenty-five, \$675, that is, \$2,079 have gone out in salary.

40 Q.—Then there are three items of equipment, the Elpeco Company of Canada, \$292.

BY MR. MONTGOMERY:

Q.—Who are they?

A.—I cannot tell you. It is a bill that came in for some equipment. I will look up the bill if you wish.

*In the  
Superior Court*  
No. 99.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
N. B. MacRostie,  
(Recalled)  
Examination  
Oct. 14th, 1932.  
(continued)

- Q.—Who are they?  
A.—I cannot tell you. It is for some electrical equipment.  
The Lincoln Motor Company, \$103; the Elpeco Company,  
\$292; Nick and Meter, \$103.33, and the Ferranti Electric, \$189.  
Those three items account for \$584.33.  
Q.—Salary account for \$2,079 and equipment for \$584.33?  
A.—Making a total of \$2,663.33.  
Q.—Out of a grand total of how much?  
A.—\$2,841.  
10 Q.—About \$180 for incidental expenses?  
A.—\$180 for incidental expenses.  
Q.—During the period of twenty-seven months?  
A.—Yes. That covers printing, stationery and stamps, and such  
equipment as necessary.  
Q.—As well as any work that may have been done on the line,  
or was there any done?  
A.—There is one account that is on that for Frederick, a small  
amount. I think it appears in the cheque.  
20 Q.—Is that the only work done on the line?  
A.—No, there has been other repair work that Mr. Frederick has  
done since then, that Mr. Cross, I believe, has made arrangements  
for him. That is all that has been paid through our office. I know  
Mr. Frederick has done other work in addition to that, and also  
Frank Cross himself.  
Q.—Will you file as Exhibit P-115 this list of outgoings con-  
nected with the system through your office for other than the power  
itself?  
A.—I will. It is a true copy of the stubs of the cheques issued  
30 through our office.

BY THE COURT:

- Q.—And which have been explained by you?  
A.—And which have been explained by me just now.

Cross-examination

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

- 40 Q.—Up to a given time this electric lighting system was being  
operated and looked after by Mr. Cross?  
A.—Yes.  
Q.—At a given time he handed it over to you to look after?  
A.—Yes.  
Q.—When was that?  
A.—That was officially on the 1st July, 1930.  
Q.—And that is substantially from that time?

*In the  
Superior Court*

No. 99.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
N. B. MacRostie,  
(Recalled)  
Cross-examination  
Oct. 14th, 1932.  
(continued)

A.—Well, cheques were not issued until the 10th.

Q.—When you took over, you found it advisable to employ a stenographer at \$600 a year, is that right?

A.—I had to have someone in the office in addition to my own stenographer. I had two stenographers at the time. I had to have someone there who would be on the job all the time, because people were coming to pay their bills. It necessitated them coming to Ottawa to pay their bills, and many came into the office at very inopportune times.

10 Q.—You found it necessary to employ someone.

A.—Yes.

Q.—You also found it necessary to employ a meter reader at \$600.00 a year?

A.—Yes. I may say the meter reader went up from Ottawa.

Q.—Hitherto those charges had not been paid by Mr. Cross.

A.—Those services had been carried out by Mr. Cross or some member of his family, or by someone in his employ.

20 Q.—But there had not been two employees charged for it in his accounts before that time?

A.—Not that I know.

Q.—And in addition to these two employees you speak of, you have kept track of the bills which were paid in respect of the system from that time on?

A.—Yes.

Q.—Amounting in all to something like \$2,800 for twenty-seven months?

A.—\$2,841.84.

30 Q.—So it would average for the two years something in the neighbourhood of under \$1,400 a year?

A.—Yes, slightly under.

Q.—I suppose you personally were not giving the matter a great deal of attention?

A.—The accounts that came in were submitted to me for payment, and I would simply turn them over. As I explained the Trust account is in the name of Mr. White, who is in my office, and any accounts coming in, would be okayed by myself for payment, and the detail looked after, the same as with the sending out of bills or anything like that.

40 Q.—Were complaints with regard to the system made to you?

A.—If I was not in the office Mr. White looked after them.

Q.—Did you furnish the service to put the complaints right?

A.—I did.

Q.—And are those all charged into this account?

A.—No.

Q.—What addition should be made for services rendered in

*In the  
Superior Court*

No. 99.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
N. B. MacRostie,  
(Recalled)  
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(continued)

respect of complaints or line adjustment, or repairs during that time?

A.—Any work that had been done by Mr. Frederick or by Mr. Frank Cross himself, and as I also stated, no charge has been made for my own personal time. I have gone up there several times to investigate complaints.

Q.—But those accounts, whatever they may be, must be added to these \$2,800 in that period?

A.—Yes.

10 Q.—Have you any idea what those would be?

A.—No, I have not.

Q.—A considerable sum?

A.—As far as our office is concerned, we put more time on it than we can legitimately charge for.

Q.—I am speaking of the services rendered outside by Mr. Frederick and these others?

20 A.—I would think that Mr. Frederick's time would be a fair average, whatever time he has put on it. I would say the time of Frank Cross would be excessive, because he had to go down to Hull practically every time there was trouble.

Q.—In this connection I notice from an examination of Mr. Cross' evidence, at page 129, he is asked the question:

“ 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?

30 A.—A total of about \$200.”

He got a house in addition: do you think that these various expenditures which you have filed as Exhibit P-115, and the other expenditures which would have to be added to them resulting from Mr. Frederick's operations, are normal expenses which should be incurred for the upkeep of a position of that kind?

A.—No, I would not think so.

40 I would think if Mr. Cross was running that system as he has in the past, and as he might run it, that the reading of the meters, and the sending out of accounts could be done more efficiently from Farm Point?

Q.—And more economically?

A.—And more economically.

Q.—I would ask you then to say whether I am right in believing an answer you gave me some days ago, that this system was not now being run economically from the point of view of management, is correct?

*In the  
Superior Court*

No. 99.  
Plaintiff's  
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(Supp. Hearing)  
N. B. MacRostie,  
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(continued)

A.—Yes.

Q.—That is not the fault of the power company?

A.—I mean running at a profit.

Q.—I ask you, is the system being run economically at the present time or not?

A.—It is not.

Q.—That is not the fault of the Gatineau Power Company?

A.—I want to be clear. What I mean by run economically is, that it is being run as economically as we can do it.

10 But it is not being run as economically, or is not being run at a profit.

Q.—It could be run at a very much greater profit that it is being run at now?

A.—It would have to be if it is going to be any use to him.

Q.—Could it be?

A.—If he did not have to purchase power.

20 Q.—The power is not purchased unless from the point of view of the items which you are including in your salary lists, and various other things: could not the system be run very much more economically and at a greater profit than it is now being run at?

A.—Yes.

Q.—There is only one other question I wanted to ask you, and that was, in respect of the depreciation which you file now for those \$50,000. The one you file with pencil marks?

A.—P-114.

Q.—I understand P-114 is an amplified statement in respect of the matters referred to in P-67?

A.—I believe so, \$53,000.

30 Q.—In other words, the \$53,000 which is referred to in paragraph 27 of the declaration as being a credit given to the Gatineau Power Company?

A.—Yes.

Q.—And that credit of \$53,000 is given to the Gatineau Power Company because of Plaintiff's allegation that that property would have been destroyed by a supposed development at Cascades?

A.—That is correct.

40 Q.—You now reduce the credit you are giving to the Gatineau Power Company, and instead of giving them credit for \$53,000, you give them credit for \$39,663?

A.—I apply the same rate of depreciation to that that I have to the other exhibits to keep them all in line.

Q.—What I was coming at was this: there is a land loss here of \$24,000 which has not been depreciated in any way?

A.—That is correct.

Q.—How many acres of land do you give us credit for by your alleged or supposed development up to 318?

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(continued)

A.—I would have to figure that out again.

Q.—That is a very important point. How many acres of land do you give us credit for? How much land is included in the \$24,000 that Mr. Cross frankly says would have been submerged by himself, and he therefore gives us credit for it—by going up to 318?

A.—It is the land that is below 318.

Q.—You are giving us credit only to 318, but you are charging us with land above 318, the three feet of seepage?

A.—No.

10 Q.—Why don't you give us credit for three feet of seepage if you are going to develop to 318?

A.—I stated last winter in my examination, that Mr. Cross would have to take certain remedial measures to maintain his area of about three acres of piling ground, and that would be looked after, and that is included.

Q.—You state he would have to take some remedial measures as to his piling ground, so you believe remedial measures are possible for the piling ground?

A.—I think he should have done it.

20 Q.—Where are those remedial measures provided for in that account?

A.—They are not provided for in that account.

Q.—What would those remedial measures cost? We should get credit for them; should we not? If he had to take remedial measures for his piling ground at 318, he should not charge us with them?

A.—I believe to be perfectly fair he should not.

Q.—What would they cost?

A.—I could not say without figuring the matter out.

30 Q.—Would it be \$5,000? It would be the cost of putting his piling ground at 318?

A.—Yes, 318.

Q.—And what would you suggest that to be?

A.—I will have to do a little figuring.

Q.—I don't ask you to the cent. I just want to know within a reasonable degree of dollars what you consider to be the cost of putting Mr. Cross' piling ground right at the water level of 318, because that will be something to base us on?

40 A.—I should think it would be in the neighborhood of between \$8,000 or \$9,000.

Q.—Is that a fill on top of it?

A.—Yes, it is a fill made before the water is raised.

Q.—How deep a fill?

A.—He would have to be protected to 321, wedge of three feet at one end and nothing at the other.

Q.—That was what you had under consideration in the way of remedial measures?

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Plaintiff's  
Evidence.  
(Supp. Hearing)  
N. B. MacRostie,  
(Recalled)  
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(continued)

A.—If you want it more accurately I would have to make an exact contour of each section.

Q.—How many yards roughly?

A.—Thirty-two hundred yards.

Q.—That is based on an assumption that a fill is possible there, and that the piling ground is not going to buckle out like your geologist indicated?

10 A.—My statement is entirely in accord with that of the geologist. I think if that had been done before the water was raised, I am of the opinion that it would to 318 stand just as you contend, that the portion between the siding and the foot of the rock would stand today.

Q.—You think it would stand today above the 321 level, if filled in?

A.—Above the 321, that is, the portion that is above the 321, yes.

Q.—There is no difficulty on that point: You and your geologist are agreed?

20 A.—We are agreed.

Q.—That filling could be done above the 321 level?

A.—That filling could be done above the 321 level.

Q.—And make a good piling ground?

A.—Yes.

Q.—The whole difference between us appears to be between piling ground between 318 and 321 for filling purposes?

A.—No, there is a portion of the piling ground which he previously used I would think would be below the 318.

Q.—He says not?

30 A.—Well, my reason for saying what I do, is based upon the best evidence which I can obtain. I have enquired from entirely independent parties and several individuals at different times, and the results of my enquiries leads me to believe I am correct in what I state.

Q.—He said he never cared to use that piling ground below 318?

A.—I am not responsible for Mr. Cross' statement. You cannot get me to agree with you.

Q.—You said that before.

A.—I said that before.

40 Q.—I referred you to it before?

A.—I know you did.

Q.—It is a matter of great importance to the Company, because the Company is alleging we can fill this in up to about 318. That is why I question you so strenuously on it.

A.—My attitude can be summed up in a nutshell, that filling could be done at one time, that is, before the water was ever raised, and before this crust was softened. I have investigated that area

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fairly close, and my reason for saying that is not based entirely on that area. I have had experience with foundations. I have reported on foundations in the City of Ottawa for a number of years for some of the biggest buildings that have gone up, and there are places where we have encountered identically the same type of material that we have encountered there.

Q.—Of course, building is a different thing?

A.—A building load is a heavier concentrated load than this.

10 Q.—As a matter of fact, just digressing for the moment, there is nothing to indicate that insofar as the level 321 is concerned, that the borings show there are evidences of it being absolutely dry down to 313?

A.—Not places absolutely dry. That is not uniform from top to bottom, because that condition is not the case. I know positively, because I took borings down about seven feet myself.

Q.—To sum up your opinion, then, you believe that had the filling in been done before the water was put up it could have been successfully filled in from 318 to 324, for instance?

20 A.—I am not saying to 324. I say to 321, because I do think there is a limit to the load which you can put upon that type of material at any time.

Q.—But it is only in respect of the difference between 318 and 321 that that load would matter?

A.—No, in your case it is beyond 321.5.

Q.—I thought Mr. Langford told us the greater the weight the greater the tendency was to consolidate below?

A.—The greater the tendency was to keep the water out, if that pressure was put upon it.

30 Q.—If we had started filling before the water came up, we could have successfully filled in below the 318 level?

A.—I would have thought so.

Q.—You think, then, there should be another spread given us of \$9,000?

A.—Yes, from the results of the development at Cascades.

Q.—That is between eight and nine thousand dollars?

A.—Between eight and nine thousand dollars. That would be on that item of \$53,000 which I have depreciated to \$39,000.

40 BY MR. ST. LAURENT:

Q.—That would bring it to about \$47,000 or \$48,000?

A.—\$47,000 or \$48,000. \$39,663.10, I believe, is the figure.

BY MR. KER:

Q.—And that credit is, of course, on the assumption that he did develop the Cascades property, which did not happen?



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A.—It has not happened.

Q.—On what basis per yard were you considering the filling?

A.—I was putting in stones at \$3.00 a yard, and gravel fill or compacted earth fill at 75 cents.

Q.—Rock at three dollars and gravel at seventy-five cents?

A.—Yes.

BY THE COURT:

10 Q.—Should I subtract from the \$39,663 the \$9,000?

A.—That should be added on.

Mr. Montgomery: This whole item is a debit.

Mr. St. Laurent: The \$39,000 is a credit item, so the eight or nine thousand has to be added to that credit item.

20 Mr. Ker: The Plaintiff alleges himself that if he put up the development at Cascades it would affect his Farm Point properties up to 318, so he says: "We will have to give you credit for that", and that is the reason he is giving the Compay credit. Of course, it is all based on the ability to develop Cascades.

Mr. St. Laurent: If Cascades is valued on the basis of the elevation of 318, this credit is to be given. If Cascades is valued on a basis of the lower elevation, this credit goes out.

30 His Lordship: I was trying to find out what Mr. Cross' loss would be, his piling ground having been completely taken away.

Mr. St. Laurent: That is shown in P-65 and P-66 where we alleged the figures mentioned in the declaration, and Mr. MacRostie said those figures were too high, because they were replacement value figures, while, in his case, we should only have the depreciated value figures, and he brought down the items in P-65 and P-66 by a substantial sum.

BY THE COURT:

40 Q.—What would be real damage caused to Mr. Cross by the changed conditions due to the raising of the water, if you can calculate it?

A.—My Lord, I feel, and I am very conscientious in feeling this, that Mr. Cross cannot be rehabilitated at Farm Point. My investigations led me to that conclusion, and I am not confining my opinion entirely upon what I have seen at Farm Point, but it is

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based upon my experience over a period of years with foundations. I do not think he can be rehabilitated at Farm Point as it was before.

BY THE COURT:

Q.—Then what damages would he suffer?

A.—The damage, in my opinion, would be his investment at Farm Point less any salvage value he could get.

10

BY THE COURT:

Q.—Could that be valued?

A.—I can go over it, and put what I think would be the salvage value. It would possibly take me half a day to do that. It would be my opinion of what that would create as a salvage value.

BY THE COURT:

20

Q.—It might help me to arrive at a conclusion?

A.—I will do that between now and Monday morning. I will put that in a statement; as I understand, a fair value has already been put in. My opinion of the fair value has already gone in. I will have to go over each item and put what I consider a salvage value.

30

His Lordship: As I have stated before, I never render judgment from the Bench, but this information I think will be useful and I would like to have the information. I may say it will in no way prejudice my judgment.

Mr. St. Laurent: We are anxious on both sides to give your Lordship such information as you may think fit to consider, without deducting any more from it but evidence that your Lordship will see fit to consider.

40

Mr. Ker: We would like to have it clearly understood that on the one side the Plaintiff maintains that because of this piling ground being affected a matter of three acres, his whole business is wiped out. The Company does not deny it has damaged his piling ground, but we do say we can make him a piling ground for a certain sum of money . . . . .

Mr. St. Laurent: Mr. MacRostie says he thinks he cannot be rehabilitated.

BY MR. KER:

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Q.—There is one question I would like to ask you, arising from the remark of Mr. St. Laurent; as to your feeling that Mr. Cross should have been rehabilitated is due to the fact that his piling ground is lost, insofar as the Farm Point industry is concerned?

A.—So far as the lumber industry is concerned.

Q.—That is the sole reason?

10 A.—When you are talking of the lumber industry, yes. I think I also brought out in my previous examination the fact that his whole endeavour is linked up, if you cut off twenty-five per cent of the total earning power, that that 25 per cent cuts off all the profit. That is an item which has to be taken into consideration. You might do a certain volume of business, and if that is increased ten or fifteen per cent, that increases, or from that ten per cent may come all the profit that he gains. There is an overhead charge which has to be taken care of. There is interest on your investment, so what I mean is, you cannot reduce the business, cut it in two and say, my profit on one hand is cut in two, and my expenditures are cut in two, there is not a direct relation between the two. That is the point I wish to  
20 bring out, and insofar as the lumber business solely is concerned, if he was only dealing in the lumber business, that was my answer to Mr. Ker, but being in the electric business as well it is two.

Q.—I am speaking now particularly of the lumber business, if this Company today was able to hand over to Mr. Cross an extent of piling ground equal to what he had been using before the water was raised, or the money equivalent of that, there would be no physical reason why the lumber business at Farm Point alone would not carry on as much as it ever carried on.

30 His Lordship: But it would affect all his houses.

Mr. Ker: It only affects five houses. Perhaps I should add to that the question of other land, not piling ground, for instance, the delta which was under water anyway. We offered to pay for five houses which were around the margin of the delta, but I am speaking of the capitalization of the lumber business.

40 There are forty residences claimed for, of which only four or five are physically affected by the raisings of the water, and both parties are in agreement, but your Lordship is right in adding those to what I have just said, that restoring the piling ground and compensating him for the four or five workmen's cottages which are affected in their cellars or otherwise, and for the land other than piling ground which has been submerged, that is the only effect, and his lumber business can carry on the same as before. The offers for these various lots are mentioned in our plea.

(And further deponent saith not.)

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(Supp. Hearing)  
Robert A. Ross,  
Examination  
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DEPOSITION OF ROBERT ALEXANDER ROSS, A WITNESS  
PRODUCED ON BEHALF OF THE PLAINTIFF.

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

ROBERT ALEXANDER ROSS,

10 of the City of Montreal, Consulting Engineer, aged 67 years, a witness produced on behalf of the Plaintiff, who, being duly sworn, doth depose and say as follows:

EXAMINED BY MR. SCOTT, K.C.,  
OF COUNSEL FOR PLAINTIFF:

Q.—I understand you are a Consulting Engineer practicing your profession in the City of Montreal?

20 A.—I am.

Q.—Have you been doing so for a number of years past?

A.—About forty years.

Q.—Is there any particular branch of engineering that you have specialized in?

A.—Power engineering, including hydraulic, electrical and so on.

Q.—I presume you are a member of the Engineering Institute of Canada?

A.—Yes.

Q.—Do you know Mr. de Gaspé Beaubien?

30 A.—I do.

Q.—An Engineer who has given evidence in this case?

A.—Yes.

Q.—Did you have occasion to discuss his account for professional services with him, which account has been filed in this case as Exhibit P-70?

A.—Yes.

Q.—You have known Mr. Beaubien for a number of years?

A.—Well, about twenty years.

Q.—Do you consider his account reasonable?

40 A.—I do. I have looked it over and consider it reasonable. My own practice has been to charge this rate mentioned here for the last twenty-five years.

Q.—\$100 per day?

A.—\$100 per day and expenses. That has been my own practice for twenty-five years.

Q.—Do you consider that rate should apply to Mr. Beaubien?

A.—Yes, I do.

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

Q.—You are not testifying as to any part of the matter which is contained in the account?

10 A.—In this way I am. I took the liberty in talking to Mr. Beaubien to go over that matter, the detailed figuring he did. That detailed figuring was not necessarily included in Court. I don't suppose it was presented, and I found that he had a very, very uncertain problem there to deal with, a problem that engineers very frequently have in hydraulics, that is, insufficient data. The consequence was that he spent a good deal of time in trying to make up a formula which would give you the heights of the water and the flows, and all that sort of thing. Now, I know how difficult it is for a man to wander in a wilderness like he has done, but in his wilderness he got results out of that, as evidenced by the fact that while his figures were used at the beginning of the case in Court, with recent figures which he had not had previously.

20 Q.—Perhaps we are wandering, although I think you are justified perhaps in thinking that. The point I really had in mind was, whether you can express, really, any opinion as to whether the work which Mr. Beaubien was doing was clearly identifiable with this present litigation?

A.—Well, from what I understood of the case, yes, but, of course, I do not know the whole case.

Q.—Mr. Beaubien told you that in a general way?

A.—Mr. Beaubien told me that himself.

Q.—He was wandering in the wilderness though?

30 A.—It was a swamp.

Q.—A very difficult problem?

A.—Yes.

Q.—It is not an open and shut proposition by any means for an hydraulic engineer?

A.—No, it is not.

Re-examination

RE-EXAMINED BY MR. SCOTT, K.C.,  
COUNSEL FOR PLAINTIFF:

40 Q.—I don't know whether you ascertained if the figures furnished to Mr. Beaubien by the Gatineau Power Company worked out with his formula?

A.—They did, as I understood it. I do not know the fact as to whether they were presented, or when they were presented.

Q.—You were not here when Mr. Beaubien gave evidence in Court.

A.—No, I was not.

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Q.—Then, was Mr. Beaubien in the wilderness after he got those figures?

A.—Oh no, he was not.

BY MR. KER:

Q.—Mr. Beaubien, of course, gave his evidence long after the Company's witnesses gave theirs?

A.—I don't know.

10

(And further deponent saith not.)

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Plaintiff's  
Evidence.  
(Supp. Hearing)  
James C. McCuaig, 20  
Examination  
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DEPOSITION OF JAMES C. McCUAIG, A WITNESS  
PRODUCED ON BEHALF OF PLAINTIFF.

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

JAMES C. McCUAIG,

of the City of Ottawa, lumber contractor, aged 47 years, a witness produced on behalf of the Plaintiff, who, being duly sworn, doth depose and say as follows:

30 EXAMINED BY MR. ST. LAURENT, K.C.,  
OF COUNSEL FOR PLAINTIFF:

Q.—Where do you live?

A.—In Ottawa.

Q.—What is your business?

A.—Lumber contractor.

Q.—How long have you been in that business?

A.—All my life.

Q.—Do you know the Gatineau District?

40 A.—Yes.

Q.—How long have you been familiar with that district?

A.—34 to 35 years.

Q.—Do you know Mr. Cross?

A.—Yes.

Q.—Did you, yourself, ever pile lumber in his yard at Farm Point?

A.—I did.

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Q.—When was that?

A.—1921-1920 or 1921.

Q.—How did you happen to be piling lumber in his yard?

A.—There was a factory at Farm Point called the Eastern, Handle and Dowel Factory, which was a subsidiary company of the M. G. O'Brien people, they were interested in, and I had sold them a lot of lumber.

Q.—Is that the factory that has been referred to from time to time as the Toy Factory?

10 A.—Well, it was a Toy Factory, subsequently taken over by the Eastern, Handle & Dowel Company.

Q.—It is the same place that has been referred to as the Toy Factory?

A.—Yes, and I sold these people a lot of lumber for winter delivery, and my loading point was at a siding which was quite a distance from the nearest village, and it meant to me that if I had to load and ship my lumber according to my contract with these people, I would have to shovel out a siding.

20 Q.—You arranged to ship it in before the snow came?

A.—Yes.

Q.—Where did you pile it?

A.—I piled it right along from the point of the spur in so far as I could go, which was a little point west of the factory.

Q.—On which side were you piling it, on the upstream or downstream side?

A.—The downstream, the south side.

Q.—The downstream side of Mr. Cross' spur?

A.—Yes.

30 Q.—Is that the only occasion you have been to this place, or have you been there frequently?

A.—I have been there practically every year, many times each year since 1920 or 1921.

Q.—Do you know from what you have seen with your own eyes, whether Mr. Cross ever piled lumber on the downstream side of the spur?

A.—Well, I have seen that siding piled that you could not get anything between it and the track, both sides of the track.

Q.—You have seen that on many occasions?

40 A.—I have seen it in 1920 and 1921, and I think in 1922—certain, in 1920 and 1921.

Q.—Have you been back there since the Gatineau Power Company raised the level of the water?

A.—I have.

Q.—You have seen how the raising of the water affected the piling ground?

A.—I have.

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Q.—And have you been able to visualize how it would be affected if the water was put up to 321.5, or about three feet higher than what the general effect has been?

A.—I am not familiar with the levels, but I have seen the siding at different heights that the water has been elevated. Sometimes the water is held up pretty full. Sometimes it is low. Sometimes I have been there when it has been pretty full. I have been there when it has been practically up to the ties on the siding.

10 Q.—And at that elevation, how does the flood affect the piling ground?

A.—The south side of the track for two-thirds or more could not be used for a proper piling ground, without doing considerable damage to any lumber piled there.

Q.—What about the upper side of the track?

A.—Part of the upper side was also damp where the water had seeped through the ties.

20 Q.—If you take it that the water has to be held at a controlled elevation, not exceeding 321.5, how, in your opinion, does that affect the Farm Point property as a commercial site or mill proposition?

A.—As I stated previously, as to the elevations, I am not familiar with the exact measurements in feet.

Q.—Something that goes up just to the floor of his power house?

A.—If it is held up to the highest level I have seen it at, it would certainly have a great effect in interfering with its value as a commercial place, for which that place had been used.

Q.—If it is held at a point that goes up to about the level of the power house floor; you know where the power house is?

30 A.—Yes.

Q.—If the water is controlled to the elevation of the power house floor, what happens to the Farm Point property as a lumber proposition?

A.—I cannot tell you what the elevation of the power house floor is, but I can speak with knowledge of the high water, the maximum, as I have seen it on the track level, and if that was kept to the highest level at which I have seen it, it leaves Mr. Cross with mighty little piling ground.

40 Q.—Does it leave it possible or not to carry on that saw mill as a commercial proposition?

A.—No, I would say not. He would have to get other piling ground, and make it at a considerable distance away from that mill, which would be rather expensive. It would mean he would have to employ horses or trucks to clear his mill and take that lumber to some distant point, where it would be at, and he would have to put a new siding in there to ship his lumber when required.



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Q.—If the expense in doing that was added to the cost of the lumber, would it remain a commercial proposition?

A.—I honestly do not believe it would.

Q.—Do you know the kind of lumber Mr. Cross is handling principally at Farm Point?

A.—For the years I have been familiar up there, I would say the product of his mill has been hardwood, birch, beech, maple, ash and basswood.

10 Q.—Do you know of others who have also attempted to handle those species of woods?

A.—I do.

Q.—Do you know of any other who had as convenient, or more convenient, place to do it than Mr. Cross had?

A.—I do not, not on that line or any place else.

Q.—No one had as convenient a place as he had?

A.—No.

Q.—What happened to the others that you know of, who tried to handle that class of material?

20 A.—The same as the paper business.

Q.—They were unsuccessful?

A.—Yes.

Q.—In your opinion, did the layout of Mr. Cross lend itself particularly to handling that class of material?

30 A.—His layout at Farm Point is about as economical a place as it is possible to find, considering the physical conditions under which he would have to operate. It is almost impossible to find a more economical point in which to handle lumber than he has got there. His mill is a water power mill, and his tram running out to his yard is what is referred to as an overhead tram, and the lumber is hauled from the sorting table on to a lumber lorry and run out into the yard, probably some eight or nine hundred feet long, and his piling ground is a double-decker, that is, the height of two piles, and then his lumber track comes right alongside his piles for shipping.

Q.—Where does his raw material come from?

A.—He has considerable holdings up along Meach Creek on the west side.

Q.—Do the logs come into the mill from the lower level or from the higher level?

40 A.—From the higher level.

Q.—You have seen how that log shut operated?

A.—I have.

Q.—The logs just roll down?

A.—Yes.

Q.—Do you know of the holdings he had behind his Farm Point mill at Meach Creek?

A.—I do.

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Q.—Did you cruise them?

A.—I did.

Q.—Were you familiar also with his layout at Mileage 12?

A.—Yes.

Q.—What was being handled there principally?

A.—Mostly ties and some hardwood, lumber. Some logs were  
sawn into lumber.

Q.—Was that an expensive or economical operation?

A.—A very economical operation.

10 Q.—Have you seen that since the waters were raised?

A.—Yes.

Q.—What effect has the raising of the water had?

A.—It is practically all gone.

Q.—Will you look at this plan that has already been filed as Ex-  
hibit P-91, and say if you examined these lots which are shown  
printed in pink?

A.—I have examined practically all this area.

Q.—That is to say, the area comprising the lots printed in pink?

20 A.—Including Mr. Cross'. Some of them I had occasion to ex-  
amine in connection with some other trespasses that were made by  
other people, but I never did examine these individually for Mr.  
Cross, but the formation of the country over there I am perfectly  
familiar with.

Mr. Ker: I would ask, my Lord, that all this evidence be taken  
under reserve of our original objection.

(The Court reserves the objection.)

30 BY THE COURT:

Q.—Did the wood belong to Mr. Cross?

A.—The wood belonged to Mr. Cross. Some of these lots he did  
not own, but he had the privilege of making timber off of them, and  
some he did own.

BY MR. ST. LAURENT:

40 Q.—What are the species of the wood?

A.—I would say it is practically about 75 to 80 per cent of hard-  
wood, birch, beechwood and ash.

Q.—What would the rest be?

A.—Hemlock and pine.

BY MR. KER:

Q.—Is there any pine there?

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A.—Yes, there is some very nice second growth pine.

BY MR. ST. LAURENT:

Q.—What age or what size would they be?

A.—I would say that some of this pine is around twenty-five to thirty years old and is just maturing into a size that in a few years it can be used for commercial purposes, but which at the present time would be almost a crime to cut.

10 Q.—It should be allowed to continue to grow?

A.—Yes.

Q.—From those lots what would be the species that would be proper to take out at this time?

A.—In 1926?

Q.—Yes, 1926 and these years.

A.—These years it was possible to take everything you could get, but most of that timber, as I said before, is 75 per cent or 80 per cent hardwood, birch, beech, and maple, were being used largely for ties.

20 Q.—What was the average value of that for Mr. Cross with the facilities he had for handling it?

A.—I would say roughly about forty or fifty dollars per acre based on the feet board measure per acre, and the return he would get from that timber.

Q.—And how would this valuation be affected by putting out of commission the Mileage 12 and Farm Point mills, if they have to be put out of commission?

30 A.—It would naturally follow that if his piling ground disappears, it is about the same as having a horse and cart without any harness.

Q.—Taking for granted that those mills are out of commission how would that affect the value of the timber lands? You said that with the mills they would be worth \$40 or \$50 an acre. Without the mills what would they be worth?

A.—They would be worth to Mr. Cross, or to any owner, the equivalent of the replacement value of these mills, and his commercial establishment, and the additional cost of the inconvenience he would be put to at some other location.

40 Q.—Is it possible for you to translate that into dollars and cents? It is quite difficult for me, but are you able to say what difference per acre in value it makes in the timber lands?

A.—From my experience with the construction and workings of mills of that nature, it would cost in the neighbourhood of around \$25,000 to \$30,000 such as his Farm Point and the other portable mill at Mileage 12; it follows the depreciation must be based on the quantity of timber he has got. I mean by that, you would not be in a

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\$25,000 unless you are sure you had a supply for that mill to cover you for a period of years; if you figured on having that mill for only two years, then you would naturally figure on getting an extraordinary price for that mill, so you have to figure on this lumber, you have to make a million feet. The cost of the mill must be based on the price per thousand feet of your wood delivered in your mill.

10 Q.—Taking all that into account, are you able to give the Court any figure, as to what, in your opinion, the abandoning of the Mileage 12 and Farm Point mills as commercial propositions would have on the value of those timber lands of Mr. Cross?

A.—I would put it roughly, from my knowledge of that area, and the mill, at from \$10 to \$15 per acre for both sides of the river where he is operating.

Q.—Do you also know the limits he had on the east side of the river?

A.—I do.

Q.—Do you know what effect the operation of the pond upon the Chelsea dam has upon the hauling possibilities across the river?

20 A.—Yes.

Q.—I see you have certain photographs there, but has your experience shown you what effect it has?

A.—Yes, it has.

Q.—What is that effect?

A.—It makes it practically impossible to haul logs across the Gatineau River on account of the water in the dam being constantly lowered and raised.

Q.—Before the altered conditions, when was this hauling done?

A.—Always in the winter months.

30 Q.—On an ice bridge in the winter months?

A.—The very moment the river was frozen over and there was nothing to interfere with the raise and fall, you had permanent service as long as the ice and winter conditions lasted.

Q.—What has been the effect of the operation of the pond above the Chelsea dam?

40 A.—It means that with the water changing, that any roads you would establish to get on and to get off the river, when you are coming out of the river on this side, to which you may find the water up almost to the ordinary level, by the opening up of the Chelsea dam, probably at noon or maybe the next morning, that may be down five or six feet; therefore, your approaches where you come on, and the jumping off place on the other side, has been lowered and makes it very dangerous for your horses getting through, and in getting drowned.

Q.—It is common knowledge there were horses drowned up there?

A.—Yes.

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(continued)

Q.—Do you know of the drowning of these horses?

A.—I did not see the horses drown, but I got a report from the men who were there.

Q.—Is that, in your opinion, what affects the limits of Mr. Cross on the east side of the river?

A.—It makes it more costly for him to produce his logs through the mill.

10 Q.—And when you stated \$10 or \$15 an acre, you applied it to the east and west side?

A.—Yes, sir.

Q.—In your opinion, the altered condition depreciates the value of those limits to Mr. Cross to that extent?

A.—To Mr. Cross or to any owner.

Q.—Are you familiar with this portable mill that Mr. Cross operated at Alcove?

A.—Yes.

Q.—On what side of the river was that?

A.—On the west side.

20 Q.—On what side of the river is the railway track?

A.—The west side.

Q.—Would it be practical to operate on the east side?

A.—It is not practical, no. It is possible but not practical.

Q.—I am talking of the commercial practicability of making any money out of it?

A.—No, I do not think so.

Q.—How does that lumber have to be shipped out after it is sawn?

A.—It must be shipped out by rail.

30  
Cross-examination

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

Q.—Are you a lumber manufacturer or a jobber?

A.—Both. I have been a lumber manufacturer and jobber.

Q.—When were you the owner of a mill last?

A.—I was never the owner of a mill, but I have had my lumber sawn at mills.

40 Q.—You were never the owner of a mill?

A.—No.

Q.—Nor of a piling ground?

A.—Yes, sir.

Q.—Where was it?

A.—On the Pontiac line, Campbell's Bay.

Q.—When was that?

A.—It is yet.

Q.—It is still there?

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A.—Yes.

Q.—Right on the river?

A.—Right close by the river?

Q.—Flooded every spring?

A.—No.

Q.—Are you sure?

A.—Yes.

10 Q.—And your piling ground at Campbell's Bay does not suffer every spring by having water on it?

A.—No, it is away above the water level.

Q.—I just want to refer to your evidence with regard to this timber limit. To begin with, I think I understood you correctly to say you had not yourself cruised the limits which are referred to on the plan which was shown to you?

A.—I did not say that.

Q.—Will you tell me just what you have done in the way of cruising these limits which are referred to on this plan?

20 A.—I have never examined this whole area. I have never staked out one of Mr. Cross' lots there, but those belong to others, but I have a thorough knowledge of that whole particular area.

Q.—And it was upon the general knowledge of the particular area that you were giving the particular evidence with respect to Mr. Cross' limits?

A.—Yes.

Q.—When was the inspection of that district made?

A.—I have made in the last six or seven years, probably, I think four or five different inspections of that area.

Q.—For what purpose?

30 A.—For the owners of different property in that section, not associated with Mr. Cross in any shape or form.

Q.—Are you licensed culler?

A.—Yes.

Q.—Of the Province?

A.—Ontario and Quebec.

Q.—Mr. Cross has certain limits on the west side of the river?

A.—Yes.

Q.—Those are altogether freehold limits?

A.—I understand so.

40 Q.—And he has on the east side of the river, which is opposite the other side of the river from Farm Point, his Government licenses?

A.—Yes.

Q.—I think you told us your valuation of the limits on the western side of the river was approximately \$40 to \$50 an acre?

A.—That is the value to Mr. Cross.

Q.—That, you say, was a reasonable value?

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A.—A reasonable value.

Q.—What are the Government leased limits on the east side of the river worth, in your opinion, per acre?

A.—Approximately the same.

Q.—\$50.00?

A.—\$40 to \$50.

Q.—I am anxious to get your evidence on that point, because it is rather important with what I am going to ask you in a moment. Now, however, you say with regard to the limits on the west side of the river, that, in your opinion, they have been depreciated in value, so that they are now worth \$15.00 an acre instead of \$40.00 an acre?

A.—I did not say that.

Q.—They are depreciated \$15 an acre?

A.—They have depreciated \$10 to \$15 an acre.

Q.—And that the limits on the other side of the river are also depreciated ten to fifteen dollars an acre?

A.—Yes.

Q.—Those freehold limits on the west side of the river are not very far from Ottawa or Hull?

A.—About sixty or seventy miles.

Q.—Do you think their proximity to the city of Hull or Ottawa would give them any added value?

A.—It has no particular greater value, not any more than these on the east side.

Q.—I would just like to read to you, and ask your opinion upon the statement made by Mr. Cross with respect to these limits. I am referring to page 194 of his evidence on discovery, which is as follows:

Mr. Cross states:

“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 or \$50 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):

Q.—Then how have they become depreciated by \$25 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 an acre?

A.—Yes.

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Q.—Then how could they be depreciated to the extent of \$25?

A.—I am in the lumber business. I am not in the wood factory business.

Q.—If their original value was \$40 and you can sell them for \$40 . . . . .

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 an acre.

10

Q.—In other words, you think you could sell it for \$40?

A.—If I was in the business I could probably go out and sell them. They have been paying as high as \$50 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.”

Do you gather from that that there has been any depreciation in Mr. Cross' mind as to those limits?

20

A.—There are some of those lots of Mr. Cross that are in the vicinity of Chelsea . . . . .

Q.—Do you agree with Mr. Cross' evidence or not?

A.—That he has what?

Q.—That he can sell the timber limits on the west side of the river at any time at \$40 or \$50 an acre?

Mr. Scott: I do not think that is a fair summary of Mr. Cross' evidence on that point.

30

BY MR. KER:

Q.—In other words, do you think you can sell them?

A.—I have my doubts whether Mr. Cross would be interested in selling these freehold lots. He has a very fine stand of second growth timber today which would probably be more valuable though there would be no timber or wood there at that particular time.

40 Q.—Speaking of the timber limits of the Crown licenses on the east side of the river, in this case Mr. Cross claims those have been depreciated by \$5.00 an acre. I think your statement was they were worth the same amount as the others, and were depreciated by \$15?

A.—By ten to fifteen dollars.

Q.—He was asked: “If they had been depreciated by \$25,600, what were they worth before?”, and he states that to have been \$8.50 an acre?

A.—In answer to that, I think, Mr. Cross was slightly mistaken.



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Q.—In other words, if they were worth \$8.50 before and they have now been depreciated by \$5.00, how do you justify your opinion as against the opinion of the value of the Plaintiff, on the east side of the river, at \$8.50 an acre?

A.—I say that he must have made a gross mistake.

Q.—Then, let us work out your idea. Let us say \$40 an acre. How much does that work out by the mile?

A.—About \$2,700 per square mile.

Q.—It is \$27,000 is it not?

10 A.—I do not think so.

Q.—Let us figure it out by arithmetic. I am anxious to get this right. How many acres are there in a mile.

A.—640 acres to the mile.

Q.—That makes \$25,600, is that correct?

A.—That is correct.

Q.—A mile?

A.—A square mile.

20 Q.—Do you know anything at all about the prices the Government sells these actual licenses for, per mile?

A.—You are opening up on a different subject entirely.

Q.—I am not.

A.—I am sorry to say you are.

Q.—Can you tell me what I can go out to the Department of Lands and Forests for, and purchase one square mile of timber limits? Do you know that the average price is about \$1,200 a mile?

A.—I know those things to be given away for nothing.

Q.—Do you know that they are put up at auction and can only be disposed of at auction?

30 A.—I am very familiar with the method by which they are sold at auction.

Q.—Do you know at the present time they are put up at auction by the Quebec Government?

A.—At the present time I have no knowledge.

Q.—Do you know what in the ordinary average cases the present prices are, and the prices for the last five or six years or ten years that have ruled for one hundred square miles of timber limits?

A.—I am perfectly familiar with the condition.

Q.—Do you know it?

40 A.—Yes, I do know it.

Q.—What have been the prices per mile? Take your choice, anywhere in the Province?

A.—I have considerable experience in the method used at these auction sales, and I do not see where they apply in any shape or form.

Q.—That is not an answer. You are impugning the integrity of the whole Government when you say that. Those things are put

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up at auction, and anybody is entitled to bid on them. Can you tell me what the general average price of Crown timber limits per mile has been during the last five or ten years at private sale?

A.—Have you reference to timber limits three or four hundred miles in the woods or alongside the railway track?

Q.—A timber limit wherever you like? A timber limit in the County of Hull, alongside of these?

10 A.—I have known of cases in the township of Hull, in that section there where timber has been sold for over \$100 an acre, right close in the neighbourhood of this place here.

Q.—I am not denying or disputing that. I asked you whether you know. These are not freehold limits. These are Government leases?

20 A.—I have had thirty years' experience in the matter of cruising limits, and on behalf of other corporations for the sale of timber limits, and there is no comparison, absolutely, in any shape or form as to the value of these timber limits. A limit is referred to in a section of the country like this, by the acre, on account of its proximity to the local mill, and can be used for any condition. Referring to a limit that may be acquired by the International Paper Company, or some other Company coupled up with a power development, I am not in a position to say, and I do not think anybody else is.

Q.—Do you know how much Mr. Cross paid for these eight square miles of timber limits?

A.—I have not the faintest idea. I know what it cost him to carry per year.

Q.—Do you know what he paid for the whole eight miles?

A.—I have not the faintest idea.

30 Q.—He swears it was \$2,000 for the whole eight miles?

A.—That may be.

Q.—Don't you think it is rather extravagant to raise it up to \$25,600 per square miles?

A.—Under the conditions at that time. I know of power plants right close by there acquired for a matter of one or two or three million dollars, and sold to the general public. . . .

Q.—Please confine yourself to answering my questions. Your deposition is quite full enough.

A.—I am giving the explanation.

40 Q.—You maintain these Crown timber limits are worth \$25,600 a mile?

A.—What he paid for them, or what they are worth does not interest me.

Q.—Mr. Cross maintains that instead of that they are worth \$3.50 an acre. He claims they are worth \$8.50 an acre, and you state they are worth \$40. You do not agree then with Mr. Cross?

A.—I certainly do not.

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Q.—In other words, eight square miles for which Mr. Cross paid \$2,000 you now value at \$200,000?

A.—Approximately. I would not put in any wrong figures. I would not probably work it out that way. There are some of the lots that Mr. Cross has on the east side of the river that are certainly not worth \$40.

Q.—Have you any idea of the timber there is on his actual lots on the west side of the river?

A.—No. I would not confine myself exclusively to his particular  
10 holdings.

Q.—You cannot give any estimate as to the amount of standing timber there is?

A.—Not on his particular lots.

Q.—Don't you think that is rather important to know in fixing a price on those limits?

A.—I can give you a pretty fair average of the run of timber through that section.

Q.—What would you say on an average?

A.—I would say ten to fifteen thousand feet board measure per  
20 acre on the freehold limits on the west side.

Q.—And what would you say about the growth on the east side?

A.—The east side is much better timber. There are some on the east side that will run 25,000 to 30,000 feet per acre. Some will not run that much.

Q.—Does that include merchantable timber?

A.—Yes, merchantable timber.

BY THE COURT:

30 Q.—On the east side?

A.—On the east side there are many of the lots that will run from twenty-five to thirty thousand feet board measure per acre, but there are some they can hardly get in, there are several lots. Some of them are on very high rock.

Q.—Again, I would refer you to what Mr. Cross says about his own limits, and I presume he should know something about the Crown limits. He was asked:

40 “ Q.—Nor have you any idea of the 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?

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Q.—What do you class it as?

A.—Merchantable timber.

Q.—Have you any idea of how much merchantable, 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 limit?

A.—Some 6,000 to 7,000 feet per acre, merchantable bush.”  
That is as against your twenty-five to thirty thousand feet?

A.—On some of the better stands.

Q.—I am asking you the average?

A.—I would really put the average on there from ten to fifteen thousand feet.

Q.—You have reduced therefore this average . . . . .

20 A.—I did not say anything about the average. I said there were some stands would run twenty-five thousand to thirty thousand. You did not speak anything about the average.

Q.—You are taking that view of it now that I did not ask you about the average, but I am asking you about some special limit?

A.—You did not ask me about the average.

Q.—Can you pick out any lot that has twenty-five thousand or thirty thousand feet?

A.—Yes, I can.

30 Q.—Can you give me the number of the lot that you maintain has twenty-five thousand or thirty thousand feet of merchantable timber?

A.—Yes.

Q.—Will you just give me the limit number, whatever it is?

A.—Twenty-four and twenty-five on the Fifth Range of Wakefield.

Q.—Do those belong to Mr. Cross?

A.—I understand so.

BY THE COURT:

40 Q.—At what do you fix the price on that?

A.—I was asked the amount of timber on these two lots, there are 25,000 to 30,000 feet per acre.

BY MR. KER:

Q.—On both the north and south half of those lots?

A.—The north half.

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- Q.—The north half of which lots?  
A.—Of both of them; 24 and 25, the north half of both lots.  
Q.—Have you ever tried to haul wood across the river in winter since the water has been raised?  
A.—I have not in that particular locality.  
Q.—When?  
A.—In the winter of 1928.  
Q.—Is that the only time?  
A.—That is the only time.  
10 Q.—Not at this point?  
A.—No, not at that point.  
Q.—Are those the only two lots you can pick out in that short time?  
A.—No, it is right around that point.  
Q.—In a general way, this layout of Meach Creek with a saw-mill part way up the slope, and the water feeding it from above is, to some extent, a pretty good layout for a sawmill?  
A.—It certainly is.  
20 Q.—And that being the case, I suppose one has perhaps to adapt himself as well as he can to the kind of piling ground he might have which might be connected with it?  
A.—Yes.  
Q.—As a matter of fact, do you call this an ideal piling ground?  
A.—Under the operating conditions he had before.  
Q.—Under ordinary circumstances?  
A.—Under ordinary conditions it was very suitable to his operations, very suitable ground.  
Q.—You say that Mr. Cross permitted you to pile certain  
30 lumber on the creek side of the siding at one time?  
A.—Yes.  
Q.—You do not know whether he used that generally for the piling of lumber?  
A.—I have seen lumber piled on that.  
Q.—Was it not cord wood?  
A.—No. Here is a picture of the siding. I have seen that piled right to the main line . . . . .  
Q.—I am not asking you to produce these pictures. You had  
40 occasion to make a claim yourself against the Gatineau Power Company?  
A.—I don't think that is interesting.  
Q.—Was the claim rejected?  
A.—No.  
Q.—Is it true you had claims against them?  
A.—I have no claims.  
Q.—You made a claim?

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(continued)

A.—I had no personal claims against the Gatineau Power Company.

Q.—Did you ever make a claim?

A.—I have no personal claim against the Gatineau Power Company.

Q.—I ask you whether you have made any claim of any kind against the Gatineau Power Company?

A.—Personally, no.

Q.—Indirectly have you for anybody else?

10 A.—Acting on behalf of others, yes.

Q.—The piling ground at the upper part, above the siding, is not so badly affected as the south?

A.—You mean the north side?

Q.—I mean the north side.

A.—There are two sides to the creek. You mean the north or south side?

Q.—The north side of the siding is not so badly affected?

A.—No, only in one low spot.

20 Q.—When did you see it last?

A.—About ten days ago. I think it was on the 3rd October.

Q.—When did you see it before?

A.—I have occasion to pass that section quite often.

Q.—You always go in and look at it?

A.—Not always. You can see it from the road when you are familiar with it.

Q.—Do you do business with Mr. Cross?

A.—I have not done much business with Mr. Cross.

Q.—When did you do business with him last?

30 A.—My last business with Mr. Cross was in 1922.

Q.—Not since then?

A.—No.

Re-examination

RE-EXAMINED BY MR. CHISHOLM,  
OF COUNSEL FOR PLAINTIFF:

40 Q.—You mentioned the value for the timber limits, that is, the Crown lease on the side of the Gatineau River. Did the proximity of Mr. Cross' mill at Farm Point have anything to do with the valuation you placed on those limits?

A.—Some of his lots are suitable for the Farm Point lumber. Others are suitable for his Alcove.

Q.—Which of the limits are suitable and adjacent to Alcove. Just say generally. Are you referring now to the east side of the Gatineau?

A.—Yes.

Q.—Will you say on what part?

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(continued)

A.—I would say on lots in concessions 5, 6 and 7 in the Township of Wakefield.

Q.—And with respect to Farm Point?

A.—On lots south of it.

Q.—And in fixing the value, had you in mind, that is, at 1926, the fact that the timber limits were in close proximity to these mills?

A.—Absolutely.

10 Q.—And that would have to Mr. Cross a greater value than perhaps to an outside person?

A.—To any man who had no mill.

Q.—With respect to leases by the Crown, I understand that apart from the actual amount paid to the Government, the Government extracts a certain amount for every year?

A.—Extracts is a good word. The Government calls for ground rental of \$8.00 per square mile, to which is added the fire ranging charges that vary from year to year as to the cost per square mile. It actually costs today on an average about eight to ten dollars, and some years it has run to as high as fifteen and sixteen dollars.

20 Q.—Then, there is the stumpage. In fact, what is paid at the auction does not begin to cover what the buyer has to pay eventually?

A.—The price that you pay for a limit does not give the ownership of the limit, of the wood. You are only paying for the privilege of cutting that timber off. Then you pay stumpage for each thousand feet added to that.

BY MR. KER:

30 Q.—Still, you think subject to all those valuable restrictions a mile of limits is worth \$25,000?

A.—I don't think you have to go very far to find that out. Mr. O'Brien has paid that amount of money about half a mile away, right close by it, Mr. Ambrose O'Brien.

(And further deponent saith not.)

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Plaintiff's  
Evidence.  
(Supp. Hearing)  
Eudore Bisson,  
Examination  
Oct. 14th, 1932.

Ce quatorzième jour du mois d'octobre, de l'an mil neuf cent trente-deux,

A comparu:—

EUDORE BISSON,

ouvrier, âgé de soixante-seize ans, demeurant à Hull, 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.—Avez-vous déjà travaillé pour M. Cross?

R.—Oui, c'est la troisième fois que je travaillais.

Q.—Quelle est la dernière fois que vous avez travaillé pour lui?

R.—C'est dans mil neuf cent vingt-six (1926).

20 Q.—Qu'est-ce que vous avez fait pour lui dans ce temps-là?

R.—Les derniers temps?

Q.—Oui?

R.—Les derniers temps on chargeait du gravois sur un chariot qui avait comme 80, 90 pieds de long. Il y avait un "hopper" au bout, on chargeait le gravois. On pilait le gravois pour le jeter en bas.

Q.—Où se faisait ce travail?

R.—Droit l'autre bord, devant son moulin.

30 Q.—Je comprends qu'il a un moulin à Farm Point, sur le côté ouest de la rivière Gatineau?

R.—Oui.

Q.—Et vous travailliez sur le côté est de la rivière Gatineau, à peu près vis-à-vis son moulin?

R.—Bien proche, un petit peu plus bas.

PAR LE JUGE:

Q.—Que Farm Point?

R.—Que Farm Point, oui.

40 PAR Me ST-LAURENT, C.R.:

Q.—Qui charroyait le gravier que vous chargiez?

R.—Un nommé Reid. Il y en avait un autre, je ne peux pas le nommer, plus bas encore.

Q.—L'autre était-ce Cove?

R.—C'est un petit homme, je ne peux pas dire.



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Superior Court

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Evidence.  
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(continued)

- Q.—Dans tous les cas il y en avait deux?  
R.—Il y en avait deux, et de temps en temps il n'y en avait rien qu'un. Quand on ne pouvait pas fournir il n'y en avait rien qu'un.
- Q.—Combien d'hommes aviez-vous sous vos instructions?  
R.—J'en avais cinq, six.
- Q.—Des fois cinq, des fois six?  
R.—Des fois ils "runnaient" l'autre bord, ils en renvoyaient.
- Q.—Et vous dites que vous aviez un chariot d'environ 80 pieds?  
R.—80, 90 pieds qui entrait dans une côte à peu près 28 pieds  
10 de haut, et ils ont coupé une tranchée dedans pour mettre leur chariot.
- Q.—Qu'est-ce qui faisait marcher le chariot?  
R.—C'est un gros moteur.
- Q.—Un moteur électrique?  
R.—Un moteur électrique, avec une bâtisse dessus.
- Q.—Comment vous y preniez-vous pour détacher le gravier?  
R.—On prenait de la dynamite. Il y avait des hommes par-dessus qui drillaient, ils le jetaient en bas. L'hiver c'était gelé. Il  
20 n'était pas tout gelé, le dessus était gelé trois, quatre pieds.
- Q.—Il fallait faire des trous là-dedans et mettre des explosifs?  
R.—Driller là-dedans et exploser cela.
- Q.—Pendant combien de temps avez-vous travaillé avec cinq hommes quelques fois et quelques fois six hommes à faire cet ouvrage?  
R.—J'ai travaillé au-dessus de deux mois.
- Q.—Quel salaire vous-même aviez-vous par jour?  
R.—Je ne peux pas dire si c'est quatre piastres et demie ou  
30 cinq piastres.
- Q.—C'était soit quatre piastres et demie ou cinq piastres?  
R.—Autour de cela, oui.
- Q.—Est-ce vous qui aviez surveillé le travail pendant qu'on avait enlevé la terre végétale et qu'on avait placé le chariot?  
R.—Non, quand je suis arrivé là ça marchait. J'ai vu qu'en dessus, à peu près trois, quatre pieds ils avaient nettoyé cela en haut pour avoir du bon gravois. Ça marchait quand je suis arrivé.
- Q.—Savez-vous personnellement quel était le salaire des hommes qui travaillaient?  
R.—Il y en avait qui disaient qu'ils avaient trois piastres,  
40 d'autres disaient trois piastres et demie.
- Q.—Il y en avait qui disaient qu'ils avaient trois piastres, et d'autres disaient qu'ils avaient trois piastres et demie?  
R.—Oui, monsieur.
- Q.—Ce n'est pas vous qui vous occupiez de les payer?  
R.—Du tout, ni d'écrire le temps.

In the  
Superior Court

No. 102.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
Eudore Bisson,  
Cross-examination  
Oct. 14th, 1932.  
(continued)

CONTRE-INTERROGE PAR Me KER, C.R.,  
PROCUREUR DE LA DEFENDERESSE:

Q.—C'était en mil neuf cent vingt-six (1926)?

R.—Oui, c'était autour de cela.

Q.—A ce temps-là vous étiez un des employés permanents de

M. Cross?

R.—Non.

Q.—Vous étiez engagé pour cet ouvrage?

10 R.—A peu près en 1908, 1909 j'ai fait la " dam " en ciment au moulin, ensuite il m'a envoyé chercher deux fois. C'est la troisième fois que je travaillais pour lui.

Q.—Les ouvriers que vous aviez avec vous pour l'ouvrage que vous avez fait de l'autre côté étaient-ils les ouvriers de M. Cross?

R.—A part d'un que j'ai monté de Hull. J'ai monté un journalier de Hull, les autres étaient des hommes de M. Cross.

Q.—Combien y avait-il d'hommes de M. Cross, des employés permanents qui demeuraient à Farm Point?

R.—Je ne peux pas le dire.

20 Q.—Cela coûte plus cher pour miner le gravois en hiver qu'en été?

R.—Bien, il a fallu qu'ils minent cela, ça tombait par gros morceaux comme cela.

Q.—Sur la glace?

R.—Non, c'est sur l'autre côté de la rivière. Cela entrainait dans le gravois, il fallait jeter cela en bas, charger cela, et ça allait comme 80, 90 pieds et il y a le " hopper ".

Q.—Ce n'est pas vous qui avez fait le charroyage?

30 R.—Non, ça marchait quand je suis arrivé.

Q.—Pouvez-vous dire quelle quantité de gravois était miné et charroyé?

R.—Je pense dix, onze voyages par jour. Des fois il y avait deux " teams ".

Q.—Mais la quantité totale?

40 R.—Ils mettaient à peu près comme deux verges par voyage, deux verges et demie. Des gros chevaux, ce nommé Reid qu'il y avait là avait de gros chevaux et il chargeait pas mal fort. Maintenant il y avait une couple d'hommes de l'autre bord pour mettre de la neige là-dessus pour monter sur le " dump ".

Q.—C'est une question de mille verges en tout, vous pensez?

R.—Il devait y avoir cela, parce que quand ils avaient fini il y avait un tas, comme on dit. Je ne peux pas dire combien il y avait de verges. Vous voyez à peu près comment cela charroie vous-même.

PAR LE JUGE:

*In the  
Superior Court*

No. 102.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
Eudore Bisson,  
Cross-examination  
Oct. 14th, 1932.  
(continued)

Q.—Quand vous dites deux verges, deux verges et demie, qu'est-ce que vous voulez dire? Verges carrées?

R.—Carrées, oui, deux verges carrées. Trois pieds carrés "all around" c'est une verge, une verge de sable ou de pierre.

Q.—Ce n'est pas cube cela?

R.—Ce n'est pas la coutume.

Q.—Trois pieds de haut, trois pieds de large?

R.—Oui. Cube cela serait vingt-sept pieds.

10 (Et le déposant ne dit rien de plus.)

*In the  
Superior Court*

No. 103.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
Aime Guertin,  
Examination  
Oct. 17th, 1932.

DEPOSITION OF AIME GUERTIN, A WITNESS PRODUCED  
ON BEHALF OF THE PLAINTIFF

20 On this seventeenth day of October, in the year of Our Lord one thousand nine hundred and thirty-two, personally came and appeared

AIME GUERTIN,

of the City of Hull, Quebec, insurance broker, aged 34 years, a witness produced on behalf of the Plaintiff, who, being duly sworn, doth depose and say as follows:

EXAMINED BY MR. W. B. SCOTT, K.C.,  
OF COUNSEL FOR PLAINTIFF:

30 Q.—Mr. Guertin, you live in Hull?

A.—Yes.

Q.—And you are a member of the Legislative Assembly for the County of Hull?

A.—Yes.

Q.—And a member of the Legislative Assembly at Quebec?

A.—Yes.

Q.—Do you know Mr. Cross, the Plaintiff in this case?

A.—Yes.

40 Q.—Have you known him for a number of years?

A.—Yes.

Q.—Last winter you knew that he had litigation pending with the Gatineau Power Company?

A.—Yes.

Q.—You are the Mr. Guertin whom it appears from the evidence in this case telegraphed on the second February to Mr. Cross that certain legislation had been introduced at Quebec?

*In the  
Superior Court*  
No. 103.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
Aime Guertin,  
Examination  
Oct. 17th, 1932.  
(continued)

A.—Yes.

Q.—After that telegram had been sent to Mr. Cross, advising of the first reading of Bills Nos. 170 and 171, did I (Mr. W. B. Scott) go down to Quebec?

A.—Yes.

(Mr. Ker, K.C., of Counsel for Defendant, objects to this question as illegal.)

10 (The Court reserves the objection.)

Q.—It is in evidence in this case that from the 4th February until the 19th February, apart from week-ends, that I was in Quebec opposing this legislation on behalf of Mr. Cross. Do you consider my attendance at Quebec was necessary?

(Same objection.)

20 (Same reserve.)

Q.—Perhaps you might tell his Lordship what took place during that period in connection with this legislation with regard to Bills 170 and 171?

Mr. Ker: I renew my objection to this line of evidence as having nothing to do with the case.

His Lordship: I will allow the question under reserve.

30 A.—There was a constant canvassing of the Members of the Legislature, and some Members of the Government, with a view of opposing the two Bills which were being presented, those Bills being against the rights of Mr. Cross.

BY MR. SCOTT:

Q.—And did I submit to you a memorandum of what the situation was?

40 A.—You did.

Q.—How this legislation might affect Mr. Cross?

A.—Yes.

Q.—And that was before the Bills reached the Committee stage?

A.—Absolutely.

Q.—Would you consider the information and details I gave to you about the situation were helpful in opposing that legislation?

A.—They were absolutely necessary.

*In the  
Superior Court*  
No. 103.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
Aime Guertin,  
Examination  
Oct. 17th, 1932.  
(continued)

Mr. Scott: I file as Exhibit P-116 a certified copy of Bill No. 171, with endorsement on it, and I also file as Exhibit P-117 copy of Bill No. 170.

I also file as Exhibit P-118 certified print of Assembly Bill 170.

Mr. Ker: I renew my objection, and object to the production of these exhibits as absolutely illegal and irrelevant.

(The Court allows the production under reserve.)

10

BY MR. SCOTT:

Q.—Mr. Guertin, in a Bill amending a Public Statute, is it a matter of course that such Bill is referred to the Committee?

Mr. Ker: I object to this question, this being a matter for the Rules of the Legislature.

20

(Objection maintained.)

Cross-examination

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

Q.—You are one of the Deputies for the County of Hull?

A.—Yes.

Q.—And I suppose, being from the same general direction of the country as Mr. Cross, you were asked to keep an eye on this matter?

30

A.—Yes.

Q.—The two Bills which were subsequently eventually withdrawn were put forward first, I understood you to say?

A.—Yes.

Q.—And were followed finally by the Bill which is now in the Act?

A.—Yes.

Q.—Do you recollect just about when that Bill which is now law was brought before the Committee in Hull, how long it took to decide upon it?

40

A.—I cannot give you any dates. I know the Bill was presented at the Committee meeting.

Q.—And it was passed?

A.—About ten days or two days after the first reading of the original Bill.

Q.—It was only one day, as I remember it. It passed in the last day of the session?

A.—In the dying days of the session.

*In the  
Superior Court*

No. 103.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
Aime Guertin,  
Cross-examination  
Oct. 17th, 1932.  
(continued)

Q.—It was only about a morning that that Bill was under discussion?

A.—As far as I am concerned, it was under discussion for two weeks, the whole matter.

Q.—But not the Bill as passed?

A.—The whole Bill itself, no. It was passed at the last minute.

Q.—You do not know what effect those two other Bills really would have had upon this case, if any, do you?

10 A.—I am not a lawyer, but I was always anxious that my friend should be fully protected, and I was apprehensive.

Q.—Your friend's lawyers did not tell you that there was any reason to be apprehensive, you thought it would be well to be on your guard?

A.—Yes.

BY THE COURT:

Q.—To whom do you refer when you say " your friend " ?

20 A.—I took the question as referring to the lawyers of Mr. Cross, but I might say that other lawyers were consulted by myself who were not possibly very well versed with the matter, who informed me that it had a far-reaching effect.

(And further deponent saith not.)

*In the  
Superior Court*

No. 104.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
A. S. Hamilton,  
Examination  
Oct. 17th, 1932.

30

DEPOSITION OF ALLAN S. HAMILTON, A WITNESS  
PRODUCED ON BEHALF OF THE PLAINTIFF.

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

ALLAN S. HAMILTON,

40 of the City of Ottawa, Ontario, Salesman, aged 52 years, a witness produced on behalf of the Plaintiff, who, being duly sworn, doth depose and say as follows:

EXAMINED BY MR. W. B. SCOTT, K.C.,  
OF COUNSEL FOR PLAINTIFF:

Q.—How many years have you been in the lumber business?

A.—About thirty years.

*In the  
Superior Court*  
No. 104.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
A. S. Hamilton,  
Examination  
Oct. 17th, 1932.  
(continued)

Q.—Do you know Mr. Cross?

A.—Yes.

Q.—And his property at Farm Point?

A.—Yes.

Q.—Between 1920 and 1929, what companies were you connected with?

A.—The Rideau Lumber Company.

10 Q.—During that period did the Rideau Lumber Company have occasion to buy any limits?

A.—Yes.

Q.—On the Gatineau River, or near the Gatineau?

A.—On the Gatineau River.

Q.—Far from Mr. Cross' property at Farm Point?

A.—I should say about twelve miles this side of Farm Point, at least, towards Ottawa.

Q.—About twelve miles nearer to Ottawa than Farm Point?

A.—Yes.

Q.—What did they purchase?

20 Mr. Ker: I object to this evidence. The best evidence is the Deed.

BY MR. SCOTT:

Q.—Did they purchase a considerable area or a small area of timber limits during that period?

(Same objection.)

30 (Objection reserved.)

A.—640 acres, a mile square.

Q.—A square mile?

A.—A square mile.

Q.—How much did they pay for it?

Mr. Ker: I renew my objection. The best evidence is the Deed.

40 BY THE COURT:

Q.—Was there a Deed passed?

A.—Yes, there was a Deed passed. The Rideau Lumber Company must have that Deed.

BY MR. SCOTT:

*In the  
Superior Court*

No. 104.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
A. S. Hamilton,  
Examination  
Oct. 17th, 1932.  
(continued)

Q.—You are not with the Rideau Company now?

A.—No.

Q.—Do you know how much they paid for that square mile?

His Lordship: Ask the witness about the valuation. You can prove the value, but if you want to prove as to the price of the property, you will have to file the Deed.

BY MR. SCOTT:

10 Q.—Can you tell his Lordship what the value of this limit you purchased was?

A.—That is a difficult thing to say. We paid \$1,700 for it, but it was worth a lot more than that.

Q.—\$1,700 or \$17,000?

A.—\$17,000.

Q.—Did you have occasion to go over Mr. Cross' limits on the west side of the Gatineau River?

A.—Yes.

20 Q.—During the winter of 1930 and 1931?

A.—Yes.

Q.—Can you tell his Lordship what value you put upon them per acre?

A.—I put a value of \$20 per acre, on the west side of the Gatineau.

Q.—That was during the winter of 1930 and 1931?

A.—1930 and 1931.

Q.—You know Meach Creek and Meach Lake?

A.—Yes.

30 Q.—Supposing Mr. Cross had had no sawmill at Farm Point available, would you put a greater or a lesser value on the limits that you examined?

A.—A lesser value.

Q.—How would you deduct from them?

A.—I would say about half. They would not be worth any more than \$10.00 an acre, if Mr. Cross had no sawmill at Farm Point or at Mileage 12?

A.—Yes.

40 Q.—How would you think his limits would compare with the limits acquired by the Rideau Lumber Company which you mentioned a few minutes ago?

A.—They are somewhat similar, as far as the lumber is concerned. It would be about 80 per cent of hardwood and the balance would be soft wood.

Q.—Would you consider Mr. Cross' limits were more valuable than the limits acquired by the Rideau Lumber Company, or less valuable?



*In the  
Superior Court*

No. 104.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
A. S. Hamilton,  
Examination  
Oct. 17th, 1932.  
(continued)

A.—They would be worth more before I saw them.

BY MR. KER:

Q.—How do you know?

A.—At the time I saw them Mr. Cross' limits were only worth \$20.00 an acre.

10 BY MR. SCOTT:

Q.—Would you say that Mr. Scott's limits would be more valuable in 1926?

Mr. Ker: I object to this question as leading.

(Objection reserved.)

A.—Certainly.

20 BY MR. SCOTT:

Q.—Generally speaking, in that territory, were limits more valuable in 1926 than they were in 1930?

A.—They were more valuable in 1926.

Cross-examination

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

30 Q.—Are you a licensed cruiser or culler?

A.—I am a culler of the Province of Quebec.

Q.—Are you a member of the Quebec Society of Forest Engineers?

A.—No.

Q.—You estimate, then, the value of Mr. Cross' timber limits on the west side of the river at \$20 an acre?

A.—Yes.

Q.—Do you think they could be sold for that?

A.—At the present time?

40 Q.—Yes.

A.—To a party who would have no mill I do not believe we could, not at that price.

Q.—Not at \$20 an acre?

A.—No.

Q.—You do not agree with Mr. Cross who states in his evidence they could be sold for \$40 an acre right now?

A.—No.

*In the  
Superior Court*  
No. 104.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
A. S. Hamilton,  
Cross-examination  
Oct. 17th, 1932.  
(continued)

Q.—Of course, these limits are not in any way affected by the water of the Gatineau River?

A.—No.

Q.—They are a long way from the Gatineau River?

A.—Yes.

Q.—And quite a way from the Farm Point mill?

A.—I should say about a mile and a half or two miles.

Q.—You mentioned a limit as having been purchased by the Rideau Lumber Company; where was that?

10 A.—At Ironsides. You would know it better by Farmers' Rapids.

Q.—Do you know from whom they purchased it?

A.—From the Holy Ghost Fathers.

Q.—That is the Ecclesiastical College of St. Alexander?

A.—Yes.

Q.—The Fathers of the Holy Ghost?

A.—The Fathers of the Holy Ghost.

Q.—When was that.

20 A.—In 1921.

Q.—That piece of land, of course, had not been cut over at all?

A.—Very little.

Q.—The Rideau Lumber people did not have a mill right there, did they?

A.—They got the Fathers' mill.

Q.—The Fathers had a mill?

A.—Yes.

Q.—And they bought the lumber too?

30 A.—No.

Q.—What was included in that deed?

A.—Simply a mile of limits.

Q.—Right on the water?

A.—I guess the lot partly bordered on the Gatineau?

Q.—Did they buy it all at once?

A.—Oh, yes.

Q.—Do you know the limit at all?

A.—Yes.

Q.—There was quite a stand of pine on that limit?

40 A.—No, very very little pine.

Q.—What was it mostly?

A.—It was mostly hard wood.

Q.—Very heavily wooded?

A.—I could not say it was heavily wooded.

Q.—Did they operate the mill they bought there then?

A.—They did not buy it. They rented the mill.

BY THE COURT:

*In the  
Superior Court*  
No. 104.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
A. S. Hamilton,  
Cross-examination  
Oct. 17th, 1932.  
(continued)

Q.—That is, the Rideau Company?

A.—The Rideau Lumber Company rented the mill from the Holy Ghost Fathers.

BY THE COURT:

Q.—What is the name of that Community?

10 Mr. Ker: It is the Fathers of the Holy Ghost, the Ecclesiastical College of St. Alexander at Ironsides, near Hull.

BY MR. KER:

Q.—Speaking of Mr. Cross' limits on the west side of the river, when did you make a cruise of these limits?

A.—In the Fall of 1930.

Q.—You had never seen them before?

A.—I had never seen them before.

20 Q.—You do not know what they were like then in 1926?

A.—No. I can simply give you an idea.

Q.—Did you make a thorough cruise of them?

A.—I was all over them about a dozen times. I was in and out scaling logs, and looking after the logging operations.

Q.—You were working for Mr. Cross?

A.—Yes.

Q.—You left the Rideau Lumber Company to go and work for Mr. Cross?

A.—It was after I left them.

30 Q.—So at that time, Mr. Cross was engaged in carrying on his lumber business?

A.—That fall, yes.

Q.—And he was bringing the wood in the cut to what place?

A.—On the Meach Creek.

Q.—And he was carrying on at his Farm Point Mill cutting it.

A.—The mill was not running at the time.

Q.—What was he going to do with the lumber?

A.—I don't know. He was going to saw it, I suppose.

Q.—He was taking out logs for that mill, was he not?

40 A.—Very likely.

Q.—You cannot surmise he was taking them out for any other purpose?

A.—No.

Q.—That was three years after the water was up, was it not?

A.—When did the water go up?

Q.—1927.

A.—Three years afterwards.

In the  
Superior Court  
—  
No. 104.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
A. S. Hamilton,  
Cross-examination  
Oct. 17th, 1932.  
(continued)

Q.—When did you enter Mr. Cross' employ?  
A.—I think it was in May, 1930.  
Q.—Are you still with him?  
A.—No.  
Q.—About eight months—eight or ten months.

RE-EXAMINED BY MR. SCOTT, K.C.,  
OF COUNSEL FOR PLAINTIFF:

Re-examination

10 Q.—I forgot to ask you whether you know anything about the piling ground conditions at Farm Point?  
A.—Yes.  
Q.—Would you tell His Lordship, what effect, in your opinion, elevation 321.5 would have on that piling ground?  
A.—It would spoil the piling ground.  
Q.—Where would you say is the natural place for cutting the lumber on those limits that you cruised?  
A.—At Farm Point.  
20 Q.—You said you considered those limits had a greater value in 1926 than they had in 1930 or 1931?  
A.—Yes.  
Q.—Are you in a position to tell us what the value would be in 1926?  
A.—I said about \$40.00 an acre.

Re-cross-examination

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

30 Q.—The mill at Farm Point is in no way actually affected physically by the water, is it?  
A.—No.  
Q.—And the water supply that makes the mill go is not in any way affected?  
A.—No.  
Q.—So there is nothing, insofar as the water in the Gatineau River is concerned at 321.5 to actually prevent the mill operating and turning out lumber?  
A.—No.  
40 Q.—So your sole reason for believing these timber limits are affected two or three miles back, is the fact that the piling ground has been affected by water?  
A.—Yes.  
Q.—The whole thing is the piling ground.  
A.—Yes.  
Q.—What is the area of the piling ground?  
A.—Between three and four acres.

*In the  
Superior Court*  
No. 104.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
A. S. Hamilton,  
Re-cross-  
examination  
Oct. 17th, 1932.  
(continued)

Q.—Have you ever seen the level 321.5?

A.—Yes.

Q.—Do you know where it is?

A.—Yes.

Q.—How many of those three or four acres would be submerged if the water were at 321.5? How many acres out of the lot would be under water?

A.—Nearly three acres.

10 Q.—Three to four you said?

A.—Three to four.

Q.—You think three acres would be submerged?

A.—Yes.

Q.—Of course, that has not been submerged up to the present time?

A.—Pretty nearly.

Q.—How much of it has been submerged. How much of it is still there?

A.—In water.

20 Q.—How much piling ground is there with the water as it is now?

A.—Oh, I should say about half an acre or three-quarters of an acre, somewhere about that.

Q.—Only half an acre there now?

A.—Yes.

Q.—When the water is at 318?

A.—Yes.

30 Q.—You say the difference of three feet between 318 and 321 does not make any difference at all. You say half an acre is submerged, or half an acre left?

A.—Half an acre left.

Q.—Now?

A.—About half an acre to three-quarters of an acre.

Q.—With the water as it is now?

A.—Yes.

Q.—And when it goes to 321.5, how much will be left?

A.—I do not think there will be any left.

Q.—You have not measured it out as to levels, I suppose?

A.—No.

40 BY MR. SCOTT:

Q.—But you have seen the mark at 321.5?

A.—I have seen the mark.

BY MR. KER:

Q.—Whose mark was it?

*In the  
Superior Court*

No. 104.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
A. S. Hamilton,  
Re-cross-  
examination  
Oct. 17th, 1932.  
(continued)

- A.—I could not swear to that.  
Q.—When did you see it?  
A.—I saw the mark on Saturday.  
Q.—Last Saturday?  
A.—Yes.  
Q.—Did you ever see it before?  
A.—No.  
Q.—Was there any part of the piling ground north of the spur-  
line under water on Saturday?  
10 A.—No, but the ground was very soggy.  
Q.—Due to rain or to what?  
A.—Well, it did not appear to be raining. It appeared to me the  
water was underneath.  
Q.—You don't know what the level of the water was that day?  
A.—No, I could not exactly say.

(And further deponent saith not.)

20

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DEPOSITION OF PATRICK O'NEIL A WITNESS PRODUCED  
ON BEHALF OF THE PLAINTIFF.

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*In the  
Superior Court*

No. 105.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
Patrick O'Neil,  
Examination  
Oct. 17th, 1932.

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

30

PATRICK O'NEIL,

of the City of Ottawa, Lumber Inspector, aged 62 years, a witness  
produced on behalf of the Plaintiff, who, being duly sworn, doth  
depose and say as follows:

EXAMINED BY MR. CHISHOLM  
OF COUNSEL FOR PLAINTIFF:

- Q.—Where do you live?  
40 A.—14 Eccles Street, Ottawa.  
Q.—What is your occupation?  
A.—Lumber inspector.  
Q.—For what length of time have you been connected with the  
lumber business?  
A.—Since I was 17 years of age, I really have been in the lumber  
business. For the last twenty years or so I did more on the reporting  
end, reporting stock to the firm.

*In the  
Superior Court*  
No. 105.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
Patrick O'Neil,  
Examination  
Oct. 17th, 1932.  
(continued)

Q.—You mean making inventories?

A.—Taking grades.

Q.—Inspecting?

A.—Inspecting, that is, if some of the lumbermen would write in that they had so much stock for sale, and they had probably three or four, I would go and examine it.

Q.—You would go and examine the stock and advise your employer that it was what he wanted to buy?

A.—Yes.

10 Q.—You know the Plaintiff, Mr. Cross.

A.—Yes.

Q.—Do you know his property at Farm Point?

A.—Yes.

Q.—How long have you known Mr. Cross?

A.—I have known Mr. Cross quite a while. From this firm that I was with, I went to the C.P.R., inspecting ties with him, and I had occasion to ship ties from Mr. Cross' mill and along the Gatineau for about four seasons.

20 Q.—Then, how long back does your knowledge of Farm Point go?

A.—I would say probably—oh, I knew it before I went up there at all, that is, Farm Point, for about ten years at least, but more so in the last five or six years.

Q.—So you have seen Mr. Cross' plant in operation prior to the flooding?

A.—Oh yes, but not to particularly pay much attention to it.

30 Q.—Will you tell the Court whether you think Mr. Cross can carry on lumbering operations at Farm Point, with the waters of the Gatineau River raised to an elevation of 321.5 feet; did anybody point out to you where the waters would be at Farm Point at 321.5?

A.—Yes.

Q.—Who was it?

A.—Mr. Ebert Morrison, on the 13th May, when I was taking stock in the yard. I had taken stock in the yard a couple of times for the Bank. I have done considerable checking up of lumber yards for the Bank of Montreal, and I had been there a couple of times previous to the 30th of May. I was up there in March.

40 BY THE COURT:

Q.—What year?

A.—March of this year. I was up checking the logs that were on the dump and later I went back along the Creek to take an estimate of the logs.

BY MR. CHISHOLM:

*In the  
Superior Court*

No. 105.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
Patrick O'Neil,  
Examination  
Oct. 17th, 1932.  
(continued)

Q.—To revert to my original question: do you think it would be practical for Mr. Cross to carry on his business at Farm Point with the water raised to the elevation which was pointed out to you as being 321.5?

10 A.—He would not carry on more than twenty per cent of his business. He could not carry on 100% I would say, that is, if you take his business to be one hundred per cent, the most he could get in that little yard he has there now, would not be more than twenty per cent, while the balance would have to remain there and eat up the twenty per cent.

Q.—In carrying on even at twenty per cent which you have mentioned would that be done with difficulty or not?

20 A.—Sure. You could not carry on a business like that, not in that particular yard. Of all the yards I have seen this is the worst. He could not operate lumber and cure it for the market, to go into competition with any lumber on the market, because it would have to be condemned. In reporting stocks to any firm, it is practically what you call an open market, and if there are four or five firms selling stock and they quote them to you and give quotations on them, naturally your firm will send you out to inspect these and report on them—well, this stock would have to compete with other stock. If he had not a proper drying area to cure that for the market, he would only have to condemn it. You could not buy it for your firm. Naturally, you would not pass it.

Q.—You consider that condition at Farm Point owing to the dampness would be most unfavorable.

Mr. Ker: I object to this as absolutely leading.

30

(Objection reserved.)

A.—I will tell you about that dampness. I was up there on Saturday, and in May.

BY MR. CHISHOLM:

Q.—Last Saturday?

40 A.—Yes. I went up for my own information. Mostly because I knew I would be called on today. I did not see any piles canting back last May, but on Saturday three piles there are really leaning on the ground now, where they were on the bottom before, and the lumber is tipped up.

Q.—To what do you ascribe that?

A.—That would be due to the flat bottom.

Q.—The effect of dampness?

A.—Oh, yes, wet ground, soft ground.



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(continued)

Q.—Do you call that warping?

A.—Well, it would be worse than warping. It would be deforming. You could not manufacture that again. If you wished to re-saw that lumber into a thinner board, you could not do it, it would just come around your saws and you could not push it through the planer. All this stuff has to be remanufactured and rehandled. On Saturday, in that yard, the water was almost up to the siding, and where the stakes were driven down, you could not see any land at all. It was covered over with water.

10

Cross-examination

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

Q.—You saw this piling ground in May of this year?

A.—On the 30th May.

Q.—And at that time you say certain piles were upright and all right?

A.—They were up, but sinking. On Saturday they were sinking down.

20 Q.—They were beginning to sink?

A.—They were sunk, not beginning to.

Q.—If I understand you correctly, it was your opinion that, knowing what the level would be at 321.5, I think you said Mr. Morrison pointed out to you, that at that level there would not be much more than twenty per cent of the piling ground left?

A.—No, there would not.

Q.—If that is not correct, will you tell me?

A.—When I say twenty per cent—there is an insurance law, you know that, which states that you must pile your lumber 100 feet, at least, from the mill. If I am not mistaken, it calls for 200 feet. Now, I won't swear to that, whether it is under 200, or 200, but I think it is the latter; well, if it is the latter, then there is much less, because this lumber is piled—we stepped it Saturday, 80 feet from the mill, so that breaks the yard up.

Q.—What I wanted to find out from you was, what percentage of piling ground do you think would remain available? I was not aware of that insurance law before, but taking that into consideration, if it is so, what percentage of his original piling ground would remain to him when the water was at 321.5?

40 A.—Well, he would only have about 110 feet.

Q.—How much area would that be?

A.—110 feet on the north side of the track, two piles deep, giving about 350,000 feet of lumber.

Q.—Perhaps you can convert that into area of piling ground after the 321.5 level as compared to what it was before? What difference would that be in area?

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A.—How many acres did he have—five?

Q.—You ought to know?

A.—There is so much covered up with water. He would not have from what I saw on Saturday, I would not call it half an acre.

Q.—About half an acre?

A.—I would not call it that.

Q.—And when you speak of his reduction in his business and all that sort of thing, it is due entirely to the fact that his piling ground is interfered with, is it not?

10 A.—Oh, certainly, his piling ground has gone. There is no air space to cure his lumber.

Q.—I suppose if he had that original amount of piling ground back again there is no earthly reason why the lumber mill there should be affected; his mill is all right?

A.—I suppose if he had it back, it would be all right.

Q.—All I want to know is, your entire idea of the fact of the injuries Mr. Cross has suffered at Farm Point is due to loss of piling ground?

A.—To loss of his piling ground, yes.

20 Q.—I understood you to say you have been inspecting ties for the C.P.R.?

A.—Yes.

Q.—When was that?

A.—Three years ago. I think it is three years ago.

Q.—I think you said it was more in the last five years that you had seen his works up there?

A.—Yes.

Q.—And in that time had he been operating up there?

30 A.—Not to any extent, no. I did not ship any ties from there since then.

Q.—You did not ship any ties for how long?

A.—Not since that year.

Q.—That is, three years ago?

A.—Yes.

Q.—A large part of his business up there was devoted to ties, was it not?

A.—I would say probably fifty per cent or thereabouts.

40 Q.—I think that is what he said himself, about fifty per cent would be ties?

A.—Yes.

Q.—As I understand it, ties are shipped out green. You do not use a piling ground for that?

A.—Not all, only a portion, and the balance, they would have to put them down until later on.

Q.—They are not kept as long as lumber?

A.—No, not when I was with the C.P.R. Of course, there are

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(continued)

no more ties being bought just at the present time, but when I was with them, there must have been twenty cars left over for later in the season.

Q.—But in a general way, the ties are cut and shipped out as they are ordered?

A.—Yes, they are. That is his only salvation, to ship them out green. He was lucky he had that privilege.

Q.—He was lucky he had the tie business to rely on?

10 A.—He was lucky he had that privilege of shipping them green, because, you see, I have shipped on that line, and we did not ship any green ties from any person else. They had to dry out most of the lumber. It must have been a privilege that he was granted by the C.P.R.

Re-examination

RE-EXAMINED BY MR. CHISHOLM,  
OF COUNSEL FOR PLAINTIFF:

20 Q.—It was a special concession to Mr. Cross because of the conditions at Farm Point?

A.—Yes.

Q.—You mentioned one fact about the lumber business, that is, the insurance? I understand the closer you pile your lumber to the mill the more you have to pay for the insurance?

30 A.—Oh, yes, you pay more premium. You see, it does not matter what kind of mill; it may be a water power, a steam mill or any other kind of mill. There is always danger of friction and overheated boxes that would catch fire, because, I remember when I was a boy at Hurdman and Company, that is long ago, it was a water mill, and it caught fire from a heated box and burned up. There was no steam, there was no fire, there was nothing there to start a fire.

Q.—The usual practice is to keep your lumber 200 feet away from the mill?

A.—I think it is 200 feet, and you have to keep it 150 feet away from the centre of the railway track.

Q.—Can you tell me whether you can obtain insurance?

A.—Yes, you can obtain insurance by paying a greater premium. You have to pay for it.

40 Q.—Would you say a man would be quite reckless in piling his lumber close up to his mill?

A.—Sure. The insurance companies very rarely would accept it.

Q.—They would not touch such a risk?

A.—I do not think they would. I know I would not if I was an insurance man.

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Patrick O'Neil,  
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(continued)

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

Q.—This is all presuming you are carrying insurance?

A.—You can presume many things, and many things that you presume are facts.

(And further deponent saith not.)

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ADMISSION

*In the  
Superior Court*

No. 106.  
Plaintiff's  
Evidence.  
Admission re  
Account of  
Hon. P. B.  
Mignault

The parties admit that if the Honourable P. B. Mignault were called, he would say that he had rendered the professional services indicated in Plaintiff's Exhibit P-75, and that his charge was made in accordance with his usual charges for such work.

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DEPOSITION OF ERNEST W. BUSH, A WITNESS  
PRODUCED ON BEHALF OF THE PLAINTIFF.

*In the  
Superior Court*

No. 107.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
Ernest W. Bush,  
Examination  
Oct. 17th, 1932.

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

30

ERNEST W. BUSH,

of the City of Montreal, Official Court Reporter, a witness produced on behalf of the Plaintiff, who, being duly sworn, doth depose and say as follows:

EXAMINED BY MR. W. B. SCOTT, K.C.,  
OF COUNSEL FOR PLAINTIFF:

40 Q.—Mr. Bush, you and Mr. Kenehan were the Official Stenographers who reported the evidence in this case?

A.—Yes.

Q.—Will you file as Plaintiff's Exhibits P-120 and P-121 copies of your accounts?

A.—Yes.

Q.—Exhibit P-120 is for \$784.30 and Exhibit P-121 is for \$343.20?

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No. 107.  
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Evidence.  
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(continued)

A.—Yes.

Q.—I understand one copy of the depositions was furnished, day by day, to the Plaintiff's attorneys during the course of the case?

A.—That is correct.

Q.—How many copies were furnished by you and Mr. Kenehan to the Company's attorneys?

10 Mr. Ker: I object to this question as having nothing to do with the case?

(The Court reserves the objection.)

A.—Two copies.

BY MR. SCOTT:

Q.—I understand these accounts also include such evidence as was taken in French?

20 A.—Yes, they include the account of Mr. Henri MacKay, who took the evidence of the French witnesses and who also reported the argument of Mr. St. Laurent in the French language.

Q.—And Exhibit P-120 includes the transcription of the arguments of Mr. St. Laurent, Mr. Scott, Mr. Chisholm on behalf of the Plaintiff, and Mr. Montgomery and Mr. Ker on behalf of the Defendant?

(Mr. Ker, K.C., of Counsel for Defendant, objects to this question as illegal and irrelevant.)

30 (The Court reserves the objection.)

A.—Yes.

Cross-examination

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

Q.—How much of this bill is for reporting and transcribing argument?

40 A.—\$373.70.

Q.—How much is charged for the Defendant's argument?

A.—Mr. Montgomery's argument, \$43.75, and Mr. Ker's argument, \$133.75.

BY MR. SCOTT:

Q.—These two accounts, P-120 and P-121, which you have just filed are exclusive of the account for taxable stenography?

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(continued)

A.—Yes.

BY THE COURT:

Q.—You charge the same rate for the copies as for the original?

A.—No, my Lord. The rate charged for the copies is half the rate of the original. The rate charged for reporting and transcribing argument is a higher rate.

10 BY THE COURT:

Q.—And for the copies of argument?

A.—We were not requested to make copies of the argument.

BY MR. SCOTT:

Q.—These bills you have just filed are rendered against the Plaintiff?

A.—Yes.

20 BY MR. KER:

Q.—Have they been paid?

A.—Partly.

(And further deponent saith not.)

*In the  
Superior Court*

No. 108.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
J. M. Robertson,  
Examination  
Oct. 17th, 1932.

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DEPOSITION OF JAMES M. ROBERTSON, A WITNESS  
PRODUCED ON BEHALF OF THE PLAINTIFF.

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30

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

JAMES M. ROBERTSON,

of the City of Montreal, Consulting Engineer, aged 59 years, a witness produced on behalf of the Plaintiff (and examined out of Court by consent), who, being duly sworn, doth depose and say as follows:

40

EXAMINED BY MR. W. B. SCOTT, K.C.,  
OF COUNSEL FOR PLAINTIFF:

Q.—You are the Mr. James M. Robertson who previously gave evidence in this case?

A.—I am.

Q.—And I understand you are presently confined to your house

*In the  
Superior Court*

No. 108.  
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J. M. Robertson,  
Examination  
Oct. 17th, 1932.  
(continued)

as a result of an automobile accident, and are under doctor's orders and cannot go down to Court, and that is why we are examining you at your residence?

A.—That is correct.

Q.—You know Farm Point?

A.—I do.

Q.—And Mr. Cross' properties there?

A.—Yes.

10 Q.—Did you have occasion to examine his piling ground?

A.—I did.

Q.—Which he used in connection with his mill business?

A.—I did, on several occasions.

Q.—When were you there last?

A.—The last occasion I was there was in the middle of last summer. I am not sure whether it was the month of August.

Q.—Around August, 1932?

A.—Yes.

20 Q.—What would you say maintaining waters at elevation 321.5 would have on Mr. Cross' piling ground?

A.—In my opinion the surface of the piling ground would become so softened that it would not be suitable for use as a piling ground.

Q.—In giving that answer, do you take into consideration any test you made or saw of the condition of the ground?

30 A.—I had previously familiarized myself with the tests that had been made by Mr. MacRostie, and in order to assure myself that I understood what they meant, I had Mr. MacRostie sink another hole in my presence on the date when I was there, and basing myself upon what he had shown me previously, and what we then saw, I am of the opinion that the piling ground could not be used in the future satisfactorily as a piling ground.

Q.—What was the nature of the ground that you saw?

A.—From the surface to a short distance below the ground was somewhat consolidated, and then from thereon down for a distance (I am speaking from memory) something like 18 feet, the ground got progressively softer and softer, being a fine sandy material with a little clay in it, which is material which does not stand up at all if it is carrying water. That is, it has no cohesion.

40 Q.—And if Mr. Cross lost his piling ground how would that affect his lumber business?

A.—I cannot see how anybody can operate a lumber business without a suitable piling ground. One of the first principles is, you must have some place to put your sawn lumber.

Q.—And with the waters at elevation 321.5, would you say there was any other available piling ground there for a sawmill?

A.—There is none I know of.

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Q.—I suppose you know that he was generating electricity there from Meach Creek?

A.—Yes, I do. He had a distribution system that covered the villages and the community within a few miles of Farm Point, and sold electricity for light and power.

Q.—Do you know that at one time he had been using some of that electricity for working his portable sawmill, which was used alternately at Mileage 12 and at Alcove?

A.—I was told that. I did not actually see the mill in operation.

10 Q.—Do you know that Mr. Cross had a gross revenue from his customers of some \$9,000 a year, and knowing that he used part of the electricity for his portable saw mill, can you give us some idea of the valuation you would place upon his system as a going concern, say, in 1926. Before answering that question, I might say that it is in evidence that his operating expenses were very low, that he had a superintendant who got a free house and free light, and he was paid varying amount by Mr. Cross each year of something on the order of \$100 a year.

20 A.—In a general way, if a man had an electrical business which showed a gross revenue of about \$9,000 a year and with operating expenses, as low as suggested in the question, which would mean only about a thousand dollars, leaving a net of about \$8,000 one would say that the business was worth about ten times that amount, or \$80,000, because ten per cent return on the investment after everything had been provided for, except interest, would be an attractive business.

Q.—You know the saw mill was operated by water power, that is, the saw mill at Farm Point?

30 A.—Yes.

Q.—It was his portable mill that was operated by electricity?

A.—That is correct.

Q.—And if ten and a half feet were taken off the draft tube of his electrical generating plant, would that have a prejudicial effect upon his system? What would have to be done, if anything?

A.—The simple taking of ten and a half feet off the draft tube—I presume you mean off the head?

Q.—Off the head?

40 A.—Is in itself not a matter of such great importance. It is the other factors that come in when that is done that are important in my view.

Q.—What are the other factors?

A.—As I see the factors, Mr. Cross had at Farm Point a number of relatively small allied industries, each of which he worked out in conjunction with the others, looking after all of them himself. So long as he had a more or less balanced set of conditions, all of these industries were profitable, but as soon as any very definite



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(continued)

upset of the balance came into the picture they all became relatively unprofitable. Now, the raising of the water removed the piling ground, or at least, removed it from the possibility of use as a piling ground, which forced the discontinuance of the sawing operation which did away with the men who lived in the neighbourhood, who were employees of his, and helped to load his electric plant, which also did away with the portable saw mills, which helped to furnish load for his electrical plant, and that left him with nothing but a partly injured electric lighting business, with nothing else to carry the overhead, and without a power plant at the moment from which to run it," the result being that that part of the electric lighting business which is left to him on a purchased power basis is not profitable, and cannot very well be, certainly would not be profitable if anybody's time were charged to the operation of it.

10  
Q.—We have filed in this case your account for professional services as Exhibit No. 69, and a detailed account has been attached to Exhibit No. 69: will you look at this detailed account where I see a charge is made of \$7,200 for services, and tell me whether those services were rendered to Mr. Cross in connection with this case?

20 A.—They were.

Q.—And is the charge you have made based upon your usual scale of charges, as a consulting engineer?

A.—The \$150 a day is my minimum scale of charges where I do work on a daily basis, but I would like to explain that when Mr. Cross first asked me if I would undertake to look after the presentation of the engineering features of his claim, I realized that Mr. Cross had no organization, no material resources, and he was making a claim against a company that was amply supplied with resources, with a large organization and efficient technical staff, and consequently it looked as if there was going to be considerable work, and naturally Mr. Cross did not ask me how much a day I would charge him, nor did I say how much I would charge a day. The idea was, I was to do the best I could with the material made available, and Mr. Cross was going to pay me whatever I sent him a bill for, but in view of the turn the case has taken, and under the circumstances of our records, (we do not keep a very close record or a minute account because it is a day to day, and a day tomorrow, and a day next week, and things like that), as far as I can find out there were about 48 to 50 days' time put on, and I have rendered a bill of 40 48 days at \$150.

Q.—And there is an item in addition to that of \$300, for expenses?

A.—Those are out of pocket travelling expenses.

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(continued)

CROSS-EXAMINED BY MR. MONTGOMERY, K.C.,  
OF COUNSEL FOR DEFENDANT:

Q.—In connection with the piling ground, Mr. Robertson, let us just get this of record. First, you are not a lumber man?

A.—I am not.

Q.—And you never operated a saw mill?

A.—I did not.

10 Q.—So your knowledge of what is required for a saw mill operation is very much what my own might be, for instance?

A.—Not quite. We have built one of the largest saw mills in the Ottawa Valley.

Q.—I do not suppose your work in connection with the construction of a saw mill involved anything particular in connection with piling ground?

A.—Oh, no, I do not intend to express the idea that I am an expert on piling grounds, but in designing a saw mill and getting it constructed it was certainly necessary for me to find out something in connection with the piling ground.

20 Q.—For instance, what would you need to find out in connection with the piling ground: did your principals not take the responsibility for that?

A.—Yes, my principals took the responsibility for that.

Q.—What would you have to do, as an engineer, with the building of a piling ground?

A.—Nothing, except as a matter of interest, I would find out for my own information.

30 Q.—So whatever information you may have got was purely incidental, and had nothing to do with your work.

A.—It just added to my general store of information.

Q.—Such as we are getting now, for instance, we add to our general store of information?

A.—I understand so.

Q.—That particular hole you saw dug in August last, was that bored with an augur?

A.—That was bored with an augur.

Q.—How far down did this layer of consolidated stuff go?

40 A.—A few feet. I would not be prepared to say whether it was four or five feet.

Q.—Did you take any field notes in connection with it?

A.—No, I did not. Mr. MacRostie was looking after all that. As a matter of fact, I want to make it clear in connection with this, that it has been my business to what I will call, direct other people.

Q.—As a matter of fact, you are an electrical engineer?

A.—As a matter of fact, I am, but I am several other kinds too.

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(continued)

About nine-tenths of my work for the last twenty years has not been electrical.

Q.—Have you any idea where the water was on that particular day?

A.—The water elevation?

Q.—Yes.

A.—To the best of my recollection it was somewhere around 318. It might have been a tenth or so either above or below.

10 Q.—And what was the elevation of the spot where you dug this hole?

A.—It was very close to the water level. I do not remember the exact elevation of that. I think that is in the evidence.

Q.—On the Meach Creek side of the spur line?

A.—I do not quite understand when you say, the Meach Creek side of the spur line. It was right near that abandoned house. It was not far from the highway. It was only a matter of 30 or 40 feet from the highway.

Q.—Do you know what has been referred to as the delta there?

20 A.—I don't know, any more than I had understood the low lying flat ground in the mouth of the Creek, was the delta.

Q.—So it is about the middle of that?

A.—I could not say as to that. I could show you on the plan. As a matter of fact, the location was given in the evidence. I know where the sidings are, but your description does not convey to me enough information to answer your question.

Q.—Perhaps you can answer, and perhaps not, as to whether it was on the creek side of the spur line?

30 A.—I cannot answer your question in that shape, because I do not know. Show me a plan and I will tell you where it is.

Q.—It is suggested I should ask you if it was downstream? It was from the spur line itself?

A.—I cannot answer that.

Q.—In any event, it was just at the edge of the water at the time, as far as you know, on the ground, 318?

A.—Well, that is, it was very nearly level with the surface of water, if that is what you mean, by on the edge of the water.

Q.—I suppose in a valuation of a power plant of that sort you have to allow for some variation in level, daily or seasonal?

40 A.—Yes, generally speaking.

Q.—When you speak of a controlled level, you would not expect to hold the water at a specific elevation all the time?

A.—No, but one would expect the water would not exceed that appreciably.

Q.—Of course, I mean in any range you have to have a maximum which you cannot exceed?

A.—Yes, usually. You have to pay damages if you do.

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Q.—Operating within your own rights, you have to have a maximum?

A.—Operating within your own rights you have to have a maximum beyond which you would not go.

Q.—As a matter of record, supposing you were expropriating water rights for a power plant, how far above the average elevation would you think it reasonable to take in order to be on the safe side?

10 A.—I think my opinion might vary slightly, depending on the character of the land that was immediately above my controlled elevation, using your own figure, if the banks of the stream were comparatively precipitous, and a difference of a foot or two, would practically make no difference in the flooding, as sometimes is the case: I would do one thing, but on the other hand if there is a large area of low land included within a short distance above my controlled elevation, then, I would have to be a little more liberal, because I would figure some day the water would get away from me.

20 Q.—In any event, you would figure what you would have been establishing to fix the maximum elevation and what maximum elevation would be required under ordinary conditions?

A.—Yes, with all the information at hand, I would estimate that under no circumstances would I need to go beyond a certain figure, and I would buy my rights or acquire them in some form up to that point.

Q.—As you know, this plant has been in operation for some five years?

A.—You mean at Chelsea?

Q.—Yes, at Chelsea?

A.—Yes.

30 Q.—You know pretty well what the range of the elevation of the water has been there?

A.—My understanding has been that the elevations have varied quite considerably.

Q.—And that is more or less normal of a plant of that kind, is it not?

A.—Yes, only I would have thought that such changes in elevation as I have heard about and seen on the records, were rather more than the ones of a plant like that are operated on.

Q.—What range have you reference to?

40 A.—Ranges of perhaps eight to ten feet. I do not mean that that is unprecedented or anything of that kind.

Q.—When you speak of eight or ten feet, between what elevation?

A.—I am speaking of elevations up to 321, and down to something like eight or ten feet below that. Of course, I am not pretending to quote you statistics.

Q.—Are you speaking now of the ordinary normal operation?

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Superior Court*  
No. 198.  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
J. M. Robertson,  
Cross-examination  
Oct. 17th, 1932.  
(continued)

A.—I don't know whether the operation is normal, or whether the water level may have been let down to do work, or for some other reason. I have no knowledge.

Q.—That has not been unusual, to let the water down?

A.—It has been done.

Q.—And you would not figure that as part of the normal operation of a plant?

A.—No.

10 Q.—But in the course of normal operation, there must obviously be a daily and seasonal range coming upon the load and depending upon natural conditions?

A.—When the load on the plant has nothing to draw upon it, the water goes down every day a distance proportional to the pond, and conversely when the high flows are on in the spring, the elevation of the water tends to be towards the maximum.

20 Q.—Then, operating as they do, when you were there and the water was around 318, you would not think the elevation of 321.5 was an unreasonable elevation to expropriate full operations of that kind?

A.—Do I understand your question is, that I would consider expropriation to 321.5 was not unreasonable if the operation was to be conducted at 318?

Q.—Bearing in mind that you know of that power plant for the last five years, and you have described to us the range and an elevation not exceeding 321.5, that would not be an unreasonable elevation to which to acquire rights in view of the last five years' experience?

30 A.—It does not seem to me that the question you are asking is a matter of opinion. One might say that he was going to acquire rights to 321.5, and there is nothing to stop him. There is no particular reason why it should be 321.5 any more than it should be 320.5, but there may be a reason why it might not be something higher if there is some territory which is available which would be flooded.

Q.—You know the territory up there pretty well, so you do not need to theorize about it.

A.—My understanding is the Village of Wakefield would suffer if it was materially higher than that.

40 Q.—What I am trying to get at, and I will tell you quite frankly, and I am sure you will answer my question quite frankly: an operation of the plant for the last few years you would take to be a sufficient period over which to give a reasonable demonstration of what levels are likely to be?

A.—With reasonable qualifications.

Q.—And having in mind those operations with that range of levels such as you have spoken of, you would think that an elevation

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not exceeding 321.5 was, at least, a prudent elevation to which to expropriate full operations such as there have been in the last five years?

A.—I would think, basing myself upon such information as I have, that one might expect the water line to go up as high as 321.5.

Q.—And you tell us it has been around 321?

A.—I have been told it was up to 322. I do not know whether I have seen it actually, but I have been told that, but in any case it has been somewhere between 321 and 320. The question is, would  
10 that affect anything above that?

Q.—I have asked you, and I am quite sure you will answer me quite frankly: for the last five years' operations, you have given a fairly good picture of what future operations are likely to be?

A.—If the load on the power plant is somewhere near normal.

Q.—What I want to clear up is as to the expression that is used in the Act, "Not exceeding 321.5", you would not take that as meaning that the water was going to recede and get to 321.5?

A.—I would understand the Company would have the right to  
20 keep it at 321.5.

Q.—I mean from the point of view of practice, as an engineer, you would not expect, or deem it possible, to hold the water at the maximum elevation specified in the Act?

A.—No, not if I was the operator and was strictly limited to 321.5, that is, I would have to pay damages in some form if it went beyond that. Then, I would naturally operate at a level below that in order to have a margin in reserve.

Q.—And in the ordinary operations of a power plant you have always advised the acquiring of rights two or three feet above your  
30 normal operations?

A.—I think that is standard practice.

Q.—So, having in mind, not exceeding 321.5, that would really refer to operations very similar to what have been conducted in the last five years, would it not?

A.—With some qualifications as to my knowledge of what has been happening for the last five years. I mean, my knowledge in general.

Q.—My statement with those qualifications is a fair one, is it  
40 not?

A.—I would expect the plant would be operated with the levels a little below 321.5, and that the distance below would be governed by the regulating facilities.

Q.—But what I am trying to get at, I tell you quite frankly, and I expect you to be quite frank with me, is, you would not see anything in the expression "Not exceeding 321.5" to indicate that they intended to operate the plant very differently from what they had to do?

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A.—Might I ask you just what the words are immediately preceding the "321.5"?

Q.—I think it is "Not exceeding 321.5".

A.—That is to say, water level?

Q.—Controlled level, not exceeding 321.5. In the first place, what does controlled level mean? Perhaps you can tell us?

A.—Controlled level means that it is a level that is controlled.

Q.—Controlled level does not necessarily mean a constant level?

10 A.—Absolutely not. It means a level that may be controlled, that it shall not exceed 321.5.

Q.—And that reference to controlled level would mean that a reasonable margin above is required to take care of the variations either due to natural conditions, or to varying conditions, or whatever they may be?

A.—But that would be more particularly true at seasons of the year when natural conditions are likely to change suddenly. In longer periods of drought there would be nothing to change.

20 Q.—Bearing in mind that you have to have a plant, and lay out a plant which is there to operate in all kinds of seasons, and is more or less of a permanency, and if you were advising in connection with the construction of a plant, you would expect to be able over a sufficient margin to take care of all likely contingencies?

A.—I would.

Q.—Perhaps we can get to where we were and close this examination very quickly; the expression, "Not exceeding 321.5", would it not, in your opinion, happen to operations very similar to what have been conducted in the past five years?

30 A.—Over a considerable part of the year I would say that was so, but over that part of the year when the precipitation is abnormally low and the water levels are fairly predictable from day to day I would expect the plant, being fully loaded, would operate with a head as high as possible. That means they would hold a level up at or as close to 321.5 as they possibly could.

Q.—But if the load was heavy, that would not be possible in the seasons of the year you have talked about, low water seasons?

A.—When the water was low, it would fall below the controlled levels during the day and it would be restored at night.

40 Q.—But if the character of the load gave a heavier load during the day?

A.—Not necessarily. They would carry even a steady load by withdrawing water from the pond. Of course, the load would have to be lighter at night, or they would not recover.

Q.—Do you know that the Hydro-Electric Power Commission load, which is one of the heaviest loads, is one that varies night and day very much?

A.—I do not happen to remember.

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Q.—Do you know whether there are big paper mill loads that vary very much night and day?

A.—The paper load does not vary very much, except so far as they might use power for steam.

Q.—The paper mill load of the very recent paper mills is a 24-hour operation?

A.—The paper mill load is about 75 per cent load factor.

Q.—You know that a part of that delta was flooded in the spring, do you not?

10 A.—I don't happen to know, but I can guess the water must go over it in the spring.

Q.—I am speaking now of under natural conditions before there was any power plant?

A.—My understanding is that under flood conditions the water goes up to that level.

Q.—That is, irrespective of any power plant?

A.— . . . . .

Q.—And you know that a railway track was put across that delta and has been there for the last forty years?

20 A.—I have seen it there for a good many years. I know it is there.

Q.—And it must have been built upon a ground which had been flooded, say, for centuries at flood seasons?

A.—Yes, but that would be intermittent for just a few weeks in the year, not continuously submerged.

Q.—I suppose even there your answer depends upon the elevation above the bed of the creek, does it not?

A.—Naturally.

30 Q.—The bed of the Creek for instance, would be practically continuously submerged?

A.—Yes.

Q.—And the railway naturally ran across that way?

A.—Yes, it did. Of course, the railway is piled where it crosses the Creek?

Q.—Just the culvert?

A.—Just the culvert, yes.

Q.—Not being a geologist, I do not suppose you would assume to say how long disintegration processes would be liable to take?

40 A.—Do you mean disintegration of the hard upper surface?

Q.—Yes.

A.—I am not prepared to say how long, but I know from the experience of somewhat similar kinds, it must be going on.

Q.—Whether we in our lifetime will ever see the result, I do not suppose you are prepared to answer?

A.—I am not prepared to answer that. I have had the experience last week that it might happen that my life might not be very long.



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Q.—You have had a good deal to do with rural distribution systems, have you not?

A.—I have.

Q.—Do you know what the average gross revenue is from a distribution system, per customer, such as that of Mr. Cross?

A.—Per a customer, we usually figure in good communities—we expect to get about five dollars per head of the population in a given territory, after the territory has been sufficiently worked.

Q.—Five dollars per head per customer, what is that?

10 A.—That, of course, does not mean that everybody is a customer. It means that a family of five would give us \$25, but there would be a few families we would not get at all, so on the average we should get a little better than \$25.00.

Q.—We have it in evidence that Mr. Cross has at present roughly, 190 customers and his gross revenue from them at the present time is around \$3,800?

20 (Mr. Scott, K.C., of Counsel for the Plaintiff objects to this question inasmuch as it is dealing with the year 1932 and not 1926.)

(The objection is reserved in the absence of the Judge.)

Q.—The suggestion is that Mr. Cross has about 190 customers and his gross revenue is \$3,800: that would be about twenty dollars per customer?

A.—That would be about twenty dollars per customer, which, under existing conditions might be expected to be somewhat lower than it would be under normal conditions.

30 Q.—Why?

A.—Because the justly famous depression is still in existence, and people have not money to pay.

Q.—Does that apply to domestic bills?

A.—Not so much as it does to commercial bills.

Q.—I know my experience of another company, with which you are familiar, would indicate that this does not apply so much to domestic bills?

A.—I do not think the inference is correct. I think it does apply to domestic bills, but people are willing to sacrifice other things first.

40 Q.—Has it not been surprising that for electric light bills all through this depression, how little the depression would seem to affect the domestic use?

A.—It has been surprising. It is just evidence that people will sacrifice nearly everything else first.

Q.—And with most of the companies you are familiar with, the domestic load has kept up surprisingly well?

A.—Yes, but that does not mean there has been no shrinkage?

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Q.—Leaving aside Mr. Cross for the moment, the companies with which you are familiar, in connection with the domestic business, had been almost negligible?

A.—It has been slight.

Q.—Do you know anything about the customers that Mr. Cross had at Kirk's Ferry?

A.—Anything specific about it?

Q.—Yes.

A.—No.

10 Q.—Do you know what class of customers they were?

A.—I only know they were customers.

Q.—Do you happen to know that most of them had summer cottages?

A.—I don't happen to know that. It may be so, but I don't happen to know it.

Q.—If you were asked to value a plant, to give a fair market value to a plant with a distribution system such as Mr. Cross had there, would you go about valuing it in the same way that Mr. Cross has done?

20 A.—It would depend, of course, for what purpose the valuation was to be used.

Q.—I take it you do not assume Mr. Cross had an exclusive franchise in that territory?

A.—I presume he had not. I don't happen to know definitely.

Q.—And you know that big plants are being erected along the Gatineau?

A.—Yes.

30 Q.—And that are quite capable at any moment of putting the distribution system of Mr. Cross entirely out of business?

A.—I don't know that. They would have to apply to the Quebec Public Service Commission for rights and they probably would not have got them. The Quebec Public Service Commission is very definitely on record that competition on a territory of that kind shall not be permitted.

Q.—Do you happen to know what Mr. Cross' record was before the Quebec Public Service Commission as regards the quality of his service?

A.—No.

40 Q.—If he did not give a service that was up to standard, would they eliminate that service?

A.—The Quebec Public Commission would insist on having it brought up to the definite standard, I presume.

Q.—Have you ever purchased a distribution system?

A.—I have helped.

Q.—Do you know what the annual revenue is calculated upon as the capital price?

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A.—I know the limits which we all keep in mind in negotiating such purchases.

Q.—I am told that it has become fairly well standardized in this Province on a basis of four times the annual gross revenue.

A.—If you suggested that four was an average between the most parsimonious standards and the most liberal standards, I would say you were not far away, but as a matter of fact from three to six.

10 Q.—For an illustration, I do not suppose you profess to know anything about the gross revenue yourself, to approximate his average gross revenue, with a customer at \$20 a year. Your evidence is that the capital valuation runs from three to six times \$20?

A.—Three to six times the gross revenue. The gross revenue in his case was about \$4,000.

Q.—I am asking you to assume that the gross revenue from Mr. Cross' system, or from any other system if you like, was \$20 per customer, per annum?

A.—How many must I multiply by? How many customers are you going to give me? Only one customer?

20 Q.—I am talking about a distribution system, whether it be one hundred, three hundred or five hundred?

A.—You want the price per customer?

Q.—Yes, precisely.

30 A.—Assuming that other things were normal, the minimum price might be as low as three or four times, and the highest price would be five or six. I have seen properties bought on a basis of six times the gross revenue, and I have also seen them bought for three times the gross revenue, but the general opinion of the people who buy is that they are worth somewhere around five times the gross, in normal times.

Q.—You mentioned the operation of the portable sawmill. That is not a very desirable load for an electrical plant?

A.—Not particularly.

Q.—The sawmill is perhaps one of the worst kinds of loads to get on an electrical plant?

A.—From the standard of the other customers, yes, but it was a desirable load from the standard of Mr. Cross.

40 Q.—Now, I am wondering whether it was or not. I assume that his interests were to some extent the interests of his customers, and the interests of his customers were his interests?

A.—That is true, but the customers being what they were, probably used very little current in the day time, and he operated his sawmill, I fancy, exclusively in the day time, the result being there was not much interference.

Q.—The operation of a sawmill off an electrical system which is supplying electrical energy involves considerable disturbance on the line, does it not?

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A.—Yes.

Q.—And for that reason very few sawmills are operated by electricity?

A.—Except on large systems.

Q.—Do not large systems keep sawmills off their load?

A.—They do not always.

Q.—They do, if they can?

A.—They do not go looking for them.

10 Q.—And most of the mills are operated depending on their size, either by steam or gasoline motor, whatever it might be?

A.—Well, with the exception of the place where a sawmill is relatively small, and the service is relatively large, so you cannot just pull it around.

Q.—Under ordinary circumstances, a sawmill is operated by a small steam plant which burns the slabs, etc.?

A.—Frequently, because you have refuse to burn.

20 Q.—And normally, leaving Mr. Cross aside for the moment, that would be what you might call the standard way of operating a sawmill?

A.—If the proprietor of a sawmill had other reasons for doing it otherwise.

Q.—Would you take it that Mr. Cross had such a surplus of power available that he was able to operate his sawmill without disturbance?

A.—I have no doubt there must have been some disturbance. The question of whether the disturbance was sufficiently objectionable seems to be answered by the fact that his customers stayed with him.

30 Q.—Are you aware of the fact that they had no alternative at that time but to stay with him?

A.—I do not happen to know it, but I can guess it.

Q.—So the question of staying with him would be Hobson's choice?

A.—I am not prepared to express an opinion as to the quality of the service. My only understanding is that the customers did stay with him.

Q.—And your understanding is also that they had no other source of supply?

40 A.—I don't know that that is the reason. It may be the fact just the same.

Q.—And you do know, do you not, that Meach Creek was a very, very variable proposition from hydro-electric point of view?

A.—There was considerable variation.

Q.—And at times he was very short of power?

A.—My understanding is that there were never times when he was out of business for want of power.

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Q.—Perhaps now you will answer my question; there were times when he was very short of power?

A.—Mr. Cross had at his own disposal the regulation of a considerable amount of load, and if he was short of water he might not run his sawmill at the time, and therefore his customers would not suffer, whereas if he had been buying that power from another source he would have insisted on delivery.

10 Q.—His sawmill under those circumstances would be rather a perilous operation if he could only operate it when he had current?

A.—No, because he was not operating a sawmill of that kind. There are a number of small services such as piling up lumber and cleaning up things, and if the mill could not be run for an hour or two, the men could be used to advantage on other work, and that is what I meant when I said, some time ago, that Mr. Cross had a series of operations that tied in with each other, so he was able to use his men and money to good advantage.

Q.—Is it your suggestion that the operation at Mileage 12 could be transferred for an hour or two at other operations?

20 A.—No.

Q.—Or at Alcove?

A.—No, not at all, but they would have other work than just running the sawmill. They would have other work to do at either Alcove or Mileage 12.

Q.—What other work would you suggest he would have to do at Mileage 12 besides running that sawmill?

A.—Somebody has to handle lumber after it is sawn. Somebody has to load cars with lumber.

30 Q.—Is the loading of cars a thing you can postpone to a rainy day or a day when you are short of power?

A.—Yes, in places like Mr. Cross' operation.

Q.—This must have been a peculiar operation?

A.—It was. That is just what it was exactly.

Q.—A very peculiar operation?

A.—Well, it was not conducted at all on the lines of the operations carried on by the International Paper Company, which was the only reason he was able to work.

40 Q.—Then I take it from your evidence that this whole operation of Mr. Cross' that we have been talking about was a sort of thing, that to use a legal expression, sui generis?

A.—That is not too far from what I think.

Q.—We have an idea from what his claim is?

A.—I quite appreciate Mr. Cross' operation was something individual to Mr. Cross.

Q.—And that anybody could have hired people and sent them in there and have conducted a similar operation?

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A.—It had to be done by the man who owned the whole outfit in person, himself.

Q.—And from the value point of view, do you value a plant depending on the personal factor of that man?

A.—Of the value to that man, not the value to some other man. I am trying to form a basis of value on this to Mr. Cross, not to somebody else.

10 Q.—And your calculation, then, does not take into account the market value in the ordinary sense. It, of course, ignores features of that sort?

A.—But the fundamental underlying principles are the same except that those special features add to its value for Mr. Cross.

Q.—But not to what you call its open market value?

A.—No. Its value to Mr. Cross would be higher than its open market value.

Q.—You have told us quite frankly that the diminution of the head by ten and a half feet would not itself be a matter of great significance?

20 A.—It would be a matter of significance to the extent that it would abstract either something more than the proportion which ten and a half feet is to the total head in power by making the wheel not fit its location so well.

Q.—Do you know anything about the circumstances surrounding the purchase of that wheel?

A.—I do not.

Q.—Do you know what head it was bought for?

A.—No.

30 Q.—Then you do not know whether, as a matter of fact, this wheel would operate better, under, we will say, a sixty-foot head as it would with a seventy?

A.—No, I do not, of my own knowledge.

Q.—Eliminating that difference for the moment, because you do not know about it one way or the other; the loss of head would naturally mean a proportionate loss of power, would it not?

A.—Under the new condition, it would mean a ten per cent loss of power.

40 Q.—Assuming the respective losses were so delicately adjusted, to be ten per cent in each case, that he lost ten per cent of his customers through the flooding of certain territory and his head were reduced ten per cent, the thing would still be in this perfect balance from the electric light point of view?

A.—If that were the only change, except that that is not the only change. If no other changes whatever were made, well, then, he would be able to operate the balance of his system as he did before, but with less profit, because he would have lost customers.

Q.—Of course, that introduces another element as to whether

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or not we are bound to compensate him for lost customers, and I do not suppose you wish to testify as to that?

A.—I have no information. I do not know anything about it.

Q.—That is why I asked you to assume certain simple things. You do know that he did lose certain customers?

A.—On the line between Cascades and Kirk's Ferry?

Q.—Yes.

A.—Yes, because I have seen the submerged land or parts of it.

10 Q.—And according to your evidence, or your assumption, certain other branches of his various and diversified industries were interfered with?

A.—Yes.

Q.—So you would have expected the load upon his system to have been considerably less than it was before?

A.—The total load on the electric system would be less after the discontinuance of the sawing operation, certainly, as well as less by the removal of these customers.

20 Q.—Do you know that, after the removal of the customers, complaints came in as to the inadequacies of his service?

(Mr. Scott, K.C., of Counsel for Plaintiff, objects to this question inasmuch as it concerns a period after the date of the approval of the plans.)

(The objection is reserved in the absence of the Judge.)

A.—I have no personal knowledge.

Q.—You have seen the order, have you not?

30 A.—You mean the Public Service Commission order?

Q.—Yes.

A.—Yes, I have seen that. What I meant was, I had no direct connection with either the making of complaints or the satisfying of customers, or anything of that kind.

Q.—He should have more power available at that time, should he not per customer, than he had before?

(Same objection.)

40 (Same reserve.)

A.—I am not able to express an opinion. I know the service was complained of, but I have not sufficient knowledge to be able to say that I know why it was wrong.

Q.—You have spoken of the loss of the piling ground as having shut down the saw mill. Do you know what happened after 1926 as regards the saw mill?

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A.—I don't know that I understand your question. I don't know anything particularly. I have no special knowledge.

Q.—Do you know that the saw mill was burned down in 1927?

A.—I heard about that.

Q.—Do you know that it was rebuilt?

A.—All my information is hearsay.

Q.—Do you know that it is there now, although it was burned down?

A.—I know it is there, and has been there for some years.

10 Q.—And it was burned down some time subsequent to the time the water was raised?

A.—I just don't know. It may be so. I knew about some of these things at the time, but I have no particular dates in my mind.

Q.—Do you know whether it operated or not subsequent to the raisings of the waters?

A.—I don't know.

Q.—Assuming that it were rebuilt and operated subsequent to that time, would that in any way affect your evidence?

20 A.—Not necessarily, because the saw mill could be operated intermittently on the same scale with a very restricted piling ground or by loading directly on to cars.

Q.—So it does not necessarily put the saw mill out of business even on your hypothesis?

A.—It puts the business out of business. My understanding is you cannot run a saw mill that way and get anywhere and make any money.

Q.—Bearing in mind, don't forget, that this was a very peculiar business?

30 A.—It was.

Q.—And it was apparently very elastic?

A.—It was.

Q.—You could pile when and as you liked and saw as you liked, and do everything else just as and when you liked?

A.—No, I do not agree with that entirely, but it had a degree of elasticity out of all proportion to what a large business has. There is no doubt about that.

Q.—Do you know that the principal part of his business in the latter years was in connection with ties or other lumber?

40 A.—I have heard that. I don't know.

Q.—Does that require as large a piling ground as what you have made reference to?

A.—I don't know.

Q.—If you know about lumber, why not about ties?

A.—I did not say I knew about lumber. I said I knew something about lumber.

Q.—And you don't know anything about ties?



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A.—I don't know anything about ties.

Q.—When you referred to a very definite upsetting, you did not refer to the loss of head as much as you referred to the loss of piling ground?

A.—An upsetting of the business conditions?

Q.—You referred to a very definite upsetting?

A.—I referred primarily to the loss of piling ground.

Q.—In fact, his claim pretty well surrounds these losses of the piling ground?

10 A.—Yes, it does. I have already stated that the loss of the piling ground disturbed the lumber business. It disturbed the electrical business.

Q.—You know, do you not, that the railway track was raised?

A.—I have heard so.

Q.—As far as you know, there has been no subsidence?

A.—Do you mean on the main track? Of course, I don't know that there was. I have never heard of it.

Q.—And I suppose the same thing would be true if the piling ground were raised?

20 A.—No, I do not think so.

Q.—Why?

A.—Because there is nothing under the piling ground to support an additional load. The raising of the piling ground would no doubt load the surface; the loading of the surface would cause subsidence of the sub-soil.

Q.—There is as much under the piling ground as there was under the railway track?

30 A.—Yes, and had the piling ground been left in the condition it was for the last two or three hundred years I dare say it would not have settled enough to hurt anybody, but with the water raised and the softening of the surface and the loading of filling material on top of that would simply mean a settlement.

Q.—But the railway runs on the main track, similar to the piling ground, does it not, in parts?

A.—So far as I know. I can only guess. It looks similar.

Q.—And taking the length of that raise, that covers all sorts of conditions, the part where the water was raised and so on?

40 A.—Of course, the railway is only run intermittently with trains.

Q.—Are you suggesting that a load on the piling ground would be greater than a load on the railway track with locomotives and trains going over it?

A.—The load on the piling ground would not be so great as the load on the railway with a train on it.

Q.—And a car loaded is very much different, there is very much more vibration and that sort of thing.

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A.—But in soil of that kind the subsidence would be more pronounced with a continuous uniform load than with a variable load. That is my personal opinion, because ground of that kind does not settle instantly and if your load gets off it before it is settled it does not go on any further.

Q.—There are two kinds of loads on a railway. In the first place there is a permanent load brought about by the raising of the right-of-way itself.

10 A.—You mean the actual weight of the ballasting and filling material?

Q.—Yes.

A.—Yes.

Q.—And then, you get the superimposed weight of the heavily loaded locomotive and heavily loaded cars?

A.—That is correct.

20 Q.—You have the locomotive especially, and that load removed, then take the fill itself, the fill there would make as much per foot of surface load as any fill that is put on your piling ground, would it not?

A.—I should suppose so.

Q.—One would take it, would they not, that a fill put upon a railway should, under normal conditions, be more than the fill put upon the surrounding ground?

A.—If it were put on in the same way and if the conditions of the soil on which it was put were similar I would say there should be no great difference in the action.

30 Q.—That railway stretching as it does right across that whole stretch some considerable distance, no doubt you would expect in certain parts of that character of ground to be very similar to what it is on the piling ground?

A.—I certainly would expect that some distance the railway traversed would be somewhat similar to that of the piling ground, and I would expect the resulting conditions to be somewhat similar providing the fill was put on there the same way as the other fill.

Q.—Providing you put the other fill on the same way as the railway fill was put on?

A.—Something like that. Similar treatment would be expected to give somewhat similar results.

40 Q.—You were asked by Mr. Scott to assume a gross revenue of \$9,000. You do not know anything about that personally?

A.—I do not.

Q.—Nor do you know anything about his operating expenses?

A.—No, I do not.

Q.—Turning to your account for \$7,200. There would appear to be two accounts.

A.—One I think is just some detail of the other. I was asked

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to state what it covered, and the one you are reading now is an attempt to describe what it covered.

Q.—And in that attempt to describe you have marked the services down for \$7,200 and the expenses from \$150 to \$300?

A.—Because there were some other expenses that had not been taken into consideration at the time that was made up.

Q.—You do not profess to have kept the charge in a charge book showing the time you spent?

A.—Not accurately, because it was not done on that basis.

10 Q.—Can you help us to this extent by telling us when these services commenced?

A.—Some of these services go back as far as 1928 at the time Mr. Cross first spoke to me, which was antecedent to the Meach Creek case.

Q.—I take it then this is the first account you rendered?

A.—Yes it is.

Q.—And would cover your services from the time you were first retained by Mr. Cross?

20 A.—That is not correct. When Mr. Cross first approached me the Meach Creek matter had not come up, and as it came up first I did work in that connection, with which, of course, you are somewhat familiar, but that work is not included in that account.

Q.—Have you ever rendered an account for that?

30 A.—No. The point was that in investigating the Meach Creek matters, it was quite evident that a discussion would sooner or later arise regarding the Cascades matter and as it was easier to get all the information at the same time than to get it in two operations, sometime was devoted to collecting information which was not pertaining to the Meach Creek matter at all, and that is included in there.

Q.—So that roughly speaking this account covers services as far back as 1928 onwards?

A.—It includes work as far back as 1928, but I would just like to make it clear that it does not include anything of the Meach Creek business and does include only matters pertaining to Cascades and the Gatineau River.

Q.—For instance, you have made no attempt to segregate services before January, 1931?

40 A.—I have not rendered a bill for that yet.

Q.—I am thinking only of this account which is before us, how it would be possible for you to segregate that \$7,200 into periods before and after January, 1931?

A.—No, I cannot do that with any degree of accuracy.

Q.—I suppose the same thing would apply to expenses?

A.—The expenses are just out of pocket expenses some in the city and some for trips to Ottawa, or rather up to the Gatineau.

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Q.—Had the matter gone on before the Quebec Public Service Commission, a good deal of the work which you did, and which is included in this account would have been relevant to that action, would it not?

A.—Do you mean the action which was desisted from? Do you mean the one that was desisted from when this action was taken? Is that the one you refer to?

Q.—Yes.

A.—The information in that case would be useful.

10 Q.—That referred to information you were asking for at the time?

A.—The information I was collecting, whichever way the case may have proceeded, we would have the information available.

Q.—At that time you were not working in that connection?

A.—No, I was not, because I had no direction on that.

Q.—And you had nothing to lead you to suppose that that action would proceed?

A.—I did not know anything about it.

20 Q.—So that we can take it that at that time you were working in connection with the action that was pending, and on the assumption that that action was going to trial?

A.—I presume that would be true.

Q.—And on the valuation of the Cascades as a water power proposition, I think you have already told us that you assumed that Mr. Cross would have the right to utilize the Pêche Rapids?

A.—Well, as I recall it, I said that.

Re-examination

RE-EXAMINED BY MR. SCOTT, K.C.,  
OF COUNSEL FOR PLAINTIFF:

30

Q.—Do you happen to know that the C.P.R. filling at Farm Point across this delta was raised before the waters were raised by the Gatineau Power Company—the raising of the C.P.R. track?

A.—The raising of the track in anticipation of the raising of the water?

Q.—The raising of the main line was done before the raising of the waters of the Gatineau?

40 A.—I know there was a track there before there was any Gatineau Power Company, and I know that the railway track was raised before the water above Chelsea was raised.

Q.—So that it was laid across the surface of the ground in its natural condition.

A.—In the condition in which it was before the water was raised.

Q.—Do you happen to know that Mr. Cross' sawing at his Farm Point mill would be done mostly in the spring time?

A.—I do not happen to know that, but I know the practice of

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most of the small mills is to saw as early in the spring as they can.

Q.—And that is during the period of high water?

A.—During the period of high water.

(And further deponent saith not.)

10

*In the  
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No. 109.  
Plaintiff's  
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(Supp. Hearing)  
John Omanique,  
Examination  
Oct. 18th, 1932.

DEPOSITION OF JOHN OMANIQUE, A WITNESS  
PRODUCED ON BEHALF OF THE PLAINTIFF.

20

On this eighteenth day of October, in the year of our Lord one thousand nine hundred and thirty-two, personally came and re-appeared

JOHN OMANIQUE (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. W. B. SCOTT, K.C.,  
OF COUNSEL FOR PLAINTIFF:

30

Q.—You have already been heard as a witness in this case?

A.—Yes.

Q.—I wanted to ask you if you could assist his Lordship by telling him what you considered Mr. Cross' lumber mill to be worth in 1926, that is before flooding?

A.—As far as I can understand, Mr. Cross claims he is cutting around three million feet since he started.

Q.—Lumber that he cuts?

A.—That he cuts every year. I take it the mill site ought to be worth \$200,000 or more, to him.

40

Q.—That was before the flooding?

A.—Before the flooding, and in sawing it say for twenty years it ought to be worth more than that to him.

Q.—You are engaged in the lumber business yourself, I think you said, in your examination in chief?

A.—Yes.

Q.—And have been for how many years?

A.—Around thirty years. I have been steady for twenty-two years.

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

Q.—You do not really know, though, just how much he did cut?

A.—No, I do not. By his figures he claimed he cut three million feet, ever since he started. That is a good many years.

Q.—How long do you think his limits would last at that rate?

A.—At that rate they would last as long as he lived. He figures he has around forty or fifty miles more, and if there is any timber at all, I figure the limits grow around five to ten per cent?

Q.—Your idea is that he has forty or fifty miles?

A.—That is what I understand. He had not that. What I mean is, he claims he can get it.

Q.—And you think that should reproduce itself every five or ten years?

A.—Five to ten per cent, which would be ten or twenty years.

Q.—You think these limits would reproduce themselves?

A.—Excuse me a minute, I am going to put a value, in cutting timber; I cut on the McLaughlin property about eight years ago, timber that the ground was farmed thirty-six years before. I cut there, and I cut white pine, a sixteen-foot log that gave a twelve by twelve, so how would you figure that?

Q.—I am afraid I am not a sufficiently good figurer to be able to do it, but I would like to know how you figure it, if you are going to have your forest reproduce in ten to twenty years, especially hard wood?

A.—It is mixed wood.

Q.—There is a little bit of hard wood on it. Do you think that it is a fair assumption that those forests would reproduce themselves in ten to twenty years?

A.—I think pine—hemlock will double in twenty years.

Q.—At any rate you really do not know anything about the kind of limits Mr. Cross has?

A.—Well, to tell you the truth, I don't know.

Q.—You don't know how large they are?

A.—Only by hearsay. I have never travelled them.

Q.—You have never been on them?

A.—No.

Q.—Approximately, how many feet board measure can you pile in an acre?

A.—I could not tell you that offhand either. On a pile, for piling, we figure on eighteen feet square for a pile sixteen feet high, which holds about from twelve to twenty thousand feet. It depends on the kind of stuff we pile.

Q.—You don't know what is assumed generally to be the rule in

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piling with respect to an acre? You don't know how much feet board measure you can carry on a pile?

A.—I never figured that. We figure on using 18 feet square on a pile of lumber, that is lumber that runs to 16 feet.

BY THE COURT:

Q.—How many piles can you place in a square acre?

10 A.—We never figured that. I always figured on the 100 feet. We figure out so many hundred feet and we put so many piles.

BY MR. KER:

Q.—Don't you know, as a matter of fact, that it is pretty well taken to be standardized that you can pile a million feet in an acre?

20 A.—Now, I would not say. We have piled white pine, and the good grade, we could not go near piling a million feet in an acre, because there is different lumber. Take basswood, you pile up basswood which in length does not average, I do not think, over 10 feet or around 12 feet. You have to leave 8 feet between each board.

Q.—Eight feet?

A.—I am sorry, 8 inches between each board so the air will go in.

Q.—What distance would you leave between each pile?

A.—In stuff like that we should leave six feet at least, that is, behind, and two feet the other way. I figure that Mr. Cross' business at Farm Point would be worth \$3 a thousand feet more than if it had been back in the woods.

30 Q.—\$3 more than it is on the stump?

A.—Than if it had been back in the woods, if he would have to put a mill in there and cut it; on account of its handiness to the track and to the highway. That is the way I figure it?

Re-examination

RE-EXAMINED BY MR. SCOTT, K.C.,  
OF COUNSEL FOR PLAINTIFF:

Q.—In arriving at this market value of \$200,000 did you take into consideration the location of the Farm Point sawmill?

40 A.—I certainly did, the location it was in.

Q.—Did you consider it a favourable location?

A.—It certainly is.

Q.—Will you tell his Lordship the facts connected with that situation?

A.—I figure the lumber is worth \$3 a thousand more at Farm Point than if you had to put a sawmill in the woods and cut it.

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Q.—Did you take into consideration the fact that the saw mill was operated by water power?

A.—That is the way I figured, by water power, and also on account of the handiness.

Q.—And with reference to the roadway?

A.—And to the track.

Q.—And to the C.P.R. track?

A.—Yes.

Q.—And I suppose, too, its proximity to Ottawa?

10 A.—Well, I understand it is only sixteen miles to Ottawa by road, and if Mr. Cross had to go in the woods, he would have quite a time getting them up. We all know woodwork is harder.

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

Q.—You think that is a desirable place for a saw mill at Farm Point?

20 A.—I do not think. I know it is as far as that goes.

Q.—And you have elements of advantage there that you would not be able to find anywhere else?

A.—I do not see how you would.

Q.—You have water coming down capable of operating your mill by water power, and you have a nice hill which gives a good head of water, and close to the C.P.R.; all these elements are elements which would add to the value, apart entirely from the piling ground?

30 A.—Well, sure, and if the piling was not there, what would you do?

Q.—But, as I think I pointed out to you, when I examined you before, where you have a nice site like that, you have to do as well as you can with the piling ground?

A.—Well, if a fellow had that piling ground, and somebody took it away from him . . . . .

Q.—You would not say you thought the piling ground was the most desirable site in the world, would you?

40 A.—I will tell you, if we figure on a mill site, that is the first thing we must figure on, is our piling ground, if we have no piling ground that mill site is no good to us.

Q.—But a mill with water to make your mill function, the good location for the mill with water power behind it is the main thing?

A.—With a piling ground it is, because you have to dry lumber before you can load it.

Q.—What species of timber or lumber or wood would you think was added to any value, to the extent of \$3 a thousand feet, by being close to that mill?

Re-cross-  
examination



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A.—Any kind of lumber. I don't care what kind of lumber you take out, it would cost \$3 more a thousand to take it out back in the woods and saw it, than to bring it down there and saw it with the water power he has there, and deliver it to the market.

Q.—How did you come to your estimate in making up your \$200,000?

A.—By Mr. Cross saying what he sawed. He figured he sawed there three million feet a year.

Q.—It was not the site so much . . . . .

10 A.—If the saw mill was some place else or away from the track and not so handy, it would not be worth so much.

Q.—But it would be worth something?

A.—I suppose it would.

Q.—All saw mills are not as favourably located as that?

A.—They certainly are not.

Q.—Did that also include his forty miles of timber limits?

A.—I don't know anything about his timber limits. I am just going by what he said he sawed.

20 Q.—You would not think his timber limits would be affected in any way in value being so close to Ottawa, as you speak about?

A.—Yes, I think they would. They would not be worth as much, as they are not as handy to get up. Being only eighteen miles from the city would be worth money.

Q.—If they were not affected by the water, they would still be a very good physical asset, according to you, they would be so close to Ottawa?

30 A.—They certainly would. They are worth \$3 more a thousand to Mr. Cross at the site where it is, with a piling ground, than they would be back in the woods.

Q.—How is your \$3 per thousand feet related to your \$200,000 value?

40 A.—When we build a mill, we figure on the time. If I build a mill I would figure on what I have behind it, how much I have to saw. We have to put an estimate on our mill when we build it. Say that we build a mill which will cost \$20,000; we just start with a small mill of \$20,000; we have to figure then how much timber there is behind it, to build that mill for the \$20,000, and pay the insurance and the interest on the money, how much timber there is, and how long it would take to cut it.

Q.—What about the \$200,000?

A.—I figure on Mr. Cross being there twenty years.

Q.—I am still unable to see where you get \$200,000. I can quite understand, when you build a mill, you have to keep on going a certain length of time, in order to pay for it.

A.—To pay for it.

Q.—How does that work out at \$200,000 for Mr. Cross' mill?

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A.—Well, if Mr. Cross has three million feet to cut there for twenty years, every year at \$3 a thousand, what would it amount to?

Q.—Oh, that is the total profit on it, \$3 a thousand?

A.—Yes, that is the lumber.

Q.—That is \$9,000 a year?

A.—\$9,000 a year.

Q.—Providing he is sawing to capacity?

A.—Yes.

10 Q.—And in twenty years it is \$180,000; that is the way you figure it?

A.—Well, then, I figure his wood, slab wood at \$2.00 a cord.

Q.—In other words, in making his value out for his mill, you figure his entire gross takings for twenty years?

A.—Not at all. It is extra.

(Mr. Scott, K.C., of Counsel for Plaintiff, objects to this evidence as irrelevant.)

20 (Objection reserved.)

Witness (continuing): This is what I am after, just how much less he can take it out for at Farm Point than he can at any other place. Those are my figures. If I go into a wood to build a mill, I figure on getting as cheap a place as I can to build it, to get my timber out, and to get it to the mill where I can deliver it to the closest market.

30 Q.—And you figure each one of those, \$3 per thousand, capitalized, due to the fine place he is in is worth \$200,000 to him?

A.—In twenty years, with his mill and wood.

Q.—If you only had a supply of timber for one or two years, would you figure that same way?

A.—No. If there is only a supply for one or two years, you could not figure it that way. I am not proving what Mr. Cross has, but just by his own estimate. I don't know anything about his timber which is on the work.

40 Q.—You are really basing your evidence on what he has told you?

A.—On the work he has got. I figure how much cheaper he could take out his lumber at Farm Point than he could in the woods, because I have had mills all over. I had a small mill I started in 1902, the first little mill I built, and it cost me \$4 a thousand just to haul my lumber alone. Where my mill is now it costs me about 45 or 50 cents to load it. That is the difference in handling lumber.

Q.—Usually, the great thing is to move your mill to the most advantageous point to take advantage of your lumber?

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A.—Yes. Another thing, I use steam and it costs more.

Q.—That is the value of his site?

A.—That is the value of his site, and on the other hand if he was using steam—say he saws 25,000 feet a day, it would take about eight cords of wood a day, which I figure his wood there at Farm Point would be worth \$6 a cord. I am speaking of hardwood now, and there is another saving he would have which is a very nice saving.

10 Q.—That is, due to his water power?

A.—Due to his water power and his ground below there, being handy.

Q.—It is a fact really that that creek coming down there just happens to be in the right place in relation to his other things?

A.—He must be pretty good to get that.

Q.—He has it, has he not?

A.—He has it there, if he can only hold the piling part and have it so he can handle it right.

Q.—That is all he needs?

20 A.—That is all he needs.

Q.—To do his piling?

A.—Yes. If he has to haul his lumber away and pile it, it will cost him extra.

Q.—And that is the sole thing?

A.—Yes.

Q.—As to his value, as far as you are concerned, if he can have his piling ground he is all right there?

A.—Sure, O.K.

30 (And further deponent saith not.)

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Plaintiff's  
Evidence.  
(Supp. Hearing)  
N. B. MacRostie,  
(Recalled)  
Examination  
Oct. 18th, 1932.

DEPOSITION OF NORMAN B. MACROSTIE, A WITNESS  
RECALLED ON BEHALF OF THE PLAINTIFF.

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

10 NORMAN B. MACROSTIE (Recalled),

a witness already examined and now recalled on behalf of the Plaintiff, who, being duly sworn, doth depose and say as follows:

EXAMINED BY MR. W. B. SCOTT, K.C.,  
OF COUNSEL FOR PLAINTIFF:

Q.—Will you file as Exhibit P-122 Statement of the salvage at Farm Point?

20 A.—I will.

Q.—On this Statement I see you have on the first column the replacement value according to you; in the second column the fair value, and in the third column the salvage value?

A.—Yes. The first two columns have gone in in evidence. It is just merely a summary for your convenience, my Lord.

Q.—I see a notation at the bottom: "If the Plaintiff did not develop the water power at Cascades, the following items should be added to the above figures: land submerged at the elevation of 318, \$24,000." That would be added to the price value on column 1. To  
30 what land has that reference to?

A.—To the land that is below 318.

Q.—On the Delta?

A.—On the Delta.

I might say in connection with that item, the division of the land which I made in the credit, which I said should be allowed to the Gatineau Power Company, was this item of \$24,000 for land below 318. I stated in my evidence that the land between 318 and 321 on our proposed development could be reclaimed if done before the water had been raised.

40 I also stated that with the water at 321.5 there was a little ridge to the north of the siding which could be filled in; as you approach the siding you would have to stop with them, so that of the one acre more or less which is north of the siding, there would be possibly less than half an acre which would admit at all of being filled.

Q.—For the piling ground?

A.—Yes, because the rock went close to that edge. As you get further away from the rock, you get a ridge upon it you cannot fill,

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and I say there would not be more than half an acre around that ridge, and in a shape that would not be suitable for piling ground by itself.

Q.—I find in going over the pleadings we omitted to ask you to give the Court a valuation of the land at Mileage 12, which was owned by Mr. Cross. Are you in a position to give us a valuation?

A.—Yes, I can place my valuation upon it. I would say that this land at Mileage 12, due to its geographical position . . . . .

10 Q.—That is, prior to the flooding?

A.—That is prior to the flooding, adjacent to the roadway, and with the siding there and adjacent to the southerly end of the timber limit taken altogether, that it should be more valuable than for cottage sites, and those run up to \$2,000 an acre, a little over \$2,000. There is something over five acres there, so, between \$10,000 and \$12,000.

Q.—Some or all of that land has been submerged?

20 A.—A portion of it, the lower portion upon which the road was situated that served this mill site. The site is submerged and the greater part of the lower land which was used for mill purposes is submerged.

Q.—How much, approximately, did the waters go up at Mileage 12?

A.—They came up over twenty feet. I have not the exact elevations. The water was spread a lot below the road.

30 Q.—Mr. Langford, in giving evidence, was using a plan which was filed as P-112, and on that plan appeared two red pencil lines, and Mr. Langford, if I remember correctly, said that he understood the piling area that was formerly used was between those two red lines?

A.—Yes.

Q.—Is that correct?

A.—That is correct to the best of my knowledge.

Cross-examination

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

40 Q.—As to this Mileage 12 property you were asked to put a value upon, what was the total area of that under natural conditions; I am speaking now without any reference to this development?

A.—I believe the Deed called for something around five acres. I am trusting to my memory on that.

Q.—You are sure it is as much as that?

A.—Well, I am trusting to my memory.

Q.—How many acres altogether have actually been submerged of those four or five acres, or whatever they may be?

A.—It is shown on the exhibit filed.

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Q.—Tell me what it is?

A.—I cannot tell you from memory.

Q.—Am I right in saying that it is about 1.3 acres?

A.—Whatever area is shown on that expropriation plan is correct, I would take it.

BY MR. CHISHOLM:

10 Q.—Exhibit P-92?

A.—Exhibit P-92.

BY MR. KER:

Q.—But the Expropriation Plan is not the submerged line, it is not to 321.5?

A.—The Expropriation line was to approximately 325.

Q.—Do you know how much of that property is really affected to 321.5, or would be?

20 A.—I would say it would be fairly close to 1.3 acres.

Q.—And the balance of the four or five acres, whatever it is, still remains to Mr. Cross?

A.—Yes.

Q.—Except the portion that was taken for the Canadian Pacific Railway right-of-way?

A.—Yes.

Q.—For which he is at present, I understand, in expropriation proceedings with the Canadian Pacific Railway?

A.—I believe so.

30 Q.—Is that a desirable property for cottage lots?

A.—There are quite a number of cottages in that vicinity.

Q.—What would lead you to believe those are worth \$2,000 an acre?

A.—\$2,000 is around the highest that had been sold on that basis, and I maintain that as a business site, it certainly is higher than a residential proposition. That is why, and due to its location where that siding was, and the convenience of the **thing**.

Q.—Then, you are valuing it, not on account of its desirability for building purposes, but as a desirable place for a saw mill?

40 A.—Yes, and I base my opinion on the fact that it is more valuable for a business proposition than for cottage sites.

Q.—What do you mean by a business proposition?

A.—The lumber business.

Q.—I still want to find out why it should be desirable for a lumber business site?

A.—In 1926 it was adjacent to the highway with a siding on the front of the property. The rear portion of the property was

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quite steep, upon which he could send the logs down hill, to work down hill all the time. The access to this property for hauling logs was through a natural gulley which ran back through Mr. Cross' timber limits, through the southern end of them and as such it made a convenient down hill operating concern.

Q.—But he was cut off from any access to his own limits by the lands of other people. Why do you speak of this gulley. He had no right to drive through this gulley?

A.—All I can say is, that he used it.

10 Q.—Had he any ownership in the gulley?

A.—I cannot say. I know he used it.

Q.—You say he had a road in front. As a matter of fact, under natural conditions the railway ran right along in front of this property, did it not, and then, on the other side of the railway ran the road between him and the river?

A.—Certainly. That is the condition all the way up the Gati-neau, from Chelsea all the way up.

20 Q.—You would not think that that particular acre, or two or three acres, was so amazingly wonderful for a lumber business that it should be preferred over a similar piece in the locality?

A.—I would, and I want to say I think Mr. Cross showed wonderful foresight and ability in choosing his locations for operations?

Q.—You think he did?

A.—I think he did. I am not a lumber man, but to me as a layman it appears that such was the case.

Q.—And drop this portable mill down on this site every second or third year?

30 A.—He used it down there. I don't know how often.

Q.—It was not a permanent mill?

A.—It was a permanent site. It was a location where he could haul out logs, have them made, and put his portable mill down there, and saw the logs up while he was filling some other piling ground, the one at Alcove.

Q.—You do not think there are any other sites there that could be used for a portable mill just as well as that one?

A.—In combining all the features Mr. Cross had there.

Q.—You mean the particular siding?

40 A.—The siding, with the down hill operation, and with the gulley running into the timber limits?

Q.—But he has no right to the gulley?

A.—I said he used it.

Q.—And he has no particular right in the rolling down process, has he, except insofar as concerns his own property?

A.—On his own property, yes.

*In the  
Superior Court*

No. 99.  
Plaintiff's  
Evidence.  
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N. B. MacRostie,  
(Recalled)  
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(continued)

Q.—And the whole Gatineau Valley is of the same geographical features?

A.—No. The Gatineau is a valley, but with the combination of the siding and of the road and the gulley running into his limits, where will you get another one that is the same?

Q.—The siding is a matter that can be made by man, and he did not have any ownership in the siding at all?

A.—It was there.

10 Q.—But a siding can be placed at any place where the Railway Board will authorize?

A.—Certainly.

Q.—You do not mean to tell me, knowing the Gatineau as you do that there are not one hundred other points such as Mileage 12 and Alcove, and that the lumber business could not be carried on?

A.—Not with reference to his timber limits.

Q.—He had no access to his timber limits?

A.—I say he used that gulley.

Q.—You could use other gulleys then, under the circumstances?

20 A.—I don't know of any other gulleys that ran into his timber limits.

Q.—How far away were his timber limits?

A.—The closest point would be about a mile and a half or so, that you can get on.

Q.—I think you deposed the other day that in your opinion this Farm Point lumber business was a complete loss, and His Lordship asked you whether there was not any salvage value about it, and I understand you told His Lordship you would prepare what, in your estimation, would be the salvage value, and I understand  
30 you have produced that as Exhibit P-122, is that correct?

A.—I have.

Q.—You are, of course, assuming in connection with the preparation of this statement Exhibit P-122, that the whole business is a total loss?

A.—I am assuming that Mr. Cross cannot be rehabilitated as he was before.

Q.—You are assuming that?

A.—Yes.

40 Q.—In other words, that he cannot have restored to him the necessary piling ground to carry on his business?

A.—I think I stated in my evidence there was the matter of the piling ground, and I also said there was a very serious disturbance of his business balance.

Q.—Business balance?

A.—Yes.

Q.—That is the expression we heard yesterday from Mr. Robertson?



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A.—It was my own, used about a week ago.

Q.—Perhaps Mr. Robertson adopted it from you. It is rather an unusual expression?

A.—Mr. Robertson is laid up, and I have not seen him.

Q.—Well, that is just an aside. I see that you completely wipe out all the machinery in the mill?

A.—No.

Q.—Except \$4,000?

A.—I allow him their value as a salvage.

10 Q.—Of course, as to the machinery in the mill, there is nothing to prevent its functioning today as well as it ever functioned?

A.—No.

Q.—And as to the buildings, apart from those which are physically affected to \$6,000 or \$7,000, they are all right today, are they not?

A.—They are physically all right.

Q.—But still you put them in as worth \$70,000, and a fair value of \$52,000? All you allow over \$35,000 is \$8,900?

A.—On a salvage basis.

20 Q.—What do you mean by a salvage basis?

A.—The price that Mr. Cross would likely get for these buildings when the water is raised to 321.5, and he is forced to discontinue his lumber business.

Q.—So that it is all really predicated on his being forced to discontinue his mill business?

30 A.—No, not entirely. The matter of the land itself, the valuation I put in—I forget the exhibit number; it is an item of \$16,000 that is affected by the raising of the water to 321.5, irrespective of the business end of it.

Q.—I do not exactly understand what you mean. To make the matter short, it is your opinion that a controlled elevation of water of 321.5 would so interfere with Mr. Cross' capacity to operate his mill that his lumber business at Farm Point would become a total loss?

40 A.—I was explaining the land part will be affected by itself. You have to distinguish between the lumber business itself and the other assets which he has there. I put in certain other land which is entirely away from the mill, that upon which his summer residence is situated, that is, the land north of the Muluva Hill road, and east of the C.P.R. right-of-way. That is the area which I say will be injuriously affected.

Q.—I am speaking now of this concentration at the mill property. I quite admit insofar as any properties are concerned which have been actually affected by the water, that those are quite properly chargeable to the Company?

A.—And are included in this.

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Q.—What I am getting at is, in giving this salvage value you are wiping out the whole industry as a business?

A.—Yes.

Q.—The whole for the sake of this piling ground?

A.—Is I explained before, no.

Q.—What is it?

A.—As I stated, it was the disturbance of the business as a whole, as well as the balance to the piling ground. The piling ground is the main feature.

10

BY THE COURT:

Q.—That is only at Farm Point?

A.—At Farm Point.

BY MR. KER:

Q.—Let us stick for the moment just to the lumber business. How is it the balance is upset at Farm Point?

20

Mr. Scott: I object to this as not proper evidence for cross-examination.

(The Court reserves the objection.)

A.—I stated it was on the basis of wiping it all out.

BY MR. KER:

30

Q.—It includes the wiping out of the storage dams up on the backwaters, higher up on the uplands?

A.—As stated.

Q.—Completely?

A.—Completely. I would say, my Lord, that these items included in this last exhibit were those covered by P-65 and P-66, with the exception of the latter part, that is, the Mileage 12 and the land portion which came in in two other paragraphs.

Q.—The one you referred to in this exhibit as land Exhibit No. P-something?

40

A.—I had not that with me.

Q.—Is that supposed division you speak of?

A.—It is that land north of the Muluva Hill road and east of the railway, together with the water front.

Q.—This is the power house and draft tube?

A.—Yes.

Q.—Concrete saddles and power house equipment?

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(continued)

A.—Yes.

Q.—And a complete distribution system and everything else, according to this statement, is also wiped out?

A.—I have allowed a salvage of \$8,000 here.

Q.—That is the valuation of physical articles, which has nothing to do with the business?

A.—Oh, no, nothing as a going concern. It is just what he probably would get for them if he was discontinuing.

10 Q.—In other words, you are wiping out his lumber business and electrical business, and the total result to him, according to you, is \$26,655?

A.—Yes.

Q.—This land submerged at elevation 318 is the land I think we have referred to as being in the delta, is it not?

A.—Yes. There is a credit item. I gave credit for.

Q.—How many acres are there?

A.—It is in the land that is in the delta.

Q.—How many acres?

20 A.—I think in the neighbourhood of 16 acres.

Q.—That is nearly at the rate of \$2,000 an acre for land submerged under water?

A.—About \$1,500.

Q.—How did you make up the \$24,000? \$1,500 an acre for land, most of which is under water?

A.—I am using that item to give you a credit.

Q.—You are putting it into the fair value of his assets, are you not?

A.—There is an explanatory paragraph on the side.

30 Q.—Supposing the question of the 318 development does not come into the picture at all, then you are valuing the land at the bottom of the river at \$1,500 an acre?

A.—Oh, no.

Q.—At the bottom of the creek?

A.—There is a vast difference between the bottom of the creek and the delta. The creek is cut away through the delta. It is that land at the bottom of the falls at Meach Creek. The water itself has cut a path through this delta. The top of the delta itself was quite a number of feet above the bottom of the creek.

40 Q.—That is the same land on which Mr. Cross has his lumber business that, in his declaration, he states would not be affected if the water was raised up to that level?

A.—I cannot say. I did not hear Mr. Cross give his evidence as to that.

(And further deponent saith not.)

*In the  
Superior Court*

No. 65,  
Plaintiff's  
Evidence.  
(Supp. Hearing)  
De Gaspé  
Beaubien,  
(Recalled)  
Examination  
Oct. 18th, 1932.

DEPOSITION OF DE GASPE BEAUBIEN, A WITNESS  
RECALLED ON BEHALF OF THE PLAINTIFF.

On this eighteenth day of October, in the year of our Lord one thousand nine hundred and thirty-two, personally came and reappeared

10

DE GASPE BEAUBIEN (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. SCOTT, K.C.,  
OF COUNSEL FOR PLAINTIFF:

Q.—You are the Mr. Beaubien who has already given evidence in this case?

20

A.—Yes.

Q.—You know Farm Point and this little electrical development Mr. Cross had at Meach Creek?

A.—Yes, I have seen it on different occasions.

Q.—Assuming that the head available to Mr. Cross prior to the flooding were 73 or 74 feet, as I think the evidence is, assuming that 10 to 11 feet of that head were lost by reason of the raising of the waters of the Gatineau River by the Defendant Company, what, in your opinion, would be the loss of capacity to generate electricity?

30 A.—My impression is, the head was 72 feet, and if 11 feet are taken off . . . . .

Mr. Ker: There are not 11 feet taken off.

BY MR. SCOTT:

Q.—Ten and a half feet taken off?

40 A.—Eleven feet were taken off, because that is the way my calculations were made: assuming that water wheel is of the type sold commercially at that time, for which I happen to have contour diagrams, efficiency curves under different conditions, I calculated that water wheel would lose 25 per cent of its capacity.

Q.—If it lost 11 feet of head?

A.—That is it.

Q.—What effect would that have upon a distribution system of that type, a loss of 25 per cent capacity?

A.—If it was loaded nearly to its capacity before, it would be absolutely unfit to take care of the load at all afterwards.

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De Gaspé

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

Q.—What loss in capacity would he suffer by a reduction of seven feet in head?

10 A.—I can work it out if you like. First of all, there is a loss in the amount of power that can be developed by water which is proportional to the loss in head, and there is a further loss by the fact that the water wheel has to be speeded up, if the head is lowered; at least, if the wheel is not speeded up proportionally to the speed at which the water wheel is speeded up, it loses in efficiency and there is a further loss in the power. There must be a relation between the speed of the wheel and the speed of the water, and if you reduce the head on the water, you reduce the speed of the water, and then the wheel passages are no longer capable of taking care of the amount of water.

20 Q.—That is very interesting, but do you know or do you not by what percentage the capacity of that wheel would be reduced by a reduction of seven feet in head?

A.—No, I have no knowledge about seven feet of head.

Q.—Do you know what sort of wheel it is?

A.—It is a Barber double runner, horizontal central discharge wheel.

Q.—Have you examined it?

A.—I have examined the outside of it.

Q.—When?

A.—When I was there the last time; I suppose it was the beginning of the month.

30 Q.—The beginning of this month?

A.—Yes.

Q.—You do not know the rating exactly of that wheel when it is sold, or what it is sold to do under varying heads, do you?

A.—No. It was designed for that position.

Q.—It was designed to work under a 74-foot head?

A.—Or 72.

Q.—And that it has lost 11 feet of head?

A.—Exactly.

40 not taken any measurement yourself?

A.—No.

Q.—You have merely been told that that was the loss in head?

A.—I think I have something about the elevations that were given to me at the time.

Q.—But you have not taken the elevations yourself?

A.—No, I have not taken the elevations myself.

Q.—And you have only visited the plant once?

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(continued)

A.—No. I was there a number of times.

Q.—Just recently?

A.—Yes. I think it was the first of the month.

Q.—Were you ever there when the plant was operated?

A.—No.

Q.—You don't know what sort of operations it used to carry on when it was operating?

A.—No.

Q.—Under normal conditions?

10 A.—No, only from the evidence given in Court, which I heard.

Q.—Do you know anything about the flows in the Lake that fed this water power.

A.—No.

Q.—The wheel I suppose is now submerged under water?

A.—No.

Q.—The water is not run through down the creek to the wheel?

A.—The water does not run down the creek to the wheel. It runs from the dam through penstocks into a casing over the wheel?

Q.—It is not going into the penstocks now?

20 A.—I think not. I think the water must be closed above, but I am not quite sure. It may be closed in.

Q.—As a matter of fact, is there any particular reason why that wheel should not be working now?

A.—Oh, yes.

Q.—Why?

A.—Because when the water goes up to above the power house floor.

30 Q.—I am now speaking of the present time. The water is not over the power house floor?

A.—If the water is kept at 318 and the power house floor is 321.5 I suppose it could run.

Q.—As a matter of fact it could run with the water at 321.5?

A.—It could, but not very conveniently.

Q.—There is nothing that has prevented that power development working for the last four or five years?

A.—I am not sure there is not, but it certainly would not be as efficient, and if it was incapable of taking care of the load, I suppose it is pretty well useless.

40 Q.—You don't know what his load was?

A.—No.

Q.—Either before or after the period of 1926?

A.—No, nothing but what I have heard here in Court.

Re-examination

RE-EXAMINED BY MR. SCOTT, K.C.,  
OF COUNSEL FOR PLAINTIFF:

Q.—If the elevation of the power house floor were 321.4, would

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(continued)

Re-cross-  
examination

you consider it could be efficiently operated if the water was raised to 321.5?

A.—No.

Q.—You gave us your opinion as to the loss of capacity at some 25 per cent, if eleven feet of head were lost;—if ten and a half feet of head had been lost, would the percentage of loss vary very much?

A.—No, not very much.

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

Q.—Have you any idea how much it would cost to put some more cement on that floor and raise it six inches or a foot?

A.—No, but I would certainly not recommend. . . .

Q.—I am not asking you that. I am asking you have you any idea what it would cost?

A.—I supposed you wanted to create an impression that I would recommend the use of. . . .

20 Q.—I am quite sure you would not recommend. I ask you have you any idea how much it would cost?

A.—I have not worked it out, but I imagine it would cost about ten dollars a yard for the cement.

Q.—It is not a very pretentious affair, is it?

A.—It is a small power house. It must have worked very conveniently.

30 Mr. Scott: That, my Lord, is the Plaintiff's case as to this part of the action with the exception, as Mr. St. Laurent stated the other day, we intend to ask Your Lordship's permission at the conclusion of the enquête for leave to file a statement of the disbursements, fees and costs incurred in connection with this branch of the case.

(And further deponent saith not.)