

CANADA
PROVINCE OF
QUEBEC
MONTREAL

Court of King's Bench

(APPEAL SIDE)

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

CANADIAN
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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 11

DEFENDANT'S EVIDENCE (Supplementary Hearing)

BROWN, MONTGOMERY & McMICHAEL

Attorneys for Appellant

MacDOUGALL, MacFARLANE & BARCLAY

Attorneys for Respondent

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

No. 655

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*In the
Superior Court*
No. 110.
Defendant's
Evidence.
(Supp. Hearing)
C. H. Boisvert,
Examination
Oct. 18th, 1932.

No. C-80504
Canada
Province of Quebec
District of Montreal

IN THE SUPERIOR COURT

Present—His Lordship Honourable Mr. Justice de Lorimier.

10

FREEMAN T. CROSS,

Plaintiff,

—vs.—

GATINEAU POWER COMPANY,

Defendant.

20

DEPOSITION OF CHARLES H. BOISVERT, A WITNESS
PRODUCED ON BEHALF OF THE DEFENDANT.

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

CHARLES H. BOISVERT,

30

of the City of Quebec, Civil Engineer, aged 28 years, a witness produced on behalf of the Defendant, who, being duly sworn, doth depose and say as follows:

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

Q.—You are a Civil Engineer by profession, Mr. Boisvert?

A.—Yes.

40

Q.—And how long have you been practicing that profession?

A.—Since 1925, seven years.

Q.—During that time how have you been employed?

A.—I was fifteen months with the Shawinigan Water & Power Company on the transmission and distribution lines, and since 1926 I have been with the Quebec Public Service Commission.

Q.—You are now on the engineering staff of the Quebec Public Service Commission, I understand?

In the
Superior Court

No. 110.
Defendant's
Evidence.
(Supp. Hearing)
C. H. Boisvert,
Examination
Oct. 18th, 1932.
(continued)

A.—Yes.

Q.—You are acting as chief engineer of that Commission?

A.—I have been acting as chief engineer since last year.

Q.—When the chief engineer, Mr. Larivière, was appointed a member of the Commission?

A.—Yes.

Q.—Are you a member of the Engineering Institute?

A.—I am an associate member of the Engineering Institute.

10 Q.—And a member of the Corporation of Professional Engineers of the Province of Quebec?

A.—Yes.

Q.—You have not at any time ever been employed by the Gatineau Power Company, as an employee of that Company?

A.—Never at any time.

Q.—Are you familiar with the power plant of Mr. Cross, and his electrical distribution system at Farm Point?

20 A.—I have been at Farm Point and in the vicinity on different occasions. On the 3rd January, 1927, I went over the ground when the Gatineau Power Company was erecting a transmission line to feed power to the Paugan Falls Development, and on the 28th January, 1927, I went over the ground also with Mr. Larivière, who was then chief engineer. I also went on the ground in July of 1927, during the year 1930 and during the present year.

Q.—You therefore saw this system in operation before the water in the Gatineau River was raised by this Chelsea development?

A.—Yes, I saw the power development in operation before the water was raised in the Gatineau River.

Q.—That is, you saw it operating under its natural conditions?

30 A.—Yes.

Q.—At the time you made your inspections (I am now speaking of those inspections made before the water was raised, before the Chelsea dam raised the water) would you tell the Court what, as an engineer, you found to be the condition of the power development belonging to the Plaintiff at Meach Creek, and taking the power plant first, and then perhaps the distribution system as well?

40 A.—The power plant on the day of my visit was operating on a head of 74 feet, and the plant itself, and the distribution line, according to my opinion, was not maintained in the way that would serve the public to the best advantage.

Q.—It was not maintained, in your opinion, in the way that would serve the public to the best advantage?

(Mr. Scott, K.C., of Counsel for Plaintiff, objects to this question as illegal and irrelevant.)

(The Court reserves the objection.)

*In the
Superior Court*
No. 110.
Defendant's
Evidence.
(Supp. Hearing)
C. H. Boisvert,
Examination
Oct. 18th, 1932.
(continued)

Q.—Could you perhaps make some remarks as to what you thought particularly was defective, or wrong, or unreasonably inadequate about it?

A.—With a small isolated plant like that of Mr. Cross, which is not a particular case; it is a general rule all over the Province that those small plants cannot give the public the service it is entitled to. These plants are sometimes out of repair; the lines are also out of repair.

10 BY THE COURT:

Q.—You are now speaking in a general way?

A.—In a general way.

Mr. Scott: I renew my objection to this evidence, my Lord.

(Same reserve.)

BY MR. KER:

20

Q.—In what condition did you find the power apparatus in Mr. Cross' power plant?

A.—There was nobody attending in the power house. Are you speaking of 1927?

Q.—In 1927?

A.—There was bushing on the water wheel that was damaged and was never repaired?

Q.—What is a bushing?

A.—That is a support at the end of the water wheel, and the line
30 itself was out of repair and a small system as a rule cannot give the public good service. They might have been all right ten years ago when they were used to supply only lighting, but today people are using electricity for radios, refrigeration, cooking, etc., and today the supply must be entirely reliable and continuous. The voltage must be kept practically constant and should not vary to within narrow limits, and the frequency must be kept constant, and in ninety per cent of cases of those small plants they have only one machine, and when the machine is broken down it means the public is without service for days and days.

40

Q.—Do you conclude that they should be eliminated?

A.—That has been done up to the present time. They are disappearing one by one.

BY THE COURT:

Q.—Is the Government suppressing them without in any way compensating them?

*In the
Superior Court*
No. 110.
Defendant's
Evidence.
(Supp. Hearing)
C. H. Boisvert,
Examination
Oct. 18th, 1932.
(continued)

A.—In some cases the companies are buying those small plants, and they are shutting them down, and sometimes it is on complaints from people. The people won't stand the service, and when there are complaints something has to be done. When their source of supply is closed sometimes steps are taken to get the supply from another source.

BY MR. KER:

10 Q.—Is the source of water supply for Mr. Cross' water power a reliable source or one such as would give a continuous service?

A.—My opinion is that in periods of low water there is not enough water in the creek to run the machinery, and that would be another reason to recommend the abandonment of the plant. There is not enough water to run the machinery.

Q.—What was the installation there? What was the wheel rated at?

20 A.—The wheel was rated at 150 horsepower under a head of seventy feet and it was directly connected to alternator.

Q.—It was a hundred and fifty horsepower wheel to operate under a seventy-foot head, with a generator of how much?

A.—Of 125 kilowatts, three-phase, 60-cycle, operating under a voltage of 4,400 volts, and there was also an exciter and regulator with a turbine fly wheel for the turbine; a panel with instruments, an oil switch, rheostat and spare exciter and lightning arrester.

Q.—Those were in the power house?

A.—Those were in the power house.

30 Q.—Have you estimated what the reduction in head would be on that plant with the water level of 321.5?

A.—At 321.5 the reduction in head would be seven and a half feet.

Q.—Is that as a result of measurements made by yourself?

A.—Yes, I measured the head available myself on the 28th January, 1927.

Q.—So you say the total reduction in head by raising of this water to point 321.5 would be seven and a half feet?

A.—Seven and a half feet.

40 Q.—Of course, the raising of the water to 321.5 in no way affects the source of supply?

A.—No. They are not related at all.

Q.—At 321.5 the water would come close to the floor of the power house, I take it?

A.—There might be a few inches maybe on top of the floor. It would be to the level of the floor because the sill of the power house is at 321.5.

*In the
Superior Court*

No. 110.
Defendant's
Evidence.
(Supp. Hearing)
C. H. Boisvert,
Examination
Oct. 18th, 1932.
(continued)

Q.—Have you any opinion as to what should be done to remedy that somewhat unsatisfactory condition?

A.—It would be better to raise the floor and the machinery three feet, so as to put them above water, so the water would not creep in.

Q.—With that raise the power plant would still be operating with only a loss of seven feet of head?

A.—Yes. The plant could operate with seven and a half and the only loss would be a loss in head of seven and a half feet.

10 Q.—And with that raising of the power house and the instruments, that would not bring about any loss in power?

A.—Well, no, there would only be a loss in head. The efficiency might be reduced, but not to any extent.

Q.—It is only the loss in head that would produce loss in power? The raising of the floor in the power house would not result in any loss in power?

A.—There would not be any loss in power.

Q.—From your experience, can you give us any idea of what it would cost to raise the floor of the power house and the instruments?

20 A.—I have prepared an estimate, and it would cost \$1,300 to raise the equipment and the machinery and the floor.

Q.—It is not a work of any great difficulty?

A.—No, it could be done easily.

Q.—Assuming for the moment that there has been no raising of the water of the Gatineau River by the Company, that it remained in its natural condition, would Mr. Cross' plant, in your opinion, have been adequate to carry on the service required?

(Same objection.)

30

(Same reserve.)

A.—No. I would consider the plant inadequate to be used for public utility purposes.

Q.—That is quite apart from the raising of the water?

A.—Absolutely.

Q.—And would the fact of an uncertain water supply into that plant itself have anything to do with that opinion?

A.—Yes, that is another reason, too.

40

His Lordship: I find it most extraordinary that they should suppress all other mills because the Government finds they were not what they should be. I find it very surprising they should be suppressing all competition by acting arbitrarily in closing out those mills. I do not think that will affect my judgment as to the damages.

*In the
Superior Court*
No. 110.
Defendant's
Evidence.
(Supp. Hearing)
C. H. Boisvert,
Examination
Oct. 18th, 1932.
(continued)

Mr. Ker: That, my Lord, is not exactly what happens. In this case Mr. Cross has a little place up there which he is serving with electricity. This Company would not be permitted to go in and serve them. They are prevented from so doing by the Public Service Commission. It would not be proper to go in and compete with Mr. Cross in that district, if Mr. Cross was giving an adequate and efficient service.

10 Mr. Scott: I object to my learned friend putting into the record that Mr. Cross' service was inadequate. The Public Service Commission did not state that Mr. Cross' system should be put out of commission. However, that is a matter for argument.

Mr. Ker: The Public Service Commission ordered the abandonment of Mr. Cross' plant because there is not sufficient water in his creek.

His Lordship: Do you not think that is a matter of argument?

20 Mr. Scott: Absolutely, my Lord.

BY MR. KER:

Q.—The Public Service Commission, I understand, of which you are the engineer, did order the abandonment of this plant?

A.—Yes.

30 Mr. Scott: If there is any such order in writing, I submit it speaks for itself.

BY MR. KER:

Q.—Would you take communication of this certified copy of this order of the Commission certified by the secretary, Mr. Ahern, under date 12th November, 1929, and which is produced as Exhibit D-145, and state what that is?

40 Mr. Scott: I object to the production of this Exhibit D-145, because it is an order of the Quebec Public Service Commission dated November 12th, 1929, nearly three years after the date at which your Lordship is called upon to make the valuation of the Plaintiff's properties and rights.

Therefore, I submit it is quite extraneous and irrelevant to the issues in this case, and I object to the production of this document as being irrelevant because it shows on its face it is proceedings before one H. C. J. Geggie vs. Freeman T. Cross, being a matter of complaint apparently for insufficient service in 1925. How that can

*In the
Superior Court*
No. 110.
Defendant's
Evidence.
(Supp. Hearing)
C. H. Boisvert,
Examination
Oct. 18th, 1932.
(continued)

possibly assist your Lordship in fixing the compensation which Mr. Cross is entitled to under this Special Act, I cannot see.

(The Court reserves the objection.)

A.—This is an order of the Commission ordering Mr. Cross to do some things in connection with his power plant and distribution line.

10 BY MR. KER:

Q.—Would you look at the Exhibit D-5, which has already been produced, and state whether that is a report of the chief engineer of the Commission on that same plant as you have produced as Exhibit D-145?

(Same objection.)

(Same reserve.)

20

A.—This is a report of the chief engineer prepared after his visit over the ground and preceding the order of the Commission which is on file.

Q.—The Order D-145 is based upon the report made by the chief engineer produced as D-5?

A.—The order is based upon the report that was rendered following the report which is dated 27th September, 1929, by Mr. Alexander Larivière.

30 Q.—I understand you to say that you examined this plant yourself some two years before these reports were made, at least, in 1927?

A.—Yes, I examined the plant then.

Q.—Would you take communication of this Exhibit D-5 which is Mr. Larivière's report, the then chief engineer, made in 1929, and state whether the conditions which Mr. Larivière refers to in this report of 1929, existed when you made your investigation in 1927, in a general way.

40 Mr. Scott: I object to the production of Mr. Larivière's report which my learned friend has referred to, as it covers several pages of printed matter and I submit it is most improper to ask this witness what this report contains without referring to the other matters in the report. I submit my learned friend should ask the witness about specific matters.

Mr. Ker: I will do so.

BY MR. KER:

*In the
Superior Court*

No. 110.
Defendant's
Evidence.
(Supp. Hearing)
C. H. Boisvert,
Examination
Oct. 18th, 1932.
(continued)

I see for instance, that Mr. Larivière in his report of 1929 states as follows:

“ The flow of the above Creek does not seem to be sufficient to run the water wheel and generator, and according to the operator this explains why only a nightly service has been given during the last few weeks ”.

10 Could you state what you found with respect to the insufficiency of the water in the creek to run the water wheel in 1927 before the water was raised?

A.—According to my opinion there was not enough water to run the water wheel?

Q.—In 1927?

A.—In 1927.

BY THE COURT:

Q.—On what was your opinion based?

20 A.—We based our opinion on average monthly flow of one fifth cubic foot second per square mile. We have the drainage area of the creek, and then we compared the creek with with other creeks in similar lakes and we got a mean average flow of so much per square mile, so that gives us the quantity of water the creek can give us at low water.

BY MR. KER:

30 Q.—Is that an exact method of measuring the flow? Is that the usual way?

A.—That is the usual way, when there are no other means unless the creek is measured over a period of years.

BY THE COURT:

Q.—Do you think Mr. Cross' mill was affected by that? Do you know personally that it was affected?

A.—It is a general rule.

40 BY THE COURT:

Q.—It is a general rule?

A.—It is a general rule.

BY THE COURT:

Q.—But you did not measure it yourself?

A.—I did not measure the creek myself.

*In the
Superior Court*

No. 110.
Defendant's
Evidence.
(Supp. Hearing)
C. H. Boisvert,
Examination
Oct. 18th, 1932.
(continued)

BY THE COURT:

Q.—And you did not go to the mill yourself?

A.—Oh, I went to the mill.

BY THE COURT:

Q.—To the Plaintiff's mill?

A.—Yes.

10 BY THE COURT:

Q.—And what did you find there?

A.—I did not measure the flow.

BY MR. KER:

Q.—I notice that in 1929. . . .

20 Mr. Scott: I must object to my learned friend reading to this witness, who is in the employ of the Quebec Public Service Commission, a report made by an engineer, and then saying, "Do you agree with this?"

Mr. Ker: You are quite wrong.

BY MR. KER:

30 Q.—I notice that in 1929 Mr. Larivière in his report states that the system was in general, in bad condition, and that the maintenance and repair of the same have been neglected, and that the distribution line constructed in certain places is a menace to life and property, and the service is not even satisfactory, even when the plant is working under normal condition, that was in 1929. Would you say what remarks you have to make from your investigation made in 1927 before the water was raised with regard to the same points to which Mr. Larivière refers?

A.—The plant itself and flow, and the distribution line was then practically in the same shape as when Mr. Larivière found it.

40 BY THE COURT:

Q.—How do you know?

A.—Because I have seen it in 1927 and I have seen it in 1930. I was there a few months later.

BY THE COURT:

Q.—You did not see it on the 27th September, 1929?

In the
Superior Court

No. 110.
Defendant's
Evidence.
(Supp. Hearing)
C. H. Boisvert,
Examination
Oct. 18th, 1932.
(continued)

A.—No, I did not see it then. I saw it a few months later and I saw it in 1927.

BY MR. KER:

Q.—You saw it on the 29th January, 1930, which was a few months after?

A.—Yes.

Q.—Did you have occasion yourself to make a report?

10 A.—I prepared a report on the same lines as Mr. Larivière after my inspection over the ground.

Q.—In 1930?

A.—In 1930.

Q.—Have you a copy of that report?

A.—I have a copy here.

Q.—This is a copy of a report made by yourself as Engineer of the Quebec Public Service Commission itself, dated February 8th, 1930?

20 That is after January, 1930, inspection?

A.—After the inspection of January, 1930.

Q.—Will you produce that report as Exhibit D-146?

(Same objection.)

(Same reserve.)

A.—Yes.

30 His Lordship: Do these reports make *prima facie* evidence according to law. I was under the impression that there was something in the Statute stating that these reports would not make evidence before the Court without being sworn to.

Mr. Ker: I don't think there is anything mentioned in the Statute. As a matter of fact, in the Quebec Public Service Commission Statute there is no statement that their reports make evidence.

40 His Lordship: At all events it is filed, and if there is any objection I will allow it under reserve.

BY MR. SCOTT:

Q.—I see this report that you have just filed is in reference to a matter of complaint of H. C. J. Geggie against F. T. Cross?

A.—Yes.

BY MR. KER:

*In the
Superior Court*

No. 110.
Defendant's
Evidence.
(Supp. Hearing)
C. H. Boisvert,
Examination
Oct. 18th, 1932.
(continued)

Q.—As a result of the flooding caused by the Gatineau Power Company dam at Chelsea a certain portion of highway between Cascades and Kirk's Ferry, I understand, was submerged. Upon that highway there was a piece of the distribution line of Mr. Cross. Were you aware of that?

A.—Yes, I saw the distribution line in 1927.

Q.—That was on your inspection of 1927?

A.—Yes.

10 Q.—Was that piece of land between Cascades and Kirk's Ferry which was submerged of the same general character as the distribution lines generally of Mr. Cross?

A.—Yes, it was of the same character except that it was built some years later than the rest.

Q.—I presume that your duties with the Commission required frequent inspections and valuations of transmission lines of that kind?

A.—Yes, we are sometimes called upon to make valuations for rate-making purposes and different matters.

20 Q.—Could you give me your opinion as to the physical value of that line, poles, wires and other apparatus per mile, which was submerged, having in view current valuations which are more or less uniform throughout the Province for that class of line?

A.—For that class of line I am of the opinion that the price per mile would not be over a thousand dollars.

Q.—Is that in line with the valuation of similar lines throughout the Province, in your opinion?

A.—It is adopting the same figures as used elsewhere.

Q.—It is adopting the practical standardized figures?

30 A.—Yes.

Q.—That, of course, includes poles, wires and various services going to make the completed line?

A.—That comprises the whole distribution line, including service, transformers, wires and poles?

Q.—And the lightning arresters, if any, and all works?

A.—Yes.

Q.—It, of course, does not make any allowance for right of way?

A.—No. There is no right of way.

40 Q.—Could a line of that kind, in your opinion, be replaced for that figure at any time?

A.—It could be replaced at any time at that price.

Q.—At a thousand dollars per mile?

A.—Yes.

Q.—I would refer you now to the portion of the distribution system above Cascades, that is, which has not been affected physically by the water, that portion of Mr. Cross' distribution system,

*In the
Superior Court*

No. 110.
Defendant's
Evidence.
(Supp. Hearing)
C. H. Boisvert,
Examination
Oct. 18th, 1932.
(continued)

including the entire distribution in the Town of Wakefield, is still functioning, I believe.

A.—Yes, it is.

Q.—That part of his distribution system is in no way affected by the operations of the Gatineau Power Company?

A.—The distribution system at that part is not affected by the Gatineau Power Company.

Cross-examination

10

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

Q.—You stated at one time you worked for the Shawinigan Water and Power Company?

A.—Yes.

Q.—And this visit you made to the property on the 3rd January, 1927, was your first trip to examine Mr. Cross' property?

A.—It was my first trip.

20 Q.—You had been with the Public Service Company at that time a matter of a few months, you say, in 1926, I think you told us?

A.—About six or seven months.

Q.—And you made your first visit to Mr. Cross' property at Farm Point on the 3rd January, 1927?

A.—Yes, sir.

Q.—At whose request did you go there?

A.—It was on the application of the Gatineau Power Company to build a transmission line to Paugan Falls to feed the construction power.

30 Q.—At that time the Gatineau Power Company were building a transmission line from where?

A.—They were building a transmission line from Chelsea to Paugan Falls.

Q.—To supply power at Paugan?

A.—To supply power at Paugan.

Q.—The Paugan development came along later than Chelsea?

A.—Yes.

Q.—I suppose the Commission sent you over the ground where they had flooded, for permission to erect this transmission line?

A.—Yes.

40 Q.—And while you were doing that you took occasion to look at Mr. Cross' plant at Meach Creek?

A.—I had to do it, because they were building that line through. There had to be a joint pole construction with Mr. Cross.

Q.—And the Company had to build that line there, and there had to be a joint pole through?

A.—On Mr. Cross' construction.

Q.—Was that visit made in company of the engineers of the

*In the
Superior Court*

No. 110.
Defendant's
Evidence.
(Supp. Hearing)
C. H. Boisvert,
Cross-examination
Oct. 18th, 1932.
(continued)

Gatineau Power Company?

A.—It was with the engineers of the Fraser Brace Company.

Q.—I understand the Fraser Brace Company built this plant at Chelsea for the Gatineau Power Company?

A.—That is what I understood. I believe I was with some of the engineers of the Gatineau Power Company. I do not remember. I would not say.

Q.—You were pretty well surrounded with the Gatineau Power Company's engineers, were you not?

10 A.—I do not remember exactly how many there were, or if they were there. I remember mostly matters of the Fraser Brace Company.

Q.—And these Gatineau Power Company engineers asked you to look over Mr. Cross' power line?

A.—They did not ask me to look at the line, I had to look at the line.

Q.—How did you come to look at Mr. Cross' power plant on that particular occasion when you were up there for another job?

20 A.—I do not think I looked at the plant that day.

Q.—That is, Mr. Cross' plant?

A.—Yes, because I had looked at the plant about three weeks later. I had made a good examination on the 28th January, 1927.

Q.—The real examination you made of Mr. Cross' plant was on the 28th January, 1927?

A.—Yes.

Q.—Was that at the request of the Gatineau Power Company?

A.—I was accompanying Mr. Larivière over the ground.

Q.—That is, between Chelsea and Paugan Falls?

30 A.—That was right along—it was the plant itself I examined on the 28th.

Q.—But you had been up there with Mr. Larivière in connection with the construction of the transmission lines?

A.—I went there with Mr. Larivière. I guess it was some expropriation proceedings that were going on before the Commission in that particular matter. Mr. Larivière was sent over the ground in that connection.

Q.—You went over the ground to see the nature of the properties that were going to be expropriated?

40 A.—Yes.

BY MR. SCOTT:

Q.—You were telling us before lunch that you had looked at this power plant of Mr. Cross' twice in January, 1927?

A.—Yes.

Q.—When was the first date?

*In the
Superior Court*

No. 110.
Defendant's
Evidence.
(Supp. Hearing)
C. H. Boisvert,
Cross-examination
Oct. 18th, 1932.
(continued)

A.—The 3rd January.

Q.—The 3rd January, 1927, and the other date was the 23rd of January, 1927?

A.—Yes.

Q.—And it was on the second occasion that Mr. Larivière was with you, too?

A.—Yes.

Q.—Who asked you to look at Mr. Cross' power plant on the first visit you made on the 3rd January, 1927?

10 A.—I don't remember.

Q.—It was suggested by one of the engineers of the Gatineau Power Company?

A.—I don't remember at all.

Q.—There was no complaint before the Commission at that time?

A.—No.

Q.—Did you make any field notes on January 3rd, 1927, when you examined the power plant?

20 A.—Yes.

Q.—Have you got those here?

A.—I have not got them.

Q.—Can you get them?

A.—Yes.

Q.—Will you look for them?

A.—Yes.

Q.—Did you make any field notes on the 28th January?

A.—Yes.

Q.—Have you got them here?

30 A.—No, I have not got them.

Q.—You will also look for them?

A.—Yes.

Q.—Dealing with the first time you looked at this power plant, you say, if my notes are correct, that you found Mr. Cross would lose seven and a half feet of head of his development at Meach Creek?

A.—Yes.

Q.—That is, if the waters were raised to what elevation?

A.—To 321.5.

40 Q.—That figure of 321.5 was taken into consideration by you on that date?

A.—Yes.

Q.—I am rather curious to know how you should have thought of 321.5 on the 3rd January, 1927?

A.—Not on the 3rd, on the 28th January.

Q.—You were making an examination with reference to the flooding up to 321.5?

*In the
Superior Court*
No. 110.
Defendant's
Evidence.
(Supp. Hearing)
C. H. Boisvert,
Cross-examination
Oct. 18th, 1932.
(continued)

A.—Yes.

Q.—It was not up to elevation 325 by any chance, was it?

A.—No.

Q.—Or to elevation 318?

A.—No.

Q.—Who gave you that figure of 321.5 to work with?

A.—It was given by the Gatineau Power Company on that date.

10 Q.—I presume the Gatineau Power people also gave you the elevation of the mouth of the draft tube?

A.—No. I measured the head myself.

Q.—I am not asking about the head. What was the elevation of the draft tube on that date?

A.—I did not go in the pit. I did not measure the height of the draft tube. I measured the water at the tailrace.

Q.—What do you call the tailrace? At the C.P.R. culvert or close to the mouth of the draft tube?

A.—Near the mouth of the draft tube, where the water comes into the culvert, there is a small concrete culvert, the water is going through it after it leaves the turbine.

20 Q.—You did not ascertain the height of the mouth of the draft tube above the sea water?

A.—There is no interest in it, because the available depth is governed by the height of water in the tailrace.

Q.—Did you know the elevation of the water of the draft tube in January, 1927?

A.—No, because there was no interest in it.

30 Q.—Did the Gatineau Power Company's engineers suggest to you what the elevation was at the mouth of the draft tube? Did they give you any figure?

A.—No.

Q.—Then how did you measure the total head?

A.—The total?

Q.—You say it came to 74 feet?

A.—The difference between the height of water in the tailrace and the height of water in the pond.

Q.—You don't know how high the pond was, then?

BY MR. KER:

40 Q.—That is the pond up on the hill?

A.—The pond up on the hill.

BY MR. SCOTT:

Q.—Have you that measurement separate from your field notes?

A.—These figures were taken out of my notes.

*In the
Superior Court*

No. 110.
Defendant's
Evidence.
(Supp. Hearing)
C. H. Boisvert,
Cross-examination
Oct. 18th, 1932.
(continued)

Q.—The figure you are now about to read you say was taken from your field notes?

A.—They were taken from my field notes. The elevation of water in the pond was 388 and the elevation of water in the tailrace was 313.91.

Q.—Will you tell us where you made that measurement of 313.91 for the waters in the tailrace? How far away from the draft tube? Was it alongside of it, or some distance below it?

A.—Not very far away; twenty feet or something, I suppose.

10 Q.—Twenty feet further down from the draft tube?

A.—Twenty feet further down from the draft tube, at the culvert.

Q.—As the water came out over the ground?

A.—As it came out of the turbine some twenty feet below.

Q.—Was the draft tube fully covered with water at that time?

A.—Yes, it was.

Q.—You have already told us, of course, you were not measuring the flow of the stream on that day?

A.—No, sir.

20 Q.—You did not make any measurement of the flow of the stream?

A.—No.

Q.—I don't suppose you went up the Meach Creek as far as Meach Lake, did you?

A.—No.

Q.—You did not examine any storage facilities on the Meach Creek above there?

A.—No.

30 Q.—You don't know whether it was a controlled stream or not, to your own personal knowledge, from the examination you made on that date?

A.—Not from the examination. I know it by hearing it. I did not go there myself.

Q.—When you were measuring the waters of the tailrace which you have just spoken about, were you carrying on those measuring operations entirely yourself, or were others helping you?

A.—There were representatives of Mr. Cross and of the Gatineau Power Company.

40 Q.—Who was representing Mr. Cross?

A.—I could not say.

Q.—Was Mr. Cross there?

A.—He might have been there part of the time. I don't remember.

Q.—You did not have any conversation with him?

A.—Yes, I had.

Q.—On that day?

*In the
Superior Court*

No. 110.
Defendant's
Evidence.
(Supp. Hearing)
C. H. Boisvert,
Cross-examination
Oct. 18th, 1932.
(continued)

- A.—On that day.
Q.—Before you took your measurements?
A.—Yes, sir.
Q.—And you do not know who was assisting you in taking these elevations for the tailrace?
A.—I do not remember.
Q.—Was it Mr. Blue or Mr. Farley or Mr. Stromberg?
A.—I don't remember.
10 Q.—Was it anybody in this Court room?
A.—Probably it was, I cannot remember.
Q.—At all events, you do not remember?
A.—No.
Q.—And on that date, January 3rd, 1927, did you do anything else except to make those measurements?

Mr. Ker: The witness is talking about January, 28th?

Witness: January, 28th.

20 BY MR. SCOTT:

- Q.—The first time you were there you did not make any measurements?
A.—No measurements.
Q.—And the second time you went there was January 28th when you made these measurements?
A.—Yes.
Q.—What examination did you make of the distribution system either on January 3rd or January 28th, which was in the winter,
30 of course.
A.—Yes. I looked it over completely, the whole distribution system.
Q.—You took a drive around?
A.—Yes, we drove as far as Paugan Falls .
Q.—After leaving Farm Point?
A.—Yes.
Q.—Of course, Mr. Cross' distribution system does not go up as far as Paugan Falls?
A.—No, but it goes part of the way up to Alcove.
40 Q.—And you were again accompanied by these engineers?
A.—Yes.
Q.—And did you examine the system between Farm Point and Kirk's Ferry on that occasion?
A.—Yes, I went through there.
Q.—You tell us you estimate a thousand dollars a mile was looked upon as the standard replacement value for a system of that description?

*In the
Superior Court*

No. 110.
Defendant's
Evidence.
(Supp. Hearing)
C. H. Boisvert,
Cross-examination
Oct. 18th, 1932.
(continued)

A.—Yes.

Q.—And if you had connections leading into a farm house that was a quarter of a mile from the road, you would have to add on money for that too, would you not, to your thousand dollars a mile?

A.—That is the whole length and even if you go out on the farm. That is an average of so much a mile.

Q.—If you had half a dozen farms that were each half a mile from the road, that would mean three additional miles, would it not?

A.—Yes.

10 Q.—And that thousand dollar value would apply to them too?

A.—Yes.

Q.—Did you allow anything for transformers?

A.—A thousand dollars per mile comprises the transformers, the services, etc., the whole system.

Q.—What was the elevation that was given to you on either of those dates by these engineers as to the elevation of the power house floor? I think you told us this morning it was somewhere around 321?

20 A.—321.5.

Q.—You have never operated one of these smaller electrical systems yourself, have you?

A.—I have not operated them myself, no.

Q.—I understand you were formerly an apprentice with the Shawinigan Water and Power Company?

A.—Yes.

Q.—And after serving your apprenticeship you joined the Quebec Public Service Commission?

A.—Yes.

30 Q.—Is it to your knowledge that some of these smaller distribution systems are profitably operated, or do you know anything about that?

A.—Well, I know that as a rule they cannot give proper service.

Q.—I am not asking about service. I am talking about profits in operation: do you know anything about that?

A.—Well, yes, they could be operated with economy.

Q.—As a matter of fact, they can be operated more economically than they could be operated by a big company?

A.—A small system itself.

40 Q.—Is that your answer?

A.—Yes.

Q.—They can be operated more economically?

A.—Yes, for a small system.

Q.—And if the power house floor had to be raised, you would also have to raise the penstock, would you not?

A.—The whole machinery.

Q.—And concrete saddles and so on?

*In the
Superior Court*
No. 110.
Defendant's
Evidence.
(Supp. Hearing)
C. H. Boisvert,
Cross-examination
Oct. 18th, 1932.
(continued)

A.—Yes.

Q.—What bench marks were you using when you made those levels on January 28th, 1927?

A.—I will have to consult my field notes. I don't remember. I think we used the sill of the floor at the power house for 321.5. I am not sure. I would have to consult my field notes on that.

Q.—You do not really know what bench mark you had reference to?

A.—I do not remember.

10 Q.—You may simply have referred to the sill of the floor of the power house?

A.—I don't remember exactly. I remember there was a bench mark; I don't know where. I know we referred to it.

Q.—You will look up your field notes and have it available later on?

A.—Yes.

20 Q.—When you went up there in January 1927, is it not a fact that the Gatineau Power Company, or the then Canadian International Paper Company had started trimming the trees, or cutting down the trees along the road running from Kirk's Ferry to Cascades, and trees had been falling across the line?

A.—I don't remember that.

Q.—You have a pretty clear recollection of what condition you found the system in first. Do you remember, as a matter of fact, whether trees had been cut down on that date, which had fallen down along the line of Mr. Cross?

A.—I know trees had been cut down for the right-of-way in certain sections, but I don't remember if they had fallen on the line.

30 Q.—Trees had been cut down in certain sections? Your observations did not show you whether any of those trees had fallen across the poles or lines of Mr. Cross?

A.—I do not remember seeing any.

Q.—But if any new poles had been put up to replace poles that had been knocked down by this cutting, don't you think you would have made a note of that?

40 A.—Of course, at that time, I was not examining the line. I was looking after the construction of the line to feed the Pagan Falls. I did not go pole by pole and make a complete examination of the system.

Q.—Your examination of Mr. Cross' system was more amusement than anything else. You were chiefly interested in the transmission line?

A.—I had a good look at the line too, but as a general rule I could not say pole by pole if this was crooked, or such a wire was out of place or cross arms were out of order. I had a general look at the line.

*In the
Superior Court*
No. 110.
Defendant's
Evidence.
(Supp. Hearing)
C. H. Boisvert,
Cross-examination
Oct. 18th, 1932.
(continued)

Q.—You were able to appreciate generally what type of construction it was?

A.—I did not go into every detail. I did not go pole by pole and wire by wire.

Q.—And you don't know whether any part of this line had been damaged by tree cutting along the road of the Gatineau highway?

A.—To my knowledge there might have been a few isolated cases, but the thing was not a general matter. There might have been five or six poles replaced on the whole line. Of course, I did not look.
10 They did not show up.

Q.—Was the sawmill then running in January?

A.—Not on the day of my visit.

Q.—You don't remember who gave you that bench mark, whatever bench mark you did use?

A.—I know it was given to me. I don't know by whom.

Q.—By one of the Gatineau Power Company's engineers? You don't remember.

A.—I don't remember.

Q.—And you don't remember who gave you the elevation of the
20 sill of the power house?

A.—On the notes coming from the bench mark I guess I noticed that the height of the sill of the power house was at the elevation of the bench mark.

Q.—Anyway, you will come back with your notes?

A.—Yes.

Re-examination

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

30 Q.—Your inspection on the 28th January was an inspection on behalf of the Public Service Commission, was it not?

A.—Yes.

Q.—To determine conditions that were then existing in respect of expropriation proceedings which the Company had taken against Mr. Cross.

Mr. Scott: I object to this question.

BY MR. KER:

Q.—You were there at the instigation of your superior officers of
40 the Quebec Public Service Commission?

A.—Yes.

Q.—And what was the purpose of your being there?

A.—To measure the head available, also the flow. Of course, I did not measure the flow myself.

Q.—Am I correct in saying that at that time there were proceedings instituted by this Company against Mr. Cross for the expropriation of those properties?

*In the
Superior Court*
No. 110.
Defendant's
Evidence.
(Supp. Hearing)
C. H. Boisvert,
Re-examination
Oct. 18th, 1932.
(continued)

A.—Yes, there were.

Q.—Those proceedings were before the Quebec Public Service Commission?

A.—Yes.

Q.—Was it as a result of those proceedings you were sent to make this investigation?

A.—Yes.

Q.—Was it made in the presence of representatives of both parties?

10 A.—Yes, it was. Both parties were advised a few days afterwards.

Q.—You spoke of a generally more or less accepted valuation of a thousand dollars per mile for transmission lines. Did you refer to that as replacement value?

A.—That is the replacement value.

Q.—What is your idea as to the extent of depreciation that should be taken against ordinary lines of that kind?

A.—The annual rate of depreciation?

20 Q.—Yes.

A.—The annual rate of depreciation would be about five per cent.

Q.—If I remember correctly, you gave an estimate of what you thought the power house floor might be raised at \$1,300?

A.—Yes.

Q.—My learned friend asked you if that would necessitate the raising of the various machinery in the power house and the penstock and the saddles; is that correct?

A.—Yes, sir.

30 Q.—Did your estimate of thirteen hundred dollars include the raising of the instruments of the penstock and the raising of the saddle and everything else connected with the matter?

A.—Yes, the whole affair.

(And further for the present deponent saith not.)

*In the
Superior Court*

No. 111.
Defendant's
Evidence.
(Supp. Hearing)
John S. Parker,
Examination
Oct. 18th, 1932.

DEPOSITION OF JOHN S. PARKER, A WITNESS PRODUCED
ON BEHALF OF THE DEFENDANT.

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

JOHN S. PARKER,

10

of the City of Ottawa, General Manager of the Electrical Distributing Division of the Gatineau Power Company, aged 45 years, a witness produced on behalf of the Defendant, who, being duly sworn, doth depose and say as follows:

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

20 Q.—You are the general manager of the Electrical Distributing Division of the Company Defendant?

A.—Yes.

Q.—Would you tell me what you were doing before you came to the Gatineau Power Company?

A.—I was Assistant Engineer of the Hydro-Electric Power Commission of Ontario, located at Toronto.

Q.—How long were you with the Hydro-Electric Power Commission?

A.—About ten years.

30 Q.—Previous to your employment by the Gatineau Power Company?

A.—Not immediately previous. There was some break in that when I was with a private company.

Q.—You were with the Hydro-Electric Power Commission and then for a short time you were with a private company, and then you were appointed to the Gatineau Company?

A.—Yes.

Q.—I take it your functions concern more the distribution than the generation of electricity?

40 A.—Yes.

Q.—Are you familiar with the electrical distribution system of Mr. Cross, the Plaintiff in this case, in the vicinity of Farm Point and on up to Wakefield?

A.—Yes.

Q.—Have you had occasion to make an examination of that system?

A.—Yes.

In the
Superior Court
No. 111.
Defendant's
Evidence.
(Supp. Hearing)
John S. Parker,
Examination
Oct. 18th, 1932.
(continued)

Q.—As it existed, when?

A.—I have examined it in a general way since I took over my present position in 1927; in a particular way in May, 1932.

Q.—May of this year?

A.—Yes.

Q.—In 1927 the water was raised, I understand, in the Gatineau River?

A.—Yes.

10 Q.—Would you, perhaps, in a general way, characterize the physical features of the system above the Cascades as it extends on up the river, and as at present existing?

A.—The system consists of a three-phase, 4,000-volt primary line carried from the power house south, as far as Cascades, and north as far as Wakefield, with a single-phase extension from Wakefield to North Wakefield or Alcove.

20 This latter portion was evidently three-phase at one time, but now appears to be operating with two wires. Then there are, of course, the ordinary transformers on the poles stepping down the voltage from 4,000 to 110 and 220 for distribution to the customers.

The system was found in a rather bad state of repair, due in part to its age, I believe, and also to lack of a proper amount of maintenance from year to year.

Q.—That portion of the system is, of course, somewhat presently, and has been uninterruptedly operated by Mr. Cross?

A.—Yes.

Q.—Have you made any estimate of the physical valuation of that portion to which you have just referred?

30 A.—I have made a careful enumeration of the material and have applied a unit replacement cost to each item, and have estimated the 1926 value for each item separately.

That 1926 value, of course, is my best estimate of what the condition was and the value as at 1926, viewed from what I saw in 1927, and what I more particularly see in 1932.

Q.—I understand you say that because you did not see the system yourself in 1926?

A.—I had never seen it before 1927.

40 Q.—Will you state your estimate of your replacement value of the system (I am now speaking of the system as operated since the water was raised above Cascades on up to Wakefield and Alcove) of the whole distribution system, \$11,150 replacement value; this statement which I will ask you to produce as Exhibit D-147, would you just state briefly what it indicates so the Court, in looking at it, may understand what it purports to indicate?

A.—This is a detailed valuation of the distribution system owned by Mr. F. T. Cross, giving a replacement value as at May, 1932, and an estimated physical value as at 1926, item by item.

In the
Superior Court
No. 111.
Defendant's
Evidence.
(Supp. Hearing)
John S. Parker,
Examination
Oct. 18th, 1932.
(continued)

- Q.—For the portion of the distribution system which has not ceased to operate?
A.—Yes.
Q.—Above Cascades on up to Wakefield and Alcove?
A.—Yes.
Q.—Will you produce that as Exhibit D-147?
A.—Yes.
Q.—Would you indicate, so it may be in the record, what you consider the 1926 value of that system to have been?
10 A.—\$3,710.
Q.—I understand the system was built in 1912?
A.—Yes, so far as I know. I was not there, but the Government reports give it as 1912.
Q.—Then I understand your figure of \$11,150 to be replacement value at the present time?
A.—Replacement value.
Q.—And that that figure of \$3,710 to be actual value in 1926?
A.—In 1926.
Q.—That is, a depreciated value in 1926?
20 A.—Instead of replacement value at the present time, I would be more likely to say the present value under normal conditions. At the present time, perhaps, the line might be built a little cheaper than that.
Q.—Are you familiar with a portion of the system which lay below Cascades down to Kirk's Ferry, and which was submerged when the road had to be flooded for this development?
A.—I am very familiar with the territory as it is now. I live on it during the summer.
30 Q.—You knew the extent of the distribution involved in the territory I speak of?
A.—Yes.
Q.—Assuming the character of that line to be the same in a general way as that above Cascades, to which you have just referred, could you give an estimate of the value of the submerged portions of the distribution system below Cascades down to Kirk's Ferry?
A.—I can, of course, only estimate that, measuring carefully from plans, of the flowage plans of the Company, and knowing where the lines of the Company are, north of Cascades, I must begin there.
40 I find there are 13.87 pole miles at present in operation north of Cascades.
Q.—13.87 miles at present in operation north of Cascades?
A.—Yes. My best estimate from the same flowage plans of the length of line south of Cascades as they existed in 1926 is eight miles. I cannot be closer than that, but I think that is a liberal estimate.
Now, assuming that the general character would be the same, I have a replacement value of eight, divided by 13.87, multiplied by

In the
Superior Court

No. 111.
Defendant's
Evidence.
(Supp. Hearing)
John S. Parker,
Examination
Oct. 18th, 1932.
(continued)

\$11,150, which would give approximately \$6,450 as the replacement value of all equipment south of Cascades which was partly flooded and part of it still remains.

Q.—I do not know whether you heard Mr. MacRostie's evidence, but that would be the same portion of the system to which he thought a value of \$6,000 should be given?

A.—Yes.

Q.—Yours is slightly higher than his?

A.—His was a depreciated value.

10 Q.—And yours is a replacement value?

A.—Mine is a replacement value of \$6,450.

Q.—And you would think it would be subject to the same rate of depreciation as the other?

A.—No, because I have learned from the evidence that it was a newer line than the part north of Cascades, and therefore should carry a lower rate of depreciation.

20 Q.—Assuming that it had been partly built in 1922 and partly built in 1924-1925, could you help us with any figure which, in your opinion, could be put down as depreciation per annum after 1924?

A.—I should think that under those conditions it should be somewhere between thirty and forty per cent.

Q.—That is the total for its whole existence?

A.—Yes, as an average of that section only.

Q.—And the replacement value you consider at \$6,400?

A.—\$6,450.

Q.—I am asked to draw your attention to the fact that apparently part of this line, according to the evidence, was built in 1918, instead of 1922?

30 A.—I don't know.

Q.—You do not know that?

A.—No. Not having seen the line, I cannot say definitely what I would judge the depreciation should be, but with those average figures I should think somewhere between thirty and forty per cent, and I understand the figure of thirty-five per cent has been put in.

40 Q.—In connection with your company, as distributing manager of a large electrical concern, could you give me any estimate from your own experience, and base it on your experience, and of such other evidence that you are able to show, as to what, in a general way, has become the custom in valuing a distribution system as a whole? What basis is used in the trade for valuing, if you are going out to buy a distribution system as it stands where a man is willing to sell and you are willing to buy; what is the general accepted method of valuation at the present time?

A.—The most used valuing system in the Province of Quebec during the last three or four years since I have known it, seems to have been a relation of going value to gross earnings.

*In the
Superior Court*

No. 111.
Defendant's
Evidence.
(Supp. Hearing)
John S. Parker,
Examination
Oct. 18th, 1932.
(continued)

Q.—Going value to gross earnings?

A.—Going value to gross earnings, or to the number of customers and in general domestic and small commercial distribution, the number of customers has been taken, particularly by the Quebec Public Service Commission as being the basis upon which such values have been computed.

Q.—Will you explain to His Lordship just what relation the customer bears to the value in working out that system?

10 A.—That average customer pays an average bill and lives in average conditions, and therefore requires average capital, and the distribution maker supply him, and the relation of the one to the other holds fairly closely. In fact, in many cases where we have studied, we have not found variations of more than ten to fifteen per cent in the relation of customer to purchase value or going value.

Q.—Would you explain just what that relation is resolved into figures?

20 A.—That relation accepted by at least two of the large companies in the Province of Quebec is four to one. Some of the companies still dispute it and claim that it should be three to one or even two to one.

Q.—Will you just explain what four to one means in relation to this matter we are discussing?

A.—It means that every dollar of annual revenue, we can afford to pay four dollars in purchase price, or four dollars in the building of an extension if it is a new job.

30 Q.—That is to say that provided a customer is paying an average of, let us say, \$20.00, and the system has a number of customers paying that, you can afford to pay for that system four times what the gross revenue from those customers would be?

A.—Yes.

Q.—It is the gross revenue you are speaking of?

A.—Yes.

Q.—Is that principle accepted by the Quebec Public Service Commission?

Mr. Scott: In what connection.

(Question withdrawn.)

40 BY MR. KER:

A.—Yes.

Q.—In connection with the matter of rate making, is that four to one principle in common use in this Province?

A.—Very common.

Q.—Is it accepted by the Quebec Public Service Commission in this Province?

*In the
Superior Court*

No. 111.
Defendant's
Evidence.
(Supp. Hearing)
John S. Parker,
Examination
Oct. 18th, 1932.
(continued)

A.—It is established by them.

BY MR. SCOTT:

Q.—That is, for rate purposes?

A.—For ordering the companies to make extensions which is a little different from rate-making.

BY MR. KER:

10

Q.—Can you give me any instances in which that principle has been followed in the purchase by your own company or other companies of distribution systems, amicably between parties who were buying and selling?

A.—We estimate that in districts such as those which we purchased, the average revenue per customer would be about \$20 per year. That is borne out by the figures submitted in this case which are just about exactly \$20 per year.

20 Then, we estimate, that we can pay about \$80 a customer, and I have here several purchases which were made about the same time that the price per customer worked out.

Q.—To which distribution system are you referring which had been purchased on that basis?

A.—I cannot say that they were all purchased with that reasoning. But the result was about the same, because some of these were purchased before my time. I am pointing out that that is at present an ordinary method of working up a valuation.

I have here the purchases of Vankleek Hill.

30 Q.—Vankleek Hill was a little distribution system?

A.—Yes.

Q.—And was purchased by your company?

A.—By the Ottawa-Montreal Power Company, one of our predecessors.

Q.—That was not a purchase by the Gatineau Company.

A.—No.

Q.—It was purchased by the Ottawa-Montreal Power Company. When was it purchased?

A.—In January 1927.

40 Q.—What does that work out at per customer?

A.—\$70.

Q.—How many customers were there?

A.—256.

Q.—And what price was it?

A.—\$18,000.

Q.—For the whole distribution system as a going concern?

A.—Yes.

*In the
Superior Court*

No. 111.
Defendant's
Evidence.
(Supp. Hearing)
John S. Parker,
Examination
Oct. 18th, 1932.
(continued)

Q.—You say that works out at \$70 a customer?

A.—That works out at \$70 a customer in round figures.

Q.—Will you produce as Exhibit D-148 a copy of the Deed from the Vankleek Hill Electric Company Limited to the Ottawa-Montreal Power Company dated the 30th December 1926?

A.—Yes.

Q.—Can you give me a reference to any other system of the same general character?

10 A.—The System of Hudson and Hudson Heights, bought on the 12th July, 1927.

Q.—By whom and from whom?

A.—From the Corporation of the Village of Hudson Heights and Hudson.

Q.—It was a municipally owned system of the corporation and sold to whom?

A.—To the Ottawa-Montreal Power Company, Limited.

Q.—And how many customers did you have there?

A.—401.

20 Q.—And what was the price?

A.—\$22,000.

Q.—How much does that work out per customer?

A.—\$55 per customer.

Q.—Would you produce that Deed as Exhibit D-149?

A.—Yes.

Q.—What is the next one?

A.—L'Orignal, February, 1927, purchased from Caleb Marston of the Municipality of L'Orignal, is the vendor, and the Ottawa-Montreal Power Company is the purchaser.

30 Q.—What is the date of that?

A.—The first of February, 1927.

Q.—And how many customers were on that line?

A.—83.

Q.—What was the price?

A.—\$6,000.

Q.—At how much a customer?

A.—\$72 a customer.

Q.—Would you file that Deed as Exhibit D-150?

A.—Yes.

40 Q.—What is the next?

A.—Morin Heights, in August, 1929, purchased from the Argenteuil Lumber Company by the Gatineau Electric Light Company, Limited.

Q.—Will you file this as Exhibit D-151?

A.—Yes.

Q.—How many customers?

A.—52 customers, \$3,500, \$67 per customer.

*In the
Superior Court*
No. 111.
Defendant's
Evidence.
(Supp. Hearing)
John S. Parker,
Examination
Oct. 18th, 1932.
(continued)

Q.—While I am on this question, these sales, of course, include all the line and all the equipment on the lines?

A.—Surely.

Q.—As well as the good will, the customers, the contracts and the whole of the machinery?

A.—Yes.

Mr. Scott: They speak for themselves.

10 BY MR. KER:

Q.—Have you any others of the same kind?

A.—I have one more, St. Jovite.

Q.—That was also a privately owned system. What about the St. Jovite system?

A.—This was purchased by the Gatineau Power Company from Dame Virginie Senecal of the Village of St. Jovite, widow of the late Joseph Vanchestine.

20 Q.—How many customers?

A.—200 customers.

Q.—What is the date of the Deed?

A.—The 17th day of November, 1931, \$20,000, \$100.00 a customer.

I might say with reference to this line that the highest price was justified because of the possibilities for expansion in the St. Jovite district, in the Laurentians.

Q.—Will you please produce this Deed as Exhibit D-152?

A.—Yes.

30 Q.—Applying these figures and principles to which you have referred, to Mr. Cross' system, I would ask you first, knowing these various localities to which the Deeds which have been produced refer, whether they are comparable in all respects to the business of Mr. Cross or to the clientele of Mr. Cross?

A.—In all these cases, except St. Jovite, I believe they will compare very closely with Mr. Cross' system. I will add this, though, that I think most of them were in a bit better shape.

Q.—You mean physical shape?

A.—Physical shape.

40 Q.—Do you know of any other systems that have been purchased in that length of time by your Company, or by companies that you could bring to knowledge?

A.—No, nothing which would compare in any way.

BY THE COURT:

Q.—Why did you make an exception for St. Jovite?

*In the
Superior Court*
No. 111.
Defendant's
Evidence.
(Supp. Hearing)
John S. Parker,
Examination
Oct. 18th, 1932.
(continued)

A.—For the reason I gave a few moments ago, that it is one of the best summer camp sections of the Laurentians. The hotels have private lakes in that area and all up there, and comparatively large power bills.

BY MR. KER:

Q.—The Gray Rocks Inn is at St. Jovite, and Lac Tremblant?

A.—Yes.

10 Q.—Applying these principles, could you give us your opinion as to what Mr. Cross' system in the open market should have been worth, assuming that he had 265 customers in 1926?

A.—I would say that the normal condition would be an annual revenue per customer averaging about \$20, and that four times being \$80, one could afford to pay \$80 per customer for the 265 customers, keeping in mind the fact that if any large immediate expenditure would be necessary to make the lines in the proper shape for use with a long distance transmission line, that amount of money should be subtracted from the total price as so worked out.

20 Q.—265 customers at \$80 would therefore represent \$21,200?

A.—I presume so. I have not just worked that out.

Q.—Assuming there are now 200 customers on the line, or 190 customers, you would therefore consider the same principle would apply, and the 190 would be multiplied by 80 to arrive at the open market value of that distribution system?

A.—Yes.

Q.—Is that, in your opinion, what Mr. Cross might hope to expect if he were selling his system?

30 BY THE COURT:

Q.—That is \$21,200 less what? Do you deduct something from that?

A.—Less what might be required to rebuild the system if such should be necessary, in order to make it suitable for attaching to a general distribution network.

BY MR. KER:

40 Q.—That is to say, the system would have to be adjusted to operate in a particular network?

A.—Yes.

BY THE COURT:

Q.—Have you any idea what that would cost?

A.—I have never studied it from that angle.

*In the
Superior Court*

No. 111.
Defendant's
Evidence.
(Supp. Hearing)
John S. Parker,
Examination
Oct. 18th, 1932.
(continued)

BY MR. KER:

Q.—The present 190 customers, therefore, multiplied by 80 would be in the neighbourhood of \$15,200?

A.—Yes.

Q.—The difference in the value between 1926, therefore, and the present time would be something in the neighbourhood of \$6,000—\$15,200 against \$21,200?

10 A.—From that point of view, yes. It would not be quite so much as the physical value if worked on my depreciation figures as given to you a short time ago.

Q.—You referred to the general average of \$20 a customer. I wonder if you would perhaps give me just some idea of how you arrive at that estimate, just in a general way. It is not just taken out of the air, I presume.

20 A.—No. That estimate is taken over a long period of years. I have been about twenty years in the distribution business, and, of course, with the Hydro-Electric Power Commission of Ontario, we have more complete figures than are available, I believe, from any other source.

At a comparable time, I have here the 1927 report of the Hydro-Electric Power Commission of Ontario, in which are enumerated 60,854 customers in small towns less than 2,000 population, villages and suburban and rural areas.

In the same year, which covers October, 1926, to September, 1927, the average bill per customer was \$23.31.

Q.—That is the annual bill?

30 A.—That is the annual bill averaged over that number of customers.

BY MR. SCOTT:

Q.—What average rate were they paying per kilowatt hour?

A.—It is not brought down.

Q.—Have you any idea what it was?

40 A.—I notice a domestic rate down here by somebody in pencil, 4.48 cents per kilowatt hour. That is not my figure, and I cannot vouch for it.

Q.—Do you think that is about right?

A.—I think that is about right for the small places. They would be lower, of course, in the larger community.

BY MR. KER:

Q.—Am I right in assuming that the lower rate means a greater consumption usually?

In the
Superior Court

No. 111.
Defendant's
Evidence.
(Supp. Hearing)
John S. Parker,
Examination
Oct. 18th, 1932.
(continued)

A.—Yes, the average customer in the small town, regardless of the rate, pays about the same bill, no matter where you find him. That is a thing which seems to hold very closely, and we have found during the past three years that when you reduce rates, reasonably, of course, within twelve months, the revenue will come back again to where it was before. That has been borne out in quite a number of cases where we have reduced rates since we began operation.

Q.—That is due to greater consumption?

10 A.—Yes, and we have reduced the rates in more than one hundred municipalities.

Q.—Is that estimate which you have given a pretty level average of the takings per customer per year? Is it borne out by the companies operating in the Province of Quebec?

A.—Very closely. The figures are hard to get. We ourselves have not been operating very long, but our own average over a considerable territory in many cases before the rates were reduced, in the first year, 1929, the first year for which we have a complete record, is \$24.75 per customer.

20 Q.—Would that be in territories similar and surrounding Mr. Cross' property?

A.—Similar, and surrounding that territory.

BY MR. SCOTT:

Q.—That is, domestic?

A.—Domestic and commercial, includes everything, heating, lighting and commercial service. It does not take in power or street lighting.

30 BY MR. KER:

Q.—As you say, you have not been operating so very long, but have you any idea of the Southern Canada Power Company, for instance, which has been operating longer than you, would work out to?

40 A.—I have some figures here which are taken from one of the other companies, and they work out about the same average. I have not brought the thing down to a general average, but the figures range all the way from \$17.00 to about \$25.00 for the different municipalities shown.

Q.—An average which you established for your own Company. To how many customers does that apply?

A.—I would say about 10,000 customers. They are not totalled here, but I would estimate there would be 10,000.

Q.—Roughly, 10,000 customers?

A.—Yes.

*In the
Superior Court*
No. 111.
Defendant's
Evidence.
(Supp. Hearing)
John S. Parker,
Examination
Oct. 18th, 1932.
(continued)

Q.—Am I right in thinking that probably the Montreal Light, Heat and Power Consolidated average would work out lower than that?

A.—I don't know.

BY THE COURT:

Q.—How does that compare with the Hydro-Electric Commission?

10 A.—I gave the figure of the Hydro-Electric Commission as being \$23 and some cents. Our own is \$24 and some cents, so there is not very much difference.

Mr. Montgomery: The Hydro-Electric is \$23.21.

Witness: The point, my Lord, is that the average individual, taking a cross-section of the whole country, is willing to pay \$2 a month for electric service.

20 BY THE COURT:

Q.—That is \$24 a year.

A.—Yes. We have never found it as high as \$24.

BY MR. KER:

Q.—You say you made an examination of Mr. Cross' distribution system in 1927. With the experience you have had in the way of how a distributing system should be normally kept up, would
30 you give us your opinion of what the condition of that system was at that time?

A.—I would consider the general characteristics of the system, as I saw it at that time quite similar—let me say rather, the worst of the systems which I had cleared up in other parts of the country. It was not up to the point of average in old isolated systems, and I was instrumental in clearing up a very large number of small isolated systems in the Province of Ontario.

Q.—What do you mean by clearing up, do you mean rehabilitating?

40 A.—Rehabilitating, connecting to a large distributing system and putting them in workman-like shape.

Q.—Could you give us your opinion as to the change in conditions of demand for service between 1912 and 1926 or 1927 in a general way, just briefly?

A.—I was connected with a fairly small system in 1912 in Sault Ste, Marie, and a few years later with a smaller system connected with the lumber business, and in the smaller system at that time

*In the
Superior Court*

No. 111.
Defendant's
Evidence.
(Supp. Hearing)
John S. Parker,
Examination
Oct. 18th, 1932.
(continued)

we were giving only night service at a flat rate of so much per sixteen and so much per thirty-two candlepower lamp. I know that in that section of the country that was quite the common thing at that time, and it was a very strange event when we saw an appliance such as a toaster, or even an electric iron, even at that time.

During the last ten years there has been a great advance, particularly in the Province of Quebec, in the use of appliances in the smaller communities, and we find that our customers now demand twenty-four hours' service of the best voltage, frequency, etc., that we are able to give them.

BY THE COURT:

Q.—Including lighting, heating and everything else?

A.—Including lighting, heating and everything else, and we must give it to them if we hope to remain in business.

BY MR. KER:

20 Q.—Irons, toasters and electric heaters, radios, stoves, you would say, then, that there has been a large expansion in the uses to which electricity has been put since Mr. Cross' plant was built?

A.—Yes, there has.

BY MR. SCOTT:

Q.—Since 1912?

A.—Or even since 1926 there has been a great advance.

30 BY MR. CHISHOLM:

Q.—And consequently an increasing demand for continuous and adequate service?

A.—Well, nobody feels it more than the power companies have during the last few years.

BY MR. KER:

40 Q.—With a view of letting us know from a technical point of view as clearly as you can what that means, what would be meant by continuous service, for instance?

A.—A continuous service means twenty-four-hour service every day in the day in as far as it is humanly possible to keep it available. The voltage must not fluctuate, more than, let us say ten per cent each side of normal with the smaller communities, and much lower variations were allowable in the larger communities.

*In the
Superior Court*

No. 111.
Defendant's
Evidence.
(Supp. Hearing)
John S. Parker,
Examination
Oct. 18th, 1932.
(continued)

Q.—There would not be more than ten per cent variation in average?

A.—In the smaller communities, and the frequency must not be allowed to vary on account of the fact there are so many small motors now being used in every community.

Q.—On a small system such as that of Mr. Cross, can you tell me what would be likely to cause variations in voltage and frequency?

10 A.—There are several causes. First of all there is the regulation at the plant, whether it is properly controlled and has the governing devices, voltage regulators which might be necessary. Then, there is the condition and character of the line, whether it is large enough, whether it is properly designed, and more particularly whether it is properly maintained and kept in good working condition.

Q.—Could you give us an idea of per mile per year would require to be spent on a system of that kind in order to maintain it properly: how much per mile per year?

20 A.—We used to figure on \$70 per mile for operation and maintenance on lines of this character. Some of our neighbours in the Province of Quebec use higher figures than that.

Q.—That is operation and maintenance?

A.—Yes.

Q.—What do you mean by those two?

30 A.—I mean that for each mile of line regardless of service, loops and transformers and other appendages we figure we must spend an average of \$70 per year to look after that line and keep it in good operating condition. It needs a new pole here and there, a new cross-arm, some insulators and the labour, of course, which is necessary to have these properly installed.

Q.—Does the winter time make considerable difference in the necessity for maintenance?

A.—Storms at any time of the year are, of course, the main sources of maintenance expense. The winter times, together with June and July, are the bad months of the year for maintenance.

Q.—Is it your opinion that that line could be maintained for \$200 a year in proper condition, that is, the whole line?

40 A.—I would very decidedly say it could not be maintained at that figure.

Q.—I understand you are the president of the Canadian Electrical Association?

A.—Yes.

Q.—Just what is that?

A.—That is an association of power companies, manufacturers, and all others interested in the electrical industry in the Dominion of Canada.

*In the
Superior Court*

No. 111.
Defendant's
Evidence.
(Supp. Hearing)
John S. Parker,
Examination
Oct. 18th, 1932.
(continued)

Q.—It has a membership throughout the whole of Canada in every Province?

A.—The whole of Canada.

Q.—It is not devoted only to power producers?

A.—No, to the general advance of electrical science in the Dominion, and it is affiliated with the National Electric Light Association of the United States?

Q.—How long have you been president?

A.—Since June.

10 Q.—Since June of this year?

A.—Yes.

Cross-examination

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

Q.—It is not an association representing consumers?

20 A.—No, not definitely in connection with consumers, although there are plenty of consumers of current in the guise, or in the position or rôle of consulting engineers who belong to the Association.

Q.—When did you go to the Gatineau Power Company?

A.—In August 1927.

Q.—Not until August 1927?

A.—Not until August 1927.

Q.—So you knew nothing about Mr. Cross' distribution system before August, 1927?

A.—Nothing at all.

30 Q.—When did you make your first examination of it, not the first day you arrived at the Gatineau Company, was it?

A.—It was before the leaves turned in the fall. I cannot tell you the date.

Q.—September or October?

A.—Perhaps.

Q.—Rates have something to do with deciding whether a purchaser will make an offer for a distributing system, rates that are being charged in a territory?

A.—I do not think so. The man who buys can set his own rate with the control of the Quebec Public Service Commission.

40 Q.—Would you say that a system such as that of Mr. Cross could be operated more economically by him, or by the Gatineau Power Company, with Mr. Cross living at Farm Point and his son helping him and his man Fredericks living in a free house supplied by Mr. Cross?

A.—From my own experience in handling a plant under very similar conditions, I would estimate Mr. Cross could operate it more cheaply than any large company.

*In the
Superior Court*

No. 111.
Defendant's
Evidence.
(Supp. Hearing)
John S. Parker,
Cross-examination
Oct. 18th, 1932.
(continued)

Q.—There is no question about that?

A.—There might be a question about it, but I think it could be done.

Q.—I don't know whether you have been here during the time the other witnesses were here. Did you hear the evidence made by Mr. Cross as to his operating costs, and did you hear the evidence of Mr. Fredericks?

A.—I do not think I heard all of it. I may have heard some of it.

10 Q.—You did not hear Frederick, who had charge of the operation of his system, in any event you don't know what Mr. Frederick said because his evidence was in French?

A.—I might get some of it. I would not get it all. I was here when he put in that document, but whether I was here throughout his evidence I cannot say.

Q.—What document do you refer to?

A.—The document showing one month's revenues, that is the man you mean, is it not?

Q.—No. You know Mr. Cross lived at Farm Point?

20 A.—Yes.

Q.—That is about the center of his distribution system?

A.—Yes, at that time.

Q.—And it is in evidence that this system was looked after by a man who worked for him for twenty-five years, a man called Frederick, and Frederick got a free house from Mr. Cross, free electricity, and charged Mr. Cross fifty cents an hour for work done in repairing the line and that the balance of Frederick's was supplied by payments made to him from customers when connections were put in to their premises. Would you call that a fairly cheap job of operation as regards overhead?

30 A.—If it could be accomplished with that I would say it was very cheap indeed.

Q.—The profits would be higher than the basis you have been telling us?

A.—If it could be accomplished.

Q.—Do you consider it an advantage to a distribution system for a man to generate his own electricity? You know that some distribution systems buy their power wholesale and retail it through their system. Do you think it was an advantage to Mr. Cross' system to be able to generate his own electricity at Farm Point?

40 A.—It would all depend on whether he could generate it more cheaply than he could buy it?

Q.—You have seen his plant there?

A.—Yes, but I have never studied his plant. I am a distribution engineer. I have not made any study of his plant.

Q.—Are you in a position to say whether that added to the value

*In the
Superior Court*

No. 111.
Defendant's
Evidence.
(Supp. Hearing)
John S. Parker,
Cross-examination
Oct. 18th, 1932.
(continued)

of his distribution system the fact that in 1926 he did not have to buy electricity?

A.—I could not say whether it would be more to his advantage to continue to operate the plant or to buy electricity.

10 Q.—I do not mean whether he could continue to operate the plant after the flooding had happened, and after the waters had been raised, but supposing the waters had not been raised, would you consider it was more profitable or less profitable for him to have operated that system if he had to buy power wholesale from the Gatineau Power Company at the rate of \$40 or \$45 a horsepower?

A.—I cannot say. The rate was not \$40 or \$45.

Q.—I am saying supposing he had to buy power from the Gatineau Power Company in 1926 at \$40 or \$45 a horsepower per annum, do you think that would be more economical for him to operate under those conditions or to generate his electricity himself at Meach Creek?

A.—I cannot say. I know nothing about his costs of generation.

20 Q.—Would any cost of generation there be sufficient to equalize that difference?

A.—Oh, yes, any cost below the price that he would have to pay wholesale would be to his advantage. That is quite apparent.

Q.—So in expressing this opinion of a figure of \$20 a customer, you are not taking into consideration the fact that he was supplying his own electricity himself?

A.—No.

Q.—You are just taking that as a distribution system apart from that?

A.—Yes.

30 Q.—Then, in expressing an opinion, did you take into consideration the fact that it was in evidence in this case that Mr. Cross was using some of this electrical energy for running his portable sawmill in connection with his lumber business?

A.—No, that was not considered.

Q.—So that is something else that should be added on to this figure.

Mr. Montgomery: Why? Don't ask a question like that. You know that is not correct.

0

BY MR. SCOTT:

Q.—What is your answer?

A.—I can see no reason why the sawmills, except at Mileage 12, cannot be operated today just as well as they were then.

Q.—That is not an answer to my question and you know that as well as I do. In placing a valuation of \$21,200 on his distribution

*In the
Superior Court*

No. 111.
Defendant's
Evidence.
(Supp. Hearing)
John S. Parker,
Cross-examination
Oct. 18th, 1932.
(continued)

system, did you take into consideration the fact, or you did not take into consideration the fact, that Mr. Cross at certain seasons of the year was running his portable sawmill at Mileage 12 with electricity generated by himself?

A.—No, no account was taken of that.

10 Q.—Supposing Mr. Cross' gross revenue from that distribution system were about \$9,000 a year, and with the operating overhead roughly, as I have indicated to you a few minutes ago, what in your opinion, using your own basis of valuation, would be the value of that distribution system to him in 1926?

A.—That is, if he were to continue to operate it?

Q.—Yes, it would be \$36,000, would it not?

A.—We have to estimate his expenses.

Q.—You have told us it was on the gross?

A.—No, I have not said that.

20 Q.—If his gross income from customers were about \$9,000 a year in 1926, using the same method of valuation that was suggested to you by my friend Mr. Ker, what, in your opinion, would be the value of his distribution system?

A.—You must give me the expense of operating that. His expense for cost of power and for maintenance of his system?

Q.—He is generating his own power?

A.—But it is costing him money. How much?

Q.—Supposing his total overhead were only \$500 a year, what would be the value of the system, according to you, using your own basis?

A.—That is an impossible supposition for me to think about.

30 Q.—Will you please answer the question? His Lordship will decide what is possible and what is not possible?

A.—When my system of averages are disturbed by block of power which are out of proportion to the domestic business, then, of course, one would have to make an engineering calculation to arrive at the proper price to pay.

Q.—But you say that since 1927 you have familiarized yourself with this system?

A.—Yes.

Q.—That is true?

A.—Yes.

40 Q.—Since the leaves began to turn in the autumn of 1927?

A.—Yes.

Q.—And you have been told what was paid this operator by Mr. Cross, namely, to this man Frederick? Cannot you give his Lordship some idea what your valuation of that system would be, assuming Mr. Cross' revenue was around \$9,000?

A.—No. If you are putting a large block of power in that \$9,000 I could not.

*In the
Superior Court*

No. 111.
Defendant's
Evidence.
(Supp. Hearing)
John S. Parker,
Cross-examination
Oct. 18th, 1932.
(continued)

Q.—How do you mean, putting a large block of power into that \$9,000?

A.—Power for his sawmills or any other power block.

Q.—Supposing he were not putting any power into the portable sawmill at all, what would be your idea of the value of the system?

A.—I am to understand the gross would be taken from the domestic and commercial lighting customers only to \$9,000?

10 Q.—Supposing that were done?

A.—In that case I would apply my rule of four to one after taking out all his expenses, seen and unseen.

Q.—You would apply your ratio of four to one? That would be \$36,000, less expenses?

A.—No, it would be the \$9,000, less expenses, and the remainder multiplied by four, reserving that supposition which you have put before me.

20 Q.—Then, supposing for a period of years, say between 1920 and 1926, he had been supplying his customers, and also running his portable saw mill doing both these operations, don't you think that would tend to increase the valuation?

A.—If he had any power on his line apart from this, it would increase the value of his line, but on a different basis.

Q.—You say this basis of four to one is what the Companies can afford to pay. Those were your own words?

A.—They can afford it in the light of future possibilities. I do not think they make any money at that figure.

Q.—And sometimes they pay more than that, do they not?

A.—They have done.

30 Q.—Your company purchased the Napierville distribution system, did it not?

A.—Yes.

Q.—I would like you to put that Deed of sale into the Record also?

A.—I have not got it with me.

Q.—Will you get it?

A.—I can get it.

Q.—And will you put it in the record?

40 A.—Yes, I can put it in. It is quite a different thing from Mr. Cross' system, a long line of 25,000 volts, transmission line all built, buying power of 25,000 volts which is not comparable at all.

Q.—That is perhaps a matter of opinion. There is a deed covering it?

A.—There is a deed.

Q.—Will you obtain that deed for me?

A.—Yes, I can get it.

Q.—Your Company, the Gatineau Power Company and other

*In the
Superior Court*

No. 111.
Defendant's
Evidence.
(Supp. Hearing)
John S. Parker,
Cross-examination
Oct. 18th, 1932.
(continued)

companies of the same size that you have been speaking to allocate, I think you said, \$70 a customer per annum?

A.—Per mile.

Q.—Per mile per year?

A.—Yes.

Q.—You do not suggest that Mr. Cross was spending \$70 per mile per year on that system of his?

A.—I did not say that.

10 Q.—And you would not think his costs were anything like as high as that?

A.—No, I don't think it was.

Q.—Between 1920 and 1926?

A.—No, but I do not think his line was maintained either.

Q.—What are the rates that you are charging for these periods covered by these deeds that you have filed?

A.—Practically the same as Mr. Cross.

Q.—70 cents?

A.—No. It is a sliding scale, just the same as at Farm Point.

20 He took our rate.

Q.—There is a sliding scale rate?

A.—There is a sliding scale rate.

Q.—What is your minimum now?

A.—\$1.25 per month. If you will name any one of those municipalities, I can value it for you.

Q.—Let us take Vankleek Hill?

30 A.—Some of them have the old rate. The old company has not taken in the new franchise. Vankleek Hill still has the Ottawa-Montreal Power rate, one dollar per month, plus five cents per kilowatt hour, for consumption, ten per cent discount for prompt payment within ten days, minimum bill one dollar per month.

Q.—I am looking at the deed covering the purchase by the Ottawa-Montreal Power Company from the Vankleek Hill Electric Company, dated December 30th, 1926, which has been filed in this case as Exhibit D-148. The Ottawa-Montreal Power Company Limited has since been acquired by the Gatineau Power Company?

A.—By the Gatineau Electric Light Company.

Q.—And the Gatineau Electric Company in turn is a subsidiary of the Gatineau Power Company, is it not?

40 A.—I don't know whether it is now or not. Is it a subsidiary or affiliated? I am not sure what is the proper term.

Q.—Or it is owned by the Canadian International Hydro-Electric?

A.—It is owned by the Canadian Hydro Electric—I don't know just what the tie is in that. I have never worried about financial matters.

*In the
Superior Court*
No. 111.
Defendant's
Evidence.
(Supp. Hearing)
John S. Parker,
Cross-examination
Oct. 18th, 1932.
(continued)

Q.—And the Canadian Hydro Electric Corporation is owned by. . . .

A.—I cannot tell you.

Q.—By the International Hydro Electric?

A.—I cannot tell you. I do not know.

Q.—At any rate it is affiliated with the Gatineau Power Company.

A.—It is affiliated with the Gatineau Power Company Limited, that is the term.

10 Q.—This purchase was made prior to the time you joined the Gatineau Power Company?

A.—Yes.

Q.—I am speaking now of the Vankleek Hill purchase. The date appears by the agreement here to be the 30th December, 1926?

A.—Yes.

Q.—That is before you joined the company?

A.—Yes.

20 Q.—So you have never examined the distribution system of the Vankleek Hill Electric Company, have you?

A.—Not before the fall of 1927.

Q.—And did the Vankleek Hill Electric Company generate their own electricity?

A.—They did at one time.

Q.—At the time this purchase was made?

A.—No, they were fed, I think, at that time by the Hawkesbury Light, Heat and Power Company.

Q.—They bought their power wholesale from the Hawkesbury Light, Heat and Power Company?

30 A.—That is my understanding. I may be wrong.

Q.—Is that another subsidiary of the Gatineau Power Company?

A.—That was bought by the Ottawa-Montreal Power Company.

Q.—At any rate, at the time of this purchase in 1926 they were generating electricity?

A.—No.

Q.—The assets were simply its distribution system or any goodwill that went with it, or their clientèle.

A.—Yes.

40 Q.—Was it confined to Vankleek Hill alone or to some adjacent territory?

A.—A few farmers were served outside.

Q.—I am now looking at Exhibit D-109 which is the sale from the Municipality of Hudson and Hudson Heights to the Ottawa-Montreal Power Company, dated 12th January, 1927. That is before you came to the Gatineau Power Company, is it not?

A.—Yes, a month or so before.

*In the
Superior Court*
No. 111.
Defendant's
Evidence.
(Supp. Hearing)
John S. Parker,
Cross-examination
Oct. 18th, 1932.
(continued)

Q.—So you made no examination of the system prior to the purchase?

A.—No.

Q.—You had nothing to do with the purchase?

A.—No.

Q.—The corporation of Hudson was not generating its own electricity?

A.—No, it was buying it wholesale.

10 Q.—And distributing it among the ratepayers?

A.—Yes.

Q.—Who were they buying from?

A.—Originally from the Western Quebec Power Company, and subsequently from the Ottawa-Montreal Power Company, and their distribution system was purchased at a later date by the Ottawa-Montreal Power Company.

Q.—You do not know what the Town of Hudson was buying its own power for?

A.—No, I do not.

20 Q.—Do you, to your personal knowledge, know how many customers were on the line on the 12th July, 1927?

A.—I know how many there were in our first monthly report after that.

Q.—I suppose you had a good many new customers?

A.—Not inside of a month.

Q.—You don't know?

A.—I don't know. I know when we buy a new system we do not immediately run out and connect up a lot of customers the first week.

30 Q.—When did you first look into the question as to how many customers you had at Hudson, to your own personal knowledge?

A.—When we took over the arrangement of the system.

Q.—You were with the Company then?

A.—When they took it over I certainly was with the Company.

Q.—This sale is dated the 12th July, 1927?

A.—It was then operated by the Power Corporation and was for three months after it was purchased by the Gatineau Power Company.

40 Q.—You did not go to the Gatineau Power Company until the autumn?

A.—The autumn of 1927.

Q.—September, 1927?

A.—Yes.

Q.—The purchase is the 12th July, 1927?

A.—That purchase is between Hudson and Ottawa-Montreal Power Company. The Ottawa-Montreal Power Company was not purchased by the Gatineau Power Company until June or July of

*In the
Superior Court*

No. 111.
Defendant's
Evidence.
(Supp. Hearing)
John S. Parker,
Cross-examination
Oct. 18th, 1932.
(continued)

that year, and then it was operated for about three months by the Power Corporation before the management was taken over by the Gatineau Electric Light Company.

Q.—And at that time, to the best of your knowledge, how many customers were there?

A.—I do not carry those figures in my head. I think it was 401.

Q.—Where did you get that figure?

A.—I got that from our monthly record of customers, which was turned over to us by the Ottawa-Montreal Power Company.

10 Q.—How many months after the purchase?

A.—In the following month after the purchase, at the end of the month; the record of customers comes in on a form prepared for that purpose.

Q.—Was there a deed or sale agreement passed between the Ottawa-Montreal Power Company and the Gatineau Electric Company?

A.—I presume there was.

Q.—Would you please look that up and file it?

20 A.—That is a very elaborate document.

(Mr. Ker, K.C., of Counsel for Defendant, objects to the production of this deed.)

His Lordship: He might produce a copy.

Witness: I do not know whether we have a copy, my Lord.

BY MR. SCOTT:

Q.—There must be a notarial copy?

30 A.—There no doubt is a notarial copy.

His Lordship: The witness might procure a copy and then we can see what it is.

Mr. Ker: There is no difficulty about furnishing a copy. It includes immoveable properties all over the province.

His Lordship: If the property in question is not mentioned in the deed it will not be necessary to file it.

Mr. Ker: It is included in the deed, but I do not think there
40 is any special reference to it.

BY MR. SCOTT:

Q.—I am now referring to the agreement between the Argenteuil Lumber Company and the Gatineau Electric Light Company which has been filed as Defendant's Exhibit D-151 and which is dated the 5th March, 1930. Did the Argenteuil Lumber Company generate their own electricity?

*In the
Superior Court*
No. 111.
Defendant's
Evidence.
(Supp. Hearing)
John S. Parker,
Cross-examination
Oct. 18th, 1932.
(continued)

A.—Yes, they had a small generator and a saw mill. I cannot tell you the capacity of it.

Q.—How many customers?

A.—52.

Q.—Situated around the saw mill?

A.—Yes, throughout the town.

Q.—Was any power bought wholesale as well?

A.—No.

Q.—None at all?

10 A.—No.

Q.—Was there any other consideration than that mentioned in this deed? I am now referring to deed Exhibit D-151?

A.—No, none whatever.

Q.—What does this paragraph 3 mean?

A.—Paragraph 3 means that the properties and houses owned by Mr. Seale, who was the Argenteuil Lumber Company, should pay the same rates for electricity as their neighbours.

20 Q.—Did Mr. Seale have a steam plant with which to develop this electricity?

A.—He had an hydraulic plant.

Q.—What stream was it on?

A.—That was on the Salmon River.

Q.—Does that run into the North River?

A.—I believe it runs into the North River.

Q.—You have no idea how much power he was generating to your personal knowledge?

A.—No. That was handled by one of my men.

30 Q.—With reference to Exhibit D-150, the sale from one Marston to the Ottawa-Montreal Power Company, dated 1st February, 1927, that is at L'Orignal in Ontario?

A.—Yes.

Q.—You had never examined that system before the purchase, because it was prior to the time you came to the Gatineau Power Company?

A.—Yes.

Q.—Do you know of your personal knowledge how many customers were on that system at the time?

A.—I know from the record in the following month.

40 Q.—After the Ottawa-Montreal Power had resold to the Gatineau Electric Company?

A.—Yes.

Q.—And that was just as a distribution system?

A.—That is all.

Q.—The L'Orignal people did not generate that electricity themselves?

A.—No.

In the
Superior Court
No. 111.
Defendant's
Evidence.
(Supp. Hearing)
John S. Parker,
Cross-examination
Oct. 19th, 1932.
(continued)

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

JOHN S. PARKER,

a witness produced on behalf of the Defendant, who continues his cross-examination as follows:

10 BY MR. SCOTT, K.C.:

Q.—Let us take up the purchase by the Gatineau Power Company from Madame Senecal, which was filed as Defendant's Exhibit D-152. That covers the sale of properties in and around Ste. Jovite?

A.—Yes.

Q.—Ste. Jovite is in the Laurentian district, is it not?

A.—Yes.

Q.—Was any waterpower included in this purchase?

A.—No.

20 Q.—Where was Madame Senecal getting her power?

A.—A hydraulic plant.

Q.—She was buying it?

A.—Manufacturing it.

Q.—Manufacturing it herself?

A.—Yes.

Q.—And she still owns the plant?

A.—Yes.

Q.—You simply bought the distribution system from her?

A.—We bought the distribution system.

30 Q.—You said your ratio for this sale was five to one; and if I remember rightly, you said that was due to the fact that you had some profitable summer customers on the system?

A.—Yes. It was \$100 per customer, which would correspond to five to one.

Q.—A ratio of five to one?

A.—Yes.

40 Mr. Ker: I do not think the witness said it was because they had summer customers. I thought he said it was the possibilities of expansion.

BY MR. SCOTT (continuing):

Q.—You also said there were the possibilities of expansion?

A.—Yes; and large summer customers of an unusual nature.

Q.—What was the possibility?

A.—A large number of summer customers.

*In the
Superior Court*
No. 111.
Defendant's
Evidence.
(Supp. Hearing)
John S. Parker,
Cross-examination
Oct. 19th, 1932.
(continued)

Q.—How many customers did you say there were?

A.—200.

Q.—How many of them were permanent customers, and how many were summer customers?

A.—The hotels in that district are open all the year round. A great deal of skiing is done in the winter.

Q.—But that is not answering my question. How many were summer customers, and how many were all the year round customers?

10 A.—I could not tell you that.

Q.—You do not know?

A.—No.

Q.—Let us take Ste. Jovite, for instance. How many hotels in Ste. Jovite were open all the year round?

His Lordship: Were you not speaking of Ste. Jovite, Mr. Scott?

20 Mr. Scott: The Ste. Jovite system. The purchase is divided into various paragraphs. I am speaking now, your Lordship, about the system in Ste. Jovite.

Witness: I have a recollection of two hotels.

BY MR. SCOTT (continuing):

30 Q.—Looking at the Deed dated November 17th, 1931, Paragraph A is headed " Ste. Jovite Distribution ". How many hotels were on the Ste. Jovite distribution?

A.—I have a recollection of two. There may have been more.

Q.—What are the two?

A.—I could not name them.

Q.—You do not know their names?

A.—No.

Q.—And you do not know how much they were using?

A.—No.

40 BY THE COURT:

Q.—I thought you had mentioned a hotel at Ste. Jovite?

A.—The hotel that was mentioned was at Grey Rocks, about three miles out; and Lac Tremblant, about four or five miles out of Ste. Jovite.

BY MR. SCOTT (continuing):

*In the
Superior Court*

No. 111.
Defendant's
Evidence.
(Supp. Hearing)
John S. Parker,
Cross-examination
Oct. 19th, 1932.
(continued)

Q.—Then do you know the name of any hotel in Ste. Jovite?

A.—No, I cannot recall it.

Q.—The next paragraph deals with the line to the Pines Hotel.
Is the Pines Hotel open all the year round?

A.—I think it is.

Q.—You do not really know?

A.—I am not sure.

10 Q.—Paragraph " C ", Lac Maskinonge. How many hotels are
on the line at Lac Maskinonge?

A.—Those details were worked out by the engineer who looked
after that district. I had no knowledge of those details.

Q.—You do not know what the revenue was?

A.—Not from that detail, no.

Q.—Sub-Paragraph " D ": Ste. Jovite; Lac Tremblant. I sup-
pose the same answer applies?

A.—Yes.

Q.—Lac Ouimet, Sub-Paragraph " E ". The same answer ap-
plies?

20 A.—Yes.

Q.—And the same for Sub-Paragraph " F "—Onontio Club?

A.—The same answer.

Q.—And Lac Mercier?

A.—Yes.

Q.—Sub-Paragraph " H ", Camp Killarney. Camp Killarney is
not open in the winter, is it?

A.—I do not know.

Q.—It is one of those summer camps for children, or young
people, is it not?

30 A.—I have no knowledge.

Q.—Run by St. Patrick's Church, and just open for a few weeks
in the summer time?

A.—I do not know.

Q.—If that be the case, I suppose you do not know whether
Madame Senecal had been making money with this system prior to
the sale?

A.—No, I do not.

Q.—In other words, you do not know whether it was a profitable
or an unprofitable system for her?

40 A.—No.

There was some representation made at a hearing before the
Quebec Public Service Commission, but I have no direct memory of
it now.

Q.—How did Madame Senecal come to be before the Public
Service Commission?

A.—Through a complaint from a number of consumers in the
territory.

*In the
Superior Court*

No. 111.
Defendant's
Evidence.
(Supp. Hearing)
John S. Parker,
Cross-examination
Oct. 19th, 1932.
(continued)

- Q.—There were complaints from a number of consumers in the territory?
- A.—Yes.
- Q.—That service was bad?
- A.—Yes.
- Q.—Then how did you come to buy it? Was that what drew this matter to your attention, or to the attention of your Company?
- A.—We had been negotiating for it for some considerable time before that.
- 10 Q.—And then there were those complaints before the Quebec Public Service Commission that the service was poor?
- A.—Yes.
- Q.—And after those complaints had been heard you purchased the system?
- A.—We came to an agreement, yes.
- Q.—Were you present before the Quebec Public Service Commission when those complaints were heard?
- A.—At one hearing, yes.
- 20 Q.—Yesterday afternoon we asked you to produce the purchase contract of the Napierville System. Have you it here?
- A.—It has not yet arrived.
- Q.—It is on its way?
- A.—It is on its way.
- Q.—And I suppose the same answer applies to the purchase by the Gatineau Company of the Ottawa-Montreal System?
- A.—Yes; it is on its way.
- Q.—Do you know the Village of Papineauville?
- A.—Yes.
- 30 Q.—Where is it situated?
- A.—On the North Shore of the Ottawa River, about 35 miles east of Ottawa.
- Q.—Did your Company purchase a distribution system from some company located at Papineauville?
- A.—Yes.
- Q.—What was the purchase price?
- A.—I do not know.
- Q.—Can you not give us any idea?
- A.—No, I cannot. That was purchased before I joined the Com-
- 40 pany, and I have no knowledge of what the purchase price was.
- Q.—Yesterday you produced several purchase deeds that were negotiated before you joined the Company?
- A.—Yes.
- Q.—Will you look up the records of the Company, and produce a copy of the Papineauville deed?
- A.—I will have to have it looked up, and it will have to be brought from Ottawa.

In the
Superior Court

No. 111.
Defendant's
Evidence.
(Supp. Hearing)
John S. Parker,
Cross-examination
Oct. 19th, 1932.
(continued)

Q.—And you will have it brought down?

A.—Yes.

Q.—Are you familiar with the different parts of your distribution system?

A.—I am.

Q.—How many customers are now being served in Papineauville?

10 A.—I am not quite so familiar with it as that. I would have to look up the records to see how many customers there are in any village. We have over 130 municipalities, and I cannot carry all the details in my mind.

Q.—In making up your valuation for Mr. Cross' power system—the valuation you described yesterday—I may take it you did not take into consideration the purchase price paid by your Company for the Papineauville system?

A.—No. I would not consider it comparable.

Q.—Yet you do not know how many customers were there, nor do you know the purchase price?

A.—No.

20 Q.—So, it would be pretty hard for you to consider whether it was comparable to Mr. Cross' system or not; if you do not know the consideration paid?

A.—As I said yesterday; the Napierville system, the Papineauville system, and the Ottawa-Montreal system included such items as power plants, rights-of-way, franchises—things which are not at all comparable to this system.

30 Q.—I will not question you any further in regard to it now. You tell me you will get a copy of the Purchase Deed for the Papineauville system?

A.—Yes.

Mr. Ker: We telephoned last night for the Deeds, and I believe they are on their way here.

BY MR. SCOTT (continuing):

40 Q.—Let us now deal with the mileage of this system. My note is that you told us yesterday the system above Cascades consisted of 13.87 miles; and below Cascades, 8 miles?

A.—Yes.

Q.—And, I think you said you based the length of that line on some contour plans of the Chelsea development?

A.—Yes.

Q.—You did not actually measure the length of the lines on the road?

A.—Except by the speedometer on a motorcar.

*In the
Superior Court*

No. 111.
Defendant's
Evidence.
(Supp. Hearing)
John S. Parker,
Cross-examination
Oct. 19th, 1932.
(continued)

Q.—Travelling on the road?

A.—Yes. As a rough check.

Q.—That would give a total mileage of 21.87, would it not?

A.—Yes.

Q.—Did you measure the transmission line which crossed the
Gatineau River at Farm Point?

A.—Yes.

Q.—What was the length of that line?

A.—I cannot tell you now.

10 Q.—Did you make any note of its length?

A.—No.

The enumeration was a tally of all material, and the distance
was simply taken from the map.

Q.—How much of the 13.87 miles from Cascades up to Alcove
is represented by the transmission line that used to cross the Gati-
neau River at Farm Point? If you do not know, just say so?

A.—I do not know.

20 Q.—How much did you allow for the length of the transmission
line up the Meach Creek road? Was that included in the figure of
13.87?

A.—That was included in the section south of Cascades—in
the eight miles.

Q.—Do you know the length of it up the Meach Creek road?

A.—Not exactly, no. I know approximately because I have been
over it.

Q.—What is it, approximately?

A.—From the old line it would be about 1.4 miles, I should say.

Q.—Up the Meach Creek road?

30 A.—Yes.

Q.—Why was that included in the portion of the system below
Cascades? Meach Creek is higher up than Cascades.

A.—Meach Creek Road is south of Cascades.

Q.—Did you include that portion of the line which runs up the
hill at Rockhurst?

A.—Yes; any line that is existing.

Q.—How long is that?

A.—It is short. I just cannot say how far.

40 Q.—That was included by looking on the map, or by using your
speedometer?

A.—By going over it, and enumerating the material, and mark-
ing the limits and judging it from the map.

Mr. Ker: Mr. MacRostie said it was eight miles.

BY MR. SCOTT (continuing):

In the
Superior Court
No. 111.
Defendant's
Evidence.
(Supp. Hearing)
John S. Parker,
Cross-examination
Oct. 19th, 1932.
(continued)

- Q.—Did you include the length of line up Wakefield Creek to the McLaren mill?
A.—Yes.
Q.—What distance did you allow for that?
A.—Whatever it showed on the map. It was taken as a running total.
Q.—You have deposed to a grand total, and I want to know upon what you based yourself.
10 You cannot remember?
A.—No, but every existing pole was given full credit.
Q.—But I am not counting poles. I am now speaking of distances.
A.—The distances were also given credit.
Q.—From recollection you cannot tell me the length of that portion?
A.—No. The little sections were not measured by themselves.
Q.—You have taken the figure of \$4.00 on Exhibit D-147 as a unit price per 30-foot pole.
20 A.—Yes.
Q.—Did you get that from the market value of cedar poles of that length in 1926 or 1927? That is a pretty low figure, is it not?
A.—No. We are buying them very much cheaper now. I think we were paying around \$3.00 to \$3.75 when I began work with the Gatineau Company. That is, poles purchased locally.
Q.—That was the autumn of 1927?
A.—Yes.
Q.—Do you know Mr. Gordon Gale, the General Manager of the Gatineau Power Company?
30 A.—Yes.
Q.—He is also President, or Manager, of the Hull Electric Company, is he not?
A.—Vice-President, I think; I am not sure.
Q.—I show you what purports to be a purchase order from the Hull Electric Company, dated May 21st, 1927, addressed to Mr. Freeman T. Cross, for sixty thirty-foot cedar poles, at a price of \$5.25 per pole. Would not that figure indicate to you that was what your officials were paying for poles in that year or around that period?
40 A.—It would. It is quite possible those poles were required in a hurry for that line, and a higher price than usual was paid.
Q.—But the order is at the rate of \$5.25 a pole?
A.—It is.
Q.—And you are quite satisfied this is the signature of Mr. Gordon Gale?
A.—No, it is not the signature of Mr. Gordon Gale.
Q.—Whose signature is it?
A.—Mr. Alfred V. Gale.

*In the
Superior Court*

No. 111.
Defendant's
Evidence.
(Supp. Hearing)
John S. Parker,
Cross-examination
Oct. 19th, 1932.
(continued)

Q.—He appears to have been the Manager of the Hull Electric Company?

A.—Yes.

Q.—And you are satisfied this is the signature of Mr. Alfred V. Gale?

A.—Yes.

Q.—And that he was General Manager of the Hull Electric Company?

A.—Yes.

10 Of course, the cost of cedar poles varies rather widely, and I think it can be demonstrated that the figures I gave you are reasonable unit costs of the period.

Q.—That makes a difference of \$1.25 a pole between what the Hull Electric Company was paying in 1927 and what you are allowing in Exhibit D-147?

A.—Yes, it does.

20 Mr. Scott: I will file, as Plaintiff's Exhibit P-123, the order of which we have been speaking, and I will attach to it the accompanying letter from the Hull Electric Company, which bears date May 21st, 1927, apparently signed by Mr. A. V. Gale.

BY MR. SCOTT (continuing):

Q.—The Hull Electric Company is owned by the Gatineau Company, is it not?

A.—No.

Q.—By whom is it owned?

30 A.—The International Paper Company, I believe.

Q.—The Canadian International Paper Company?

Mr. Ker: No, it is not.

BY MR. SCOTT (continuing):

Q.—Then who owns it?

A.—I believe it is the International Paper Company.

40 Q.—And Mr. Gordon Gale, the General Manager of the Gatineau Power Company, is President of the Hull Electric Company?

A.—I do not think so.

Q.—Or Vice-President?

A.—He may be.

Q.—Did you count the poles on Mr. Cross' line, or did you have it done by some employee?

A.—I had them enumerated. I did not actually count them myself. I went over the line carefully, but I did not count the poles.

In the
Superior Court

No. 111.
Defendant's
Evidence.
(Supp. Hearing)
John S. Parker,
Cross-examination
Oct. 19th, 1932.
(continued)

Q.—The counting of the poles was done for you, and under your supervision?

A.—Yes.

Q.—Have you told us how many primary poles, and how many secondary poles, there were?

A.—No. It would be practically impossible to separate them, because the same pole carries both lines.

Q.—In some instances the one pole carried the primary lines as well as the secondary lines?

10 A.—Yes.

I did not count any poles twice, or did not have them counted twice.

Q.—Referring again to Exhibit D-147, I would like some further details in regard to the heading: "Labour, etc., to install poles and fixtures: \$1,400". Will you tell us how that \$1,400 is made up?

A.—The labour item is considered as an average cost per mile in the constructing of such systems.

Q.—How much would you be paying your labourers per day, in 1926 or 1927?

20 A.—The rate would scale down from about 35 cents per hour.

Q.—For a ten-hour day?

A.—For a ten-hour day.

Q.—Say, \$3.50 a day?

A.—\$3.50 a day.

Q.—Down to what?

A.—25 cents or 30 cents for common labour. I am not just sure what we were paying in that district, but we were getting a good deal of rough labour for 25 cents.

30 Q.—The labour item would range from, say, \$3.50 to \$2.50 a day?

A.—Yes.

Q.—What would be the total time under the heading of "Labor"?

A.—The item was not figured as time; it was figured as a mileage basis—what we know from our experience in building lines. It was not figured on a unit basis at all.

Q.—You cannot say how many miles of line would take so many hours of labour?

40 A.—No. It was figured on the basis that it would take so many dollars in labour.

Q.—How much are you allowing for labour, per mile?

A.—A little over \$100 per mile.

Q.—For labour?

A.—Yes.

Q.—And if there were 21 miles

A. (interrupting)—There were 13.87 miles in this estimate.

In the
Superior Court

No. 111.
Defendant's
Evidence.
(Supp. Hearing)
John S. Parker,
Cross-examination
Oct. 19th, 1932.
(continued)

Q.—This estimate only includes from Cascades up?

A.—Yes.

Q.—And it is just for installing the poles?

A.—Yes.

Q.—It is apart from putting in transformers and stringing the wires?

A.—Yes.

Q.—You have not estimated anything for labour below Cascades?

10 A.—No.

This total of \$11,150 was taken as a unit, and the eight miles below Cascades was figured pro rata.

Q.—Where does it appear in the exhibit?

A.—\$11,150 is the total replacement value of the 13.87 miles. Then in my evidence I showed the information in detail as to how we arrived at the other figure for the eight miles. You will find it in the record.

Q.—You have not attempted in this exhibit to treat the labour item and installation items in the same way?

20 A.—No. I could not have the details of that line enumerated, because a good deal of it has been destroyed.

Q.—I think we are on common ground that this system was built, or extended, bit by bit, from 1912 forward?

A.—That is not my understanding. I was not there.

Q.—You do not even know that?

A.—I was not there.

30 Q.—And from following the evidence in this case you do not even know that the lower portion was built many years subsequently to 1912?

A.—No. My understanding is it was built after 1920.

Q.—The lower portion?

A.—Yes.

Q.—When would you imagine the first portion had been built?

A.—1912.

Q.—Therefore, the whole system was not built on one order?

A.—No.

Q.—It was built bit by bit, by Mr. Cross?

A.—I presume so.

40 Q.—And, gradually extended?

A.—Yes.

Q.—I suppose it is more expensive building piecemeal like that, rather than giving an order to have 13, or 21, or 25 miles built all at once?

A.—That would depend upon conditions.

Q.—I mean, in making up your estimates for labour, and so on?

A.—We would figure on doing it all at once.

*In the
Superior Court*

No. 111.
Defendant's
Evidence.
(Supp. Hearing)
John S. Parker,
Cross-examination
Oct. 19th, 1932.
(continued)

Q.—If you were figuring on doing it bit by bit, the reproduction cost would be greater, would it not?

A.—Not necessarily.

I was in the lumber business, as Mr. Cross has been, and I had an electric system. We built our extensions at times when men would not be doing any other profitable work. Therefore I would expect to do it as cheap, or more cheaply, operating from a lumber industry.

10 Q.—Dealing with your depreciated figures on this valuation. I think you gave us yesterday a depreciated total of \$3,710?

A.—Yes.

Q.—That is for the portion north of Cascades?

A.—Yes.

Q.—And approximately \$4,500 for the period below Cascades—that is, after depreciation. I think you mentioned the figure of \$6,000, and said that 30 per cent or 40 per cent to be taken off?

A.—Yes.

Q.—That would give you a total of something like \$8,210?

20 A.—Yes, if I choose 30 per cent depreciation. If I choose 40 per cent, it will be a few hundred dollars below that.

Q.—I think you also gave us a valuation of the system based on a four to one ratio, for some 265 customers—\$21,200?

A.—\$21,200 is the figure, as I remember it.

Q.—What would you say represents the difference between \$8,210 and \$21,200? Would that be the element of going value, or market value? Would that enter into it?

30 A.—I would say it is the difference between physical value as at 1926 and the market value for a system in good operation at that time.

Q.—Again assuming, of course, that it could be acquired on a four to one ratio?

A.—Yes.

Q.—Since you joined the Gatineau Power Company, in 1927, you have been in charge of the distribution end of the work?

A.—Yes.

Q.—And, since you joined the Company I suppose it has been gradually extending its distribution system?

A.—Yes, we have made a number of extensions.

40 Q.—You have purchased smaller systems?

A.—Not very many since I joined the Company.

Q.—You built some new lines into new territory?

A.—Yes, some.

Q.—That territory, I suppose, would naturally be the Gatineau Valley?

A.—No, there has been very little extension in the Gatineau Valley. There have been a few summer communities.

In the
Superior Court

No. 111.
Defendant's
Evidence.
(Supp. Hearing)
John S. Parker,
Cross-examination
Oct. 19th, 1932.
(continued)

Q.—You have not extended much in the Gatineau Valley?

A.—No, not in my time.

Q.—Not since 1927?

A.—No.

Q.—Are you serving the Gatineau Valley generally now?

A.—Yes. The lines had been built before that.

Q.—But, you built new lines?

10 A.—We have built lines to little villages like Mount Serf, Lake St. Mary, the summer community at Tenaga—those are all I can recall at the moment.

Q.—Did you not acquire the Maniwaki Electric Company?

A.—That had been acquired before 1927.

Q.—At the present time is there anyone else besides your Company distributing electricity in the Gatineau Valley?

A.—Mr. Cross.

Q.—Mr. Cross is the only one, apart from your Company?

A.—As far as I know. There is a little mill at Thirty-One-Mile Lake, which has a few customers.

20 Q.—Then, you have gradually extended your system down the Ottawa River, on the west side, to Hudson, Vaudreuil, and so on?

A.—I think those municipalities were all served at that date.

A few new ones may have come in.

Q.—You are the Company serving that territory now?

A.—Yes, we are.

Q.—And, there is no one else?

A.—There are a lot of municipalities in that area.

Q.—Do you know of any other substantial company serving that district on the south side of the Ottawa River?

30 A.—No, there is no substantial company. There may be a few isolated plants. Of course, there is the Hydro Electric Power Commission of Ontario.

Q.—That is when you get into the Province of Ontario?

A.—Yes.

Q.—With reference to the various purchases of distribution systems in regard to which you spoke yesterday, are you in a position to say whether any of those systems had been making money during the five-year period between 1920 and 1925?

A.—I would not know that. I do not know.

40 Q.—You have no idea whether they were being operated profitably or not during that five-year period?

A.—No.

Q.—Nor do you know the rates they were charging in each case?

A.—Except in a general way. I could not name the rates. I could obtain the information for you, if you wish.

Q.—I think you told us that according to your experience the

*In the
Superior Court*
—
No. 111.
Defendant's
Evidence.
(Supp. Hearing)
John S. Parker,
Cross-examination
Oct. 19th, 1932.
(continued)

average light bill for domestic use per family was about \$20.00 or \$25.00 per year?

A.—About that.

Q.—That is, in the Province of Quebec?

A.—Yes: parts of the Province of Quebec. I cannot get figures for it all.

Q.—And the average domestic light bill in the Province of Ontario, when you were with the Hydro Electric, was how much? I am speaking now of the smaller communities—not Toronto,
10 Hamilton, or Ottawa.

A.—The figure I gave yesterday, which was the Report of 1926-27, when I was with the Hydro-electric Commission.

Q.—What was the figure?

A.—\$23.31.

Q.—That is for smaller communities?

A.—Less than two thousand population; villages and suburban and rural areas.

Q.—And the Report of the Hydro-Electric Commission gives
20 the cost and the number of kilowatt hours?

A.—The cost of average monthly consumption in kilowatt hours—the average monthly bill and the net cost in each municipality.

The municipalities have separate rates. There are hardly any two of them that have the same rate. So the cost varies very widely.

Q.—Looking at the Twentieth Annual Report of the Hydro-Electric Power Commission for 1927, and at page 342 thereof, can you tell us in a general way what those smaller municipalities were paying per kilowatt hour?

30 A.—Taken down the page, the figures are: 7.1; 3.0; 2.6; 7.8; 2.4; 4.0; 4.0; 8.4—etc. A very wide range.

Q.—I see something about average added at the bottom in pencil—“ 4.48 ”?

A.—That has been taken off.

Q.—But your answer does not mean anything for the Record. Apparently 4.48 cents represents the average rate in kilowatt hours for the communities mentioned on page 342?

A.—I presume it means the average of 50,994 customers which are included in the lists from page 334 to page 342 inclusively.

40 Q.—Do those tables assist you in giving me the information as to whether the average consumption there is greater or less than what you find in the Province of Quebec?

A.—From a casual glance I would consider the consumption is a little greater than in the Province of Quebec, but not appreciably greater.

Q.—How does that average rate of 4.48 cents compare with the

In the
Superior Court

No. 111.
Defendant's
Evidence.
(Supp. Hearing)
John S. Parker,
Cross-examination
Oct. 19th, 1932.
(continued)

average rate on your system for domestic consumption? Is it greater or less?

A.—I was just wondering if this might be used against us by the Province of Ontario. It would be rather lower in the Province of Ontario than in the Province of Quebec, but again not appreciably.

Q.—Do you not think that a distribution system in Quebec would be more profitable, taking it by and large, than one in Ontario?

A.—No.

10

Q.—You do not think so?

A.—No.

Q.—Even though the rates that could be charged in the Province of Quebec were higher?

A.—Quite so. The communities are very much closer together in the Province of Ontario, and that is a very important factor in the cost of distribution.

Q.—According to your figures, Wakefield, Rockhurst, Alcove, Farm Point and Cascades are all fairly close together?

A.—They are fairly close together.

20

Q.—You have mentioned a distance of 13 miles. If Mr. Cross was getting a higher rate from his customers, do you not think that any Ontario figures would not apply in fixing a valuation?

A.—Ontario figures would not apply definitely, of course.

Q.—I mean any Ontario ratios of four to one would not apply to Mr. Cross' property?

A.—The point I was bringing out was that the people of Ontario are not very different from the people of Quebec, and will pay about the average price for domestic service.

Q.—And that is the only answer you can give?

30

A.—Yes. If the rate is lower, they will use more of it.

Q.—Did you tell us yesterday whether the Hydro had any ratio upon which it based itself in acquiring smaller systems? Did you say it was on this four to one basis?

A.—No, I did not say that.

Q.—As a matter of fact, whenever they bought it was on a considerably higher ratio, was it not?

A.—No.

Q.—You do not think so?

A.—No.

40

Q.—During the period you were with the Hydro?

A.—No.

Q.—You are quite sure of that?

A.—Yes, quite sure.

Q.—Since you came to the Gatineau Power Company, in addition to the extensions on the south side of the Ottawa River, and the extensions up the Gatineau Valley, your Company has also extended

*In the
Superior Court*

No. 111.
Defendant's
Evidence.
(Supp. Hearing)
John S. Parker,
Cross-examination
Oct. 19th, 1932.
(continued)

into the territory around Joliette? I do not mean in Joliette, but up to St. Jerome, and farther north into the Laurentians?

A.—That was all done before 1927.

Q.—You are operating in that territory now?

A.—We are operating in that territory now, yes.

Q.—And that involved purchases, in some cases, of power plants; and, in other cases, of distribution systems?

10 A.—I cannot think of any purchases, except those that have been filed, which had to do with distribution systems only.

Q.—Now, Mr. Parker, let us be frank with each other, and save time. You know your Company bought out the distribution system in the Town of St. Jerome?

A.—The distribution system in St. Jerome was purchased, as I remember it, together with the Laurentian hydro-electric system.

Q.—It was a purchase?

A.—It was a purchase, but not of the distribution system in St. Jerome as a unit.

20 Q.—There may have been some power plants included in the purchase, as well as the distribution system?

A.—Yes, and a great deal of additional distribution system.

Q.—And do you think that purchase was made by your Company prior to the time you joined it?

A.—Yes.

Q.—How long before 1927?

A.—It may, indeed, have been in 1927; but it was before I joined the Company.

30 Q.—For the purpose of my cross-examination, let us call it the St. Jerome purchase. I do not know what was the name of the Company which you acquired. Can you tell me the name of the Company from whom you bought?

A.—The Laurentian Hydro-Electric, Limited. I think that was the name of it.

Q.—Do you know how many customers they were serving?

A.—No.

Q.—You have no idea at all?

A.—No, not here.

Q.—Therefore, you did not consider the St. Jerome purchase in putting this valuation on Mr. Cross' system on a four to one basis?

40 A.—No.

Q.—Would you be surprised to find it was on a very much higher ratio than four to one?

A.—Again I must say it is not comparable.

Q.—You have told us that several times. My question is would you be surprised to find it was on a very much higher ratio than four to one?

In the
Superior Court

No. 111.
Defendant's
Evidence.
(Supp. Hearing)
John S. Parker,
Cross-examination
Oct. 19th, 1932.
(continued)

A.—I would be, if the distribution systems could be separated and it is shown that we had a much higher ratio than four to one.

Q.—Then you evidently had some knowledge of what was included in that purchase?

A.—Yes.

Q.—Will you tell me in a general way what was included in that purchase in the way of assets?

10 A.—The purchase included three power plants—I stand to be corrected on that, because I am not just very familiar with the power end of it—a good deal of right of way, and property; a considerable number of undeveloped power sites and waterfalls; sub-stations—13,000 volts; transmission lines, extending as far south as St. Benoit, I believe, and as far north at Ste. Jovite.

Q.—How many customers were on the distribution part of that system?

A.—I do not know.

Q.—Can you tell me approximately? Would there be 200, or 400, or 500?

20 A.—There were a large number of municipalities; but anything I could say to you as to the number of customers would be purely a guess.

Q.—You have no idea how many customers were on the line when you purchased it?

A.—No.

Q.—Was it a purchase of physical assets or was it a purchase of shares?

A.—Again, I do not know. I have never been connected with the financial structure of the Company. I am not a director.

30 Q.—And you have not any idea of what the purchase price was?

A.—No, I have no idea.

Q.—Going a little farther up that territory, did not your Company purchase some system in or around Ste. Adele?

A.—That is the system we have been speaking of.

Q.—Ste. Adele was included in what we have been speaking of as the St. Jerome purchase?

A.—Yes.

Q.—Was Shawbridge included?

A.—Yes.

40 Q.—And Ste. Marguerite?

A.—Yes.

Q.—And Ste. Agathe?

A.—No. Ste. Agathe has its own system.

Q.—The municipality has its own system?

A.—Yes.

Q.—Around 1927, or shortly before, or shortly after, did your Company make any purchases between Ste. Agathe and St. Jerome

*In the
Superior Court*

No. 111.
Defendant's
Evidence.
(Supp. Hearing)
John S. Parker,
Cross-examination
Oct. 19th, 1932.
(continued)

apart from the one we have been speaking of as the St. Jerome purchase?

A.—The only two purchases in that area, apart from the Laurentian Hydro, were the two which have been filed; Ste. Jovite, and Morin Heights.

Q.—Can you tell us whether the Laurentian Hydro-Electric Company had been making money in that St. Jerome territory during the five years preceding its purchase by your Company?

A.—I could not say.

10 Q.—You do not know whether any of its indebtedness was assumed in the purchase by your Company?

A.—I believe I do know of certain bonds that were taken over. The responsibility for certain bonds was taken over.

Q.—I understand you also purchased a system at L'Annonciation?

A.—I think that was a part of the system when I joined the Company. It must have been purchased with the Laurentian Hydro.

Q.—You think that was included with the Laurentian Hydro purchase?

20 A.—I think so.

Q.—When you are getting the other Deeds for us will you also get the Deed in regard to the purchase from the Laurentian Hydro?

Mr. Ker: It will have to be from the Quebec Southern. The facts were the Quebec Southern was an operating company, which owned the stock of Laurentian Hydro. Quebec Southern is the parent company.

30 Witness: As I said before, I was not connected with the financial structure of the Company.

Mr. Ker: In any event, whatever it is, we will get it. We will have it during the hearing. Those papers have to come from Ottawa. They will probably be here tomorrow.

Witness: I may not be able to be here tomorrow.

40 Mr. Scott: We will see the Deeds themselves, when they come. I imagine they are all in notarial form.

Mr. Ker: We will do our best to get them as quickly as we can. Of course, those are not Deeds for distribution systems at all.

Mr. Scott: The documents will speak for themselves, and when they are brought before the Court we will see just what they are.

I will reserve my right to further cross-examination of the wit-

*In the
Superior Court*

No. 111.
Defendant's
Evidence.
(Supp. Hearing)
John S. Parker,
Re-examination
Oct. 19th, 1932.

ness until the Deeds have been produced. In the meantime, I have no further questions to ask.

BY MR. KER:

10 Q.—My learned friend suggested to you in cross-examination that there might be a difference in this four to one ratio in cases where the person from whom you were purchasing a distribution system was himself developing the power, as compared with cases in which he was buying the power elsewhere. Do the facts indicate that? In other words, in the municipality of Hudson, and in Hudson Heights, I believe they were buying their power?

A.—Yes.

Q.—The Argenteuil Lumber Company (very similar to Mr. Cross) developed for the purposes of a lumber business, and had a distribution system besides?

A.—Yes.

Q.—In that case the ratio is practically preserved between the two?

20 A.—Yes, practically.

Q.—In the case of the Argenteuil Lumber Company, I understand it was only the distribution system that was acquired. You left them with their power, and paid them practically on the basis of four to one on their customers?

A.—Considerably less than that.

Q.—And the same thing occurred with Vanchestein—the Ste. Jovite system—where they owned their own power on the Black River?

A.—I believe so.

30 Q.—You did not buy the power?

A.—No.

Q.—Vanchestein was in business, using part of his power?

A.—Yes.

Q.—And am I right in saying it went to something over four to one because of the possibilities of expansion in that area?

A.—Yes.

40 Q.—My learned friend referred to the possibility of a system being more valuable because it was exacting higher rates from its customers. Am I right in stating that you said yesterday you found that since the rates were reduced your revenues were either maintained or increased?

A.—After about twelve months we have found they have come back to practically the same gross revenue as before. They were reduced for a short time.

Q.—In other words, is it a fact that because a company is charging its customers high rates its system should be more valuable than one which is charging low rates?

*In the
Superior Court*
No. 111.
**Defendant's
Evidence.**
(Supp. Hearing)
John S. Parker,
Re-examination
Oct. 19th, 1932.
(continued)

A.—A purchaser can only consider what he can do with the system. He is only mildly interested in what the former owner may have done with it. To be more specific, I am only mildly interested when I hear of a customer paying as much as \$150 a year back in 1912. What I am very particularly interested in hearing is that last year she paid \$15, because it is the \$15 I expect to get next year, or the year after, as a purchaser.

10 Q.—As a matter of fact, the physical lines mean nothing—it is the people who are served who are the whole thing in the distribution business?

A.—Yes.

Q.—And it is coming down practically to saying that, after all, the lines are only a means to the end, and if you are purchasing a distribution system it is on the basis of what the lines will bring you at the end—and that is what interests you?

A.—I think that holds in any business.

20 Q.—My learned friend, during the course of his cross-examination yesterday, rather assumed, out of the air, some hypothetical system giving a gross revenue of \$9,000 a year, and he stated that according to your views the capital value of that system would be \$36,000?

A.—Again I say if he could prove to me that I could earn \$9,000 a year with that system, it would be worth that. The fact that he earned \$9,000 a year would not be important. It is a question whether I, as a buyer company, could earn it under the restrictions under which I have to work. Any purchaser must work in that way. He cannot collect on what the former owner has done in the past. He must work on what he can do in the future.

30 Q.—In other words, you work on the basis of four times the gross revenue that you are sure of getting out of the system?

A.—Yes.

Q.—Would you consider the Ste. Jovite district to be a district which would compare favourably, or unfavourably, from the power point of view, with the Wakefield district and its environs?

40 A.—As a resort district it is, of course, in a different class entirely, having much greater elevation, much more rugged scenery, and year-round business in the hotels. It also has the City of Montreal to draw from, as compared with the City of Ottawa, in its resort people. It also gets a very considerable proportion of American tourists, who pay high rates, which I would not expect to find in the Wakefield district.

Q.—How would you compare it from the point of view of electric distribution? If you were going to purchase, would you consider both districts equal, or would you consider one was better than the other, and, if so, which?

A.—In the one case we have used the figure of four to one. In

*In the
Superior Court*

No. 111.
Defendant's
Evidence.
(Supp. Hearing)
John S. Parker,
Re-examination
Oct. 19th, 1932.
(continued)

the Ste. Jovite case we have used the figure of five to one, in the actual purchase. The prices speak for themselves.

Q.—And the Vanchesteins retained their power development themselves. You did not buy it from them?

A.—We did not touch that at all.

Q.—Am I right in stating that the other purchases, such as Papineauville, the Quebec Southern (operating in the north) and the Laurentian Hydro, were purchases of companies with complete operating power developments, and transmission business, taken
10 together?

A.—In every case.

Q.—And a great many municipalities already being served?

A.—Large numbers.

Q.—Mr. J. M. Robertson was examined as a witness for the Plaintiff, and, at page 821, gave the following evidence, under cross-examination:

“ Q.—I may state it has become fairly well standardized
20 in this Province on a basis of four times the annual gross revenue?

A.—If you suggest 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.”

Do you agree with that?

A.—Yes, I would say it sometimes might go from three to six.

Q.—That is Mr. Robertson's evidence for the Plaintiff on the
30 same point?

A.—I would agree with it.

Q.—Again, on exactly the same point, he gave the following evidence (page 821):

“ Q.—I am asking you to assume that the gross revenue from Cross' system, not from any other system that 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?

Q.—I am talking about a distribution system where you
40 have 100, 300, or 500.

A.—You want the price per customer.

Q.—Yes, precisely.

A.—Assuming that other things are 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

*In the
Superior Court*
No. 111.
Defendant's
Evidence.
(Supp. Hearing)
John S. Parker,
Re-cross-
examination
Oct. 19th, 1932.
(continued)

bought for three times the gross revenue. The general case of the people who buy is that they are worth somewhere around five times the gross revenue in normal times.”

Do you agree with that statement of Mr. Robertson, in a general way?

A.—In a general way: with the stipulation of four to one.

BY MR. SCOTT:

10

Q.—That is what you would like to do as a purchaser?

A.—That is what we do, as a general rule.

Q.—Did you negotiate those purchases at St. Jerome, or Papineauville, or Napierville?

A.—I was in the picture. I did not do it all myself.

Q.—You did not fix the purchase prices?

A.—That, of course, was fixed by negotiation. No system has been purchased without my O.K. since I have been with the Company.

20

Q.—But, were you the one who fixed the prices?

A.—In the last analysis I am the one to fix the prices.

Q.—But, you did not fix the prices in the purchases that were made before you joined the Company?

A.—No.

Q.—Since you joined the Company, what purchases have you made yourself, or fixed the prices on, on a four to one ratio, and got away with it?

A.—The prices I have submitted: Morin Heights being one.

30

Q.—You fixed that price personally?

A.—Yes, in the final O.K. The negotiation was carried on by my engineer.

Q.—And, that was the only one?

A.—In the other distribution purchases since my time, the purchasing was all practically done before I came on the scene.

Q.—How far is Ste. Jovite from Montreal?

A.—80 miles, more or less.

Q.—Are there any hotels at Wakefield?

A.—Yes.

40

Q.—How many?

A.—Two, that I know of.

Q.—They are open all the year round?

A.—I believe so.

Q.—How far is Wakefield from Ottawa?

A.—About twenty miles.

Q.—Would you say the average summer cottager in the Wakefield district, on the Gatineau, spends a longer time per summer on

*In the
Superior Court*

No. 111.
Defendant's
Evidence.
(Supp. Hearing)
John S. Parker,
Re-Cross-
examination
Oct. 19th, 1932.
(continued)

the Gatineau than the average summer cottager spends at Ste. Jovite?

A.—A longer time, but much shorter money.

Q.—Because the Montrealers are richer?

A.—The Ste. Jovite district has an entirely different class of cottager, and cottage.

Q.—And a much shorter season?

A.—There are the same number of days in both places.

10 BY MR. KER:

Q.—Of course, the population of Montreal (from which the summer cottagers are drawn) is much larger than the population of Ottawa?

A.—Yes. There are also the New Yorkers.

BY THE COURT:

Q.—And your idea is they pay more?

20 A.—Yes, they do pay more. And that is what regulates the purchase price. The civil servants at Ottawa cannot afford to pay, and the summer cottagers at Wakefield are composed largely of civil servants from Ottawa.

(And further deponent saith not.)

*In the
Superior Court*

No. 110.
Defendant's
Evidence.
(Supp. Hearing)
C. H. Boisvert,
Cross-examination
Oct. 19th, 1932.
(continued)

30 CONTINUATION OF TESTIMONY OF CHARLES BOISVERT,
ON BEHALF OF THE DEFENDANT.

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

CHARLES BOISVERT,

40 already sworn, and examined on behalf of the Defendant, who continues his cross-examination as follows:

BY MR. SCOTT, K.C.:

Q.—I asked you to look up your field notes of the two trips you made in 1927?

A.—Yes.

Q.—Let us first take the one on January 3rd, 1927. That was

In the
Superior Court

No. 110.
Defendant's
Evidence.
(Supp. Hearing)
C. H. Boisvert,
Cross-examination
Oct. 19th, 1932.
(continued)

not the day you took your elevations?

A.—No.

Q.—This memorandum in your handwriting refers to your trip up the river?

A.—Yes.

Q.—It has nothing to do with elevations at Farm Point?

A.—Absolutely nothing.

Q.—There is no mention of expropriation proceedings in these notes?

10 A.—No.

Q.—Then let us look at your field notes for January 28th, 1927. Will you please tell from those notes what bench mark you used?

A.—It is not marked on the notes, but it was a bench mark on a pole close to the power house.

Q.—And I see a figure for the level at the tailrace, 313.91?

A.—Yes.

Q.—That is as you found conditions on that date?

A.—Yes. At the tailwater.

20 Q.—You are not suggesting that the head could not have been increased by clearing out any debris or refuse at the mouth of the draft tube?

A.—That elevation was not measured at the mouth of the draft tube; it was measured down close to a culvert, about five to ten feet from the power house. As a matter of fact, it was lower than the draft tube.

Q.—Did I understand you to say it was 25 feet from the draft tube?

30 A.—About five or 10 feet from the power house—downstream from the power house. There is a little road in front of the power house, and there is a little culvert over the creek. It was measured close to the culvert, downstream of the waterwheels.

Q.—Was it measured above the mouth of the draft tube?

A.—No, it was measured below the mouth of the draft tube.

Q.—You paid no particular attention to the soil underneath at the mouth of the draft tube?

A.—No, because I was lower down.

Q.—You spoke of a culvert, or bridge. Just what were you referring to?

40 A.—There is a road right in front of the power house.

Q.—Right in front of Mr. Cross' power house?

A.—Yes, and there is a small culvert over the gully where the draft tube discharges.

Q.—The draft tube goes underneath the road?

A.—I do not know exactly where it goes. It discharges into that gully, and the gully runs under the culvert.

In the
Superior Court

No. 110.
Defendant's
Evidence.
(Supp. Hearing)
C. H. Boisvert,
Cross-examination
Oct. 19th, 1932.
(continued)

Q.—Where does the draft tube come out? On the lower side of the road?

A.—The draft tube comes out close to the power house—I do not know exactly at what point—above the culvert.

Q.—To which culvert are you referring?

A.—There is a culvert right in front of the power house, then there is a gully where the draft tube discharges, and the draft tube discharges above the culvert.

10 Q.—Do you know whether that draft tube has been changed since you took the elevation?

A.—I do not know that.

Q.—You do not know whether it is the same today as it was then?

A.—I did not look at the draft tube.

Q.—When were you last up there?

A.—My last examination of the power house was in 1930, I believe.

20 Q.—Did it appear to you that the draft tube was in the same place as it was before?

A.—I did not examine it on that day.

BY MR. KER:

Q.—I understand you gave Mr. Cross credit for all the head he could have obtained there?

A.—Yes. As a matter of fact, I gave him more head, because instead of measuring at the mouth of the draft tube I measured lower down.

30 Q.—And what was the total head you found?

A.—74 feet, available.

Q.—That being the case, and going as low as you could, you found 313.91?

A.—Yes.

Q.—And the difference between 313.91 and 321.5 is absolutely accurately the loss of head there?

A.—It is the loss of head.

Q.—With the water at the level 321.5?

A.—Yes.

40 Q.—And what does that amount to?

A.—7.59 feet.

Q.—Out of a total head of 74 feet?

A.—Yes, sir.

BY MR. SCOTT:

Q.—The benchmark to which you referred was given to you by

*In the
Superior Court*
No. 110.
Defendant's
Evidence.
(Supp. Hearing)
C. H. Boisvert,
Cross-examination
Oct. 19th, 1932.
(continued)

the Company's engineer, who was present?

A.—It was given to me that day in the presence of Mr. Cross.
Mr. Cross was there.

Q.—It was one of the engineers of the Company who gave you
the benchmark?

Mr. Montgomery: My friend should take the answer of the
witness as it is. He has said Mr. Cross was there.

10 BY MR. SCOTT (continuing):

Q.—By whom was the benchmark given to you?

A.—By an engineer of the Company, if I remember rightly.

BY MR. KER:

Q.—And in the presence of Mr. Cross?

A.—Yes.

20 Q.—You were in attendance, having been sent by the Public
Service Commission Board, before whom proceedings to expropriate
this property were taken by the Company?

A.—Yes.

Q.—And after notices had been given to both sides to be present?

A.—Yes. Nobody pointed out to me that the benchmark was
wrong. Everybody agreed.

(And further deponent saith not.)

30

40

In the
Superior Court

No. 112.
Defendant's
Evidence.
(Supp. Hearing)
Stuart S. Scovil,
Examination
Oct. 19th, 1932.

DEPOSITION OF STUART S. SCOVIL, A WITNESS EXAM-
INED ON BEHALF OF THE DEFENDANT

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

STUART S. SCOVIL,

10

of the City of Ottawa, consulting engineer, aged 46 years, a witness produced and examined on behalf of the Defendant, who, being duly sworn, deposes as follows:

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

Q.—You have already been examined in this case when it was before His Lordship on the original proceedings?

20

A.—Yes.

Q.—At that time you told us the particular branch of your profession in which you have specialized, and you stated what your experience had been. Would you mind giving us your qualifications again?

A.—I am a hydraulic engineer. I have been specializing for twenty years in it, particularly in stream measurement work, run-off of water sheds throughout Canada, storage studies, and river improvement.

30 Q.—You were connected with the Federal Government Department dealing with those subjects?

A.—I was in charge of such work for the last years of my service in Ottawa. I spent thirteen years in Government service. I have been in private practice since 1925.

Q.—In the same kind of work?

A.—Specializing entirely in the same work.

Q.—In private practice?

A.—Yes.

40 Q.—Are you a member of the Board regulating the relations of the various parties in connection with the hydro development at Beauharnois?

A.—I am a member of a board of three set up by the Montreal Light, Heat & Power Company and the Beauharnois Light, Heat & Power Company to fix upon the compensating works necessary in the St. Lawrence River at Cedar Rapids. I am also a member of a board which reported to Beauharnois (and I am still a member) on the Coteau Rapids control work, necessitated through the Beauharnois diversion from the main river.

*In the
Superior Court*

No. 112.
Defendant's
Evidence.
(Supp. Hearing)
Stuart S. Scovil,
Examination
Oct. 19th, 1932.
(continued)

Q.—You are familiar with the locality known as Meach Creek, and the Gatineau River at that point?

A.—I am.

Q.—Have you made any studies to determine what would be the ordinary minimum flow at Meach Creek—that is, dependable for power purposes?

A.—I have.

I would place the ordinary minimum of Meach Creek, at the mouth, at six second feet.

10 Q.—That is six cubic feet per second?

A.—Yes.

I have based that figure on the existing records of Meach Creek run-off, and on my general knowledge, and from my experience in the last twenty years with run-off in small streams.

Q.—What is meant by “run-off”?

A.—The ordinary flow of the river.

20 During the year 1920 investigation was made by the Department of Public Works of Canada of the water levels in Meach Lake, together with discharges through the power plants at Farm Point. Those records were produced in connection with the first case arising out of Farm Point between Mr. Cross and the Gatineau Power Company.

Q.—That was when the Gatineau Company attempted to expropriate in 1926 or 1927?

A.—Yes.

In addition to the records in the year 1920, there have been filed with the Court as exhibits discharge measurements made at intermittent periods.

30 Based particularly on the one continuous record covering the year 1920, obtained by the Department of Public Works, when storage was being utilized on Meach Lake in that year (which, of course, would augment the low flow of the river) the flow was at times in the neighbourhood of five second feet. 1920 was not an extreme low year as compared with other low years of record. When I say a low year, I mean a year of low discharge in the rivers.

40 Further comparison in connection with six second feet might be made. The Gatineau, with a watershed of 9,600 square miles, has an ordinary low flow of 2,800 second feet. Meach Creek cannot be taken at the same rate, as its drainage is only 45 square miles. It may have the same average run-off, but in periods of drought the run-off of Meach Creek would drop extremely lower than the Gatineau. That was shown during the past year. It was that way throughout the last year. Where the Gatineau in 1931 would have dropped to 3,000 second feet, Meach Creek dropped to two second feet.

Putting it in a ratio of drainage basins: 3,000 second feet on

*In the
Superior Court*

No. 112.
Defendant's
Evidence.
(Supp. Hearing)
Stuart S. Scovil,
Examination
Oct. 19th, 1932.
(continued)

the Gatineau is at the rate of .3 second feet per square mile. As applied to Meach Creek, a drainage of 45 square miles would show 13 second feet; whereas we have actual records of only two second feet in that dry period.

10 In the smaller watershed there is no diversity—and by diversity I mean rain. In a larger watershed rain may be encountered in the upper reaches, and not in the lower; or the reverse. So that as a result of the larger area a more uniform run-off or river flow is assured, whereas in a small watershed, such as Meach Creek, a season may be encountered, such as last year, when no rain falls in the watershed.

About two months ago there was over four inches of rainfall in a period of two days in the upper watershed of the Gatineau, the Upper Ottawa and the Upper St. Maurice, which brought the flow of those rivers up very materially. There was no rainfall in the lower portion of the watershed.

That is an explanation of diversity being in favour of the larger watershed.

20 That comes back to conditions as encountered last year, 3,000 second feet on the Gatineau, under natural conditions, eliminating regulation by storage. A comparable rate on Meach Creek would be 13.5 second feet; whereas it was only two second feet.

Q.—From the investigation you made with respect to this ordinary minimum flow, could the minimum flow you speak of, or could six feet, be depended upon to yield any dependable power all the year round, and, if so, what?

A.—With a head of 74 feet, at Farm Point, 40 horsepower.

30 Q.—That is what you might call dependable power, available for general purposes?

A.—Yes. It would not be available at all times. Not in extreme low years.

Q.—In your experience in the last few years, has there been a reduction from six feet?

A.—I am placing that as an ordinary minimum. It would not give dependable power in every year. The flow will drop down to two second feet, or less, on Meach Creek.

Q.—Has that happened recently, to your knowledge?

A.—It happened last year.

40 Q.—For how long did it last?

A.—At least three months' time through last year.

Q.—It carried through last year for three months at two feet or less per second?

A.—Yes.

BY THE COURT:

Q.—How many horsepower would that produce?

*In the
Superior Court*

No. 112.
Defendant's
Evidence.
(Supp. Hearing)
Stuart S. Scovil,
Examination
Oct. 19th, 1932.
(continued)

A.—Two second feet would give 13 horsepower.

BY MR. KER (continuing):

Q.—And six cubic feet per second, ordinary minimum would give 40 horsepower?

A.—Yes.

10 BY THE COURT:

Q.—How many horsepower would be required to run a mill like Mr. Cross had at Farm Point?

A.—For his sawmill, I believe the rated capacity of the wheel is 140 horsepower. That operates under a 53-foot head, and at full capacity would require thirty second feet. For the power house, with a 74-foot head and an installed capacity of 150 horsepower, it would require 25 second feet for full output. Making a total of 55 second feet flow required for full operation of his plant.

20 BY MR. KER (continuing):

Q.—That is for full operation of the sawmill and the lighting business at the same time?

A.—Yes.

Q.—You are now speaking of dependable power?

A.—Yes.

BY THE COURT:

30 Q.—And, could he actually develop that the whole year round?
A.—No, sir. It would be absolutely impossible.

BY MR. KER (continuing):

Q.—What percentage of the year would he be able to get 55 second feet?

40 A.—Compared with the Gatineau—which I admit is not the proper comparison to make, because the Gatineau has much more favourable run-off conditions than the small watershed—55 second feet would be equivalent to 1.2 second feet per square mile; which is the average run-off of the Gatineau. That would mean complete regulation of Meach Creek. The same comparable rate on the Gatineau would be 11,600 second feet, which would only be comparable 30 per cent of the time.

Q.—Would that percentage be applicable, in your opinion, to Meach Creek also?

In the
Superior Court

No. 112.
Defendant's
Evidence.
(Supp. Hearing)
Stuart S. Scovil,
Examination
Oct. 19th, 1932.
(continued)

A.—Yes.

Q.—That is to say, the 55 cubic feet per second (which is the minimum he would require to run both plants at the same time) would be only available to him on an average of 30 per cent of the days in the year?

A.—Yes.

Q.—I think you said that 25 second feet would be required to run his lighting plant at full capacity?

A.—Yes: on a 74-foot head.

10 Q.—Can you tell us the period of time, or the percentage of time, he would have the 25 feet per second which is sufficient to run his lighting plant alone?

A.—No, I have not computed that.

Q.—It would be something over 30 per cent, would it not?

A.—It would be over 30 per cent.

Q.—But, it certainly would not be 100 per cent?

A.—No: far from it.

20 Q.—Could you figure it out approximately? Would it be 60 per cent of the time?

A.—I would not care to mention any particular figure. I have not computed it.

BY THE COURT:

Q.—In what season would he get the most power?

A.—In the spring of the year. The low-water period extends through very often from June on right until the next spring, gradually diminishing from June until the next spring.

30 BY MR. KER (continuing):

Q.—I think you were assuming 74 feet head. Let us assume a reduction of $7\frac{1}{2}$ feet in that head. Under the ordinary minimum flow to which you have referred, what reduction would that be, converted into horsepower?

A.—With a loss of $7\frac{1}{2}$ feet, and at an ordinary minimum of six second feet, the reduction would be 4.1 horsepower.

40 Q.—4.1 horsepower, dependable, or more or less continuous power?

A.—Yes.

Q.—You are familiar with the physical characteristics of Meach Creek, and Farm Point, and the little power house?

A.—Yes.

Q.—Assuming the floor of the power house to be at elevation 321.5, and assuming the water to be at the same level; is there any

In the
Superior Court

No. 112.
Defendant's
Evidence
(Supp. Hearing)
Stuart S. Scovil,
Examination
Oct. 19th, 1932.
(continued)

physical reason, apart from loss of power, why the power house could not continue to operate?

10 A.—None whatever. It is common—I should not say practice, but it is a common occurrence, where power houses operate with tailwater level above the elevation of the floor generator deck, such as Mr. Cross has, in high floods in the spring of the year. I know of no better example than the Chaudière plant of the Gatineau Power Company on the Ottawa River, where the entrance to the generator deck of the power house is closed by stop logs in high water every spring. The water is anywhere from two to three feet above the level of the floor of the power house.

I have known of a case where a power house door was completely closed by a concrete structure during a high flood, which lasted three months. The water was over five feet above the generator deck of the power house; yet, the power house still operated. The only effect was that of a reduction in power output.

Q.—Due to the reduction of the tail?

20 A.—Reduction of the head. Through the raising of the tail water level the head was reduced.

There is no reason why the plant could not operate.

Q.—I presume it would be inconvenient to have the power house floor banked, as was done in those instances?

A.—Yes.

Q.—Have you any suggestion to make with respect to the remedying of that condition in the physical power house itself? Could the power house be raised?

A.—There is no reason at all why it could not be. Both the units and the floor could be raised.

30 Q.—Sufficiently to bring them above the level of the water?

A.—Yes.

Q.—And the various wheels, penstocks, saddles, and so on adjusted to the new level?

A.—It would be a very simple matter.

Q.—Would it be a costly matter?

A.—I do not believe so. I have not made an estimate of it, but I do not believe it would be very costly.

40 Q.—Would the raising of the power house in any way effect a loss of power, or bring about an additional loss of power, or anything of the kind?

A.—No additional loss other than the first loss brought about through raising the tailwater and reducing the head.

In other words, raising this water to 321.5 would not in any way interfere with or necessitate the shutting down of the power house: it would only mean a loss of approximately 10 per cent in the power output.

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

*In the
Superior Court*

No. 112.
Defendant's
Evidence.
(Supp. Hearing)
Stuart S. Scovil,
Cross-examination
Oct. 19th, 1932.

Q.—If your theories be correct, how is it Mr. Cross carried on business through all those years? How do you account for that?

A.—I cannot see how Mr. Cross could have carried on a power development continuously, of any appreciable amount.

Q.—I am speaking now of prior to 1926.

10 A.—I am speaking of any period: whether it was previous to 1926, or later. That would not affect the run-off conditions of Meach Creek.

Q.—That is very interesting, but how do you account for the fact that Mr. Cross carried on his lumbering business, in which he used the waters of Meach Creek; and his electrical distribution system, in which he used the waters of Meach Creek. How do you account for the fact that he carried on those two businesses up to 1926?

20 A.—He may have carried them on. It is a question of what type of service he gave, and how long a period he operated. The only records I have ever seen in regard to flows do not warrant any statement that he carried on, or could have operated those plants to full capacity throughout the major portion of the year.

Q.—And if he had only 40 horsepower which you call dependable, would you think that would be capable of running his sawmill and serving some 300 customers?

A.—Not properly, nor continuously, no.

Q.—You have been advising the Gatineau Power Company throughout these proceedings, have you not?

30 A.—Yes.

Q.—In a professional way?

A.—Yes.

Q.—And in the earlier expropriation proceedings concerning Meach Creek?

A.—Yes.

Q.—As a matter of fact, you have a general retainer from the Gatineau Power Company?

A.—I have; as I have from two other large Power Companies.

Q.—The Canadian International?

40 A.—The Montreal Light, Heat & Power Company, and the Beauharnois Light, Heat & Power Company. Also the International Joint Commission.

Q.—So there are the Gatineau Power Company, the Montreal Light, Heat & Power Company and the Beauharnois Light, Heat & Power Company?

A.—Yes.

Q.—You have a general retainer from them?

In the
Superior Court

No. 112.
Defendant's
Evidence.
(Supp. Hearing)
Stuart S. Scovil,
Cross-examination
Oct. 19th, 1932.
(continued)

A.—Yes, an annual retainer.

(And further for the present deponent saith not.)

BY MR. SCOTT:

Q.—Before the adjournment, you told us that the loss of seven and a half feet of head was, in your opinion, equivalent to a loss of about ten per cent of the capacity of Mr. Cross' coffer dam?

10 A.—That is quite right.

Q.—Is that answer, in your opinion, as dependable or reliable as the evidence you gave, that Mr. Cross required 55.7 of flow in order to operate his mill?

A.—I usually give evidence to the best of my opinion, so that anything I say is to the best of my judgment.

Q.—And you are just as sure of the one opinion as of the other?

A.—Yes.

Re-examination

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

Q.—Your estimate of 53 feet head requires some premise as to the 140 horsepower required in the sawmill, and 150 horsepower in the power plant, is that correct?

A.—Fifty second feet is based upon 140 horsepower at 53 feet head, and 80 per cent efficiency in the sawmill for full capacity requiring 30 second feet.

30 The company's rating of the unit in the Hydro-Electric plant is 150 horsepower at 70-foot head, 80 per cent efficiency, requiring 24 second feet at full capacity.

Under a 74 feet head the power in the Hydro-Electric plant at full capacity would be increased to 159 horsepower, and would require under like circumstances 25 second feet, making a total for both sawmill and Hydro-Electric plant of 55 second feet.

Q.—That is when they both operate at full capacity?

A.—At full capacity.

40 Q.—Of course, the head under which the sawmill operates being partly up the hill, is not as large as the head below to the power house?

A.—The head at the sawmill was taken between a pond elevation.

Q.—Above?

A.—Above of 388, and a tailrace of 335, giving a 53-foot head. At the power house the head was taken between elevations 388 and 314, giving a head of 74 feet.

Q.—To one of my learned friend's questions you stated one of

*In the
Superior Court*

No. 112.
Defendant's
Evidence.
(Supp. Hearing)
Stuart S. Scovil,
Re-examination
Oct. 19th, 1932.
(continued)

your clients which you were under retainer for was the International Joint Commission?

A.—I am Canadian Engineer to the International Commission on the Rainy Lake Reserve, a matter which has been carrying on for the past seven years, dealing with storage and regulation of Rainy Lake, of the boundary waters above Rainy Lake.

Q.—Your duties in that respect would be along the lines of stream measurements, and natural flow?

10 A.—My duties in that respect are entirely along the line of determination of natural flow and of regulated flow for a drainage of 26,000 square miles. The Reserve involves the determination by the International Joint Commission of what storages and developments are advisable in the boundary waters above Rainy Lake, and as to the effect that these works may have upon other interests, but downstream particularly, within Canada as affecting the whole Winnipeg River, on which southern Manitoba is entirely dependent for its power sources.

Re-cross-
examination

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

Q.—And you are still of opinion that all Mr. Cross had at Meach Creek was 40 horsepower dependable?

A.—Dependable.

(And further deponent saith not.)

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40

*In the
Superior Court*

No. 113.
Defendant's
Evidence.
(Supp. Hearing)
Carroll N. Simpson,
Examination
Oct. 19th, 1932.

DEPOSITION OF CARROLL N. SIMPSON, A WITNESS
PRODUCED ON BEHALF OF THE DEFENDANT.

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

10

CARROLL N. SIMPSON,

of the City of Ottawa, Hydraulic and Electrical Engineer, aged 39 years, a witness produced on behalf of the Defendant, who, being duly sworn, doth depose and say as follows:

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

20 Q.—Mr. Simpson, you were previously examined in this matter in respect of the portion of the case which was before this Court earlier in the year, or at the end of last year?

A.—Yes.

Q.—I understand you are the chief engineer of the Gatineau Power Company?

A.—Yes.

Q.—Are you familiar with Meach Creek or Farm Point, power plant of the Plaintiff, Mr. Cross—I understand they are one and the same thing?

30 A.—I have made a general inspection of them.

Q.—Assuming a water elevation of 321.5 in the Gatineau River, and consequently in the Meach Creek, what is your professional opinion as to the ability of the plant to operate, assuming, let us say, the power house floor is the same level, 321.5?

A.—The plant would be capable of operating, but it would not deliver as much power as if the water in the tailrace were at 318 or 315, or any elevation below 321.5.

Q.—I take it that is due to reduction in head by reason of the tailwater?

40 A.—Yes.

Q.—Is the loss of head, in your opinion, the only effect which it would have on its operation?

A.—There would be a loss of power due to the loss of head. I would not think that the plant would be as satisfactory under general operating conditions with the water right at the power house floor level.

In the
Superior Court

No. 113.
Defendant's
Evidence.
(Supp. Hearing)
Carroll N. Simpson,
Examination
Oct. 19th, 1932.
(continued)

Q.—Why? Because of the inconvenience of having water on your floor?

A.—The water might not be exactly on the floor, but the water comes a little bit too close to the electrical machinery, and you are likely to get some dampness in the electrical windings which may break them down?

Q.—What would your opinion be, then, as to measures necessary to remedy that inconvenient condition?

10 A.—I would raise the water wheel and the generator approximately three feet.

Q.—Would that, in your opinion, satisfy all the requirements of ordinary convenient operation?

A.—Yes. You would have to put additional concrete on the floor, to raise the floor level and the water wheel and the generator and the penstock, and the building itself would have to be altered to some extent, but the plant would be capable of operating in just as good a way as it could formerly, excepting there would not be as much power output due to the reduced head.

20 Q.—What is the relation between the percentage of loss of power to loss of head? Is it exactly equal?

A.—No. The loss in his power varies as the three halves power of the head.

Q.—Assuming, then, a reduction in head of seven to seven and a half feet, what, then, would be the percentage of the loss of power?

A.—That would be assuming a normal head of seventy feet and a new head of sixty-two and a half feet.

Q.—Assuming a turbine rated at seventy-foot head and a normal head of seventy-four feet reduced by seven and a half feet?

30 A.—The normal rating of the wheel would not make very much difference. I would judge with a wheel such as the type that Mr. Cross has at Farm Point, that a wheel that is capable of delivering a definite amount of seventy horsepower would deliver in the ratio of the three halves power with the head of 74 feet, so I could tell you what the proportion of reduction would be between 74 and $66\frac{1}{2}$.

Q.—Would that be a difference of seven and a half feet of head?

A.—There would be $86\frac{1}{2}$ per cent of the capacity at 74 feet head.

40 BY MR. SCOTT:

Q.—Reduced down to $66\frac{1}{2}$?

A.—A $66\frac{1}{2}$ -foot head would have $86\frac{1}{2}$ per cent of the capacity that you would have at 74 feet head.

BY MR. KER:

In the
Superior Court

No. 113.
Defendant's
Evidence.
(Supp. Hearing)
Carroll N. Simpson,
Examination
Oct. 19th, 1932.
(continued)

Q.—You are now speaking of capacity?

A.—I am speaking of maximum capacity of the water wheel.

Q.—Have you made any estimate of the cost of the physical work that you speak of for the purpose of overcoming that inconvenience to the power house itself—the raising of the floor?

A.—Yes, I have made an estimate.

Q.—You have made a detailed estimate? Will you produce it as Exhibit D-153?

A.—Yes.

10 Q.—You produce as Exhibit D-153 an estimate of the cost of raising the power house for operation, with the water level at 321.5?

A.—Yes.

Q.—Would you be good enough to state what the total cost of that re-arrangement would be?

A.—I estimate the total cost of re-arranging the penstock, power house and the adjustments to the machinery at \$1,450.

Q.—I suppose that is quite a physical possibility?

A.—Oh, yes.

20 Q.—With an adjustment made, is there any adverse effect on this power plant apart from the loss of capacity due to the reduction of the tailrace?

A.—I would say there is none whatever.

Q.—When you spoke of 86 per cent of capacity, you do not convert that into horsepower over a given time, do you?

A.—As far as the installation goes at Farm Point, I do not think that means anything in the matter of horsepower, because the wheel is made up in excess of the available water in the river.

30 Q.—In other words, there is a lot of play between what the wheel can take through and the amount of water that can go through it?

A.—Yes, the fact that the wheel is of larger capacity than the water available in the river, if there is a ten per cent reduction in the flow, the power would merely be reduced ten per cent, as long as the power would not be to the maximum rated capacity of the wheel. It is only the maximum rated capacity of the wheel that is reduced in three halves power.

40 Q.—Am I right in assuming that, insofar as dependable power is concerned, the reduction in actual power due to this cause would be practically equivalent to the percentage of reduction in head?

A.—It is exactly proportional to the percentage of reduction in head. I do not consider there would be any practical difference in the efficiency of the wheel installed in Mr. Cross' plant operating under 67½ feet as against 74 feet of head.

Q.—You think there would be no difference in efficiency?

A.—No practical difference in efficiency. I would guess that it might be in the order of one-half of one per cent.

*In the
Superior Court*
—
No. 113.
Defendant's
Evidence.
(Supp. Hearing)
Carroll N. Simpson,
Examination
Oct. 19th, 1932.
(continued)

Q.—In other words, the wheel designed to operate at 70 would operate either at 74 or 66 with a loss of only one or one-half of one per cent?

A.—Yes.

Q.—That is with a Barber wheel such as you are speaking of?

A.—Yes.

Q.—And you know that is the kind of wheel that is installed, do you?

A.—Yes.

10 Q.—Apart, then, from the ten per cent loss of power, the loss by reason of the wheel is practically negligible?

A.—Yes.

Q.—You are sure as to that?

A.—Yes.

Q.—Because I think there has been some suggestion otherwise. Have you heard Mr. Scovil's evidence?

A.—I heard most of it. I did not hear the last five minutes of it.

20 Q.—I understand Mr. Scovil deposed to the fact that a dependable flow (I am now speaking of what can be relied on) would produce 40 horsepower in the power house?

A.—I heard him say that.

Q.—You heard that portion of his evidence?

A.—Yes.

Q.—And I think he stated further that ten per cent of that would be 4 horsepower?

A.—Yes.

30 Q.—In other words, that insofar as the dependable power which was in Mr. Cross' power plant, being 40 horsepower, the reduction of ten per cent would mean a loss of dependable power of 4 horsepower?

A.—That is right.

Q.—Assuming a loss of that kind, for what price could that power be replaced by purchase elsewhere?

A.—That power could be purchased at Farm Point from the Gatineau Power Company for something less than \$48 a horsepower a year.

40 Q.—So that if Mr. Cross lost 4 horsepower, how would you arrive at a capital sum which he would expect to get in order to enable him to keep it perpetual, to keep replacing that horsepower without expense to himself.

A.—\$48 a horsepower a year on four horsepower is \$192 a year, and I would capitalize that to arrive at the capital value of that amount of power.

Q.—I would like to get some definite sum, for which, handed to Mr. Cross, he could be sure that he could buy perpetually that

*In the
Superior Court*

No. 113.
Defendant's
Evidence.
(Supp. Hearing)
Carroll N. Simpson,
Examination
Oct. 19th, 1932.
(continued)

much power without expense to himself after he had received that money, granting him a certain yield?

A.—Assuming a six per cent yield, \$3,200 capital.

Q.—Would yield him sufficient to purchase four horsepower perpetually?

A.—Yes.

Q.—Available at all times of the day and night?

A.—At all times.

10 Q.—That is on a one hundred per cent load factor basis?

A.—On any load factor he wants to take it.

Q.—But he could use it all the time?

A.—Yes.

Q.—Would the same price apply to any greater or less amount of horsepower which he would suffer, supposing he lost ten horsepower, would the same figure of \$48 a horsepower apply?

20 A.—That same figure would apply to the proportion of the amount of power. Up to ten horsepower I would hazard a guess, that for fifteen horsepower he might get a very considerable reduction in that, for a small amount of power like from 4 to 10 horsepower—\$4 a horsepower per month, or \$48 a horsepower per year is more than the Gatineau Power Company would charge.

Q.—But you have put that outside figure?

A.—That is the outside limit.

Q.—For one hundred per cent continuous twenty-four hour, year after year, power all the time?

A.—That is right.

Q.—As against that, of course, he would not have any cost of upkeep or anything of the kind. It would be delivered to him?

30 A.—That would be delivered at 4,400 volts or 4,000 volts, the voltage of his distribution system.

BY THE COURT:

Q.—It steps down?

A.—The Gatineau Power Company would step it down to 4,000 volts.

BY MR. KER:

40 Q.—They would step it down to the same point at which he himself generates it?

A.—Yes.

BY THE COURT:

Q.—Are you obliged by law to furnish him with the necessary power for \$48 a year?

*In the
Superior Court*

No. 113.
Defendant's
Evidence.
(Supp. Hearing)
Carroll N. Simpson,
Examination
Oct. 19th, 1932.
(continued)

A.—That is the rate that our distribution department uses for the sale of power month by month, where a person wants to take it at any or all times. That is not the rate that is established by law, but it is a rate which we are willing to contract with any person to sell electricity.

BY THE COURT:

10 Q.—Supposing you did not wish to supply power to Mr. Cross, could you by law refuse to do so?

A.—I do not think so. The Quebec Public Service Commission requires us to deliver electricity to anyone who can use it properly?

BY MR. KER:

Q.—And who can pay for it, and your rate for that electricity is filed with the Commission?

20 A.—Yes. That rate is filed with the Quebec Public Service Commission.

Q.—Is it your opinion that if you by any chance should refuse to sell such power to him or to other people, you could be obliged to do so by the Quebec Public Service Commission.

Mr. Scott: The law speaks for itself on that matter.

BY MR. KER:

30 Q.—In any event, as far as you are aware, that is what the Quebec Public Service Commission is for, is it not?

A.—Yes.

Q.—I understand you are at present supplying him with power on the direct order from the Quebec Public Service Commission?

A.—Yes.

Q.—And that rate you speak of as being applicable to four horsepower would apply in any scale up to ten or fifteen horsepower?

A.—Up to ten or fifteen horsepower. At about fifteen horsepower I would judge the rate would go down.

40 Q.—By what percentage?

A.—Ten per cent.

Q.—Stepped up or graded up?

A.—As the amount of power goes up the rate per horsepower goes down and I would judge that where we would sell four horsepower at \$48 a horsepower a year we would be willing to sell fifteen horsepower at \$43 to \$44 per horsepower a year.

*In the
Superior Court*

No. 113.
Defendant's
Evidence.
(Supp. Hearing)
Carroll N. Simpson,
Examination
Oct. 19th, 1932.
(continued)

BY THE COURT:

Q.—Is that for over fifteen horsepower?

A.—At fifteen horsepower I would judge we would sell it at \$43 to \$44 a horsepower a year.

BY MR. SCOTT:

10 Q.—What is Mr. Cross getting his power for now from your company?

A.—It is a different kind of rate. The rate we are charging Mr. Cross is based on a peak charge plus energy charge, and I believe Mr. Cross can purchase power from the Gatineau Power Company on the basis that he is now using power on his distribution system at very much less than the \$48 per horsepower a year, but I am just naming that \$48 per horsepower a year as the outside maximum limit that the Gatineau Power Company would charge for the power which he can take in, and every day and in anyway he likes.

20 Q.—What is the actual standby charge per horsepower he is paying per year now?

Mr. Scott: Not the standby. What is he paying for it—in layman's language? We are not all electricians.

30 Witness: Did not Mr. Parker give that evidence? As I can recall, the rate is \$1.66 per horsepower month of maximum demand charge; two and one-half cents per kilowatt hour for the first 50 kilowatt hours per horsepower of maximum demand; one cent for the next fifty kilowatt hours per horsepower of maximum demand, and one-half cent for the balance.

BY MR. KER:

Q.—What does the basic charge of \$1.66 amount to?

A.—There is the ten per cent reduction on the total amount of that bill for prompt payment.

Q.—Has he ever taken advantage of those reductions?

40 A.—I would not want to say that he has ever done so, but I know there are a lot of cases where he has not.

Q.—As to \$1.66, that would be a basic charge of twelve times \$1.66; \$20 a horsepower?

A.—\$20 a horsepower year, less the ten per cent discount for prompt payment.

Q.—And on top of that what he uses, the first 50 kilowatts per horsepower each month?

A.—Kilowatt hours per horsepower.

*In the
Superior Court*

No. 113.
Defendant's
Evidence.
(Supp. Hearing)
Carroll N. Simpson,
Examination
Oct. 19th, 1932.
(continued)

Q.—Kilowatt hours per horsepower per month, he gets for two cents?

A.—Two and one-half cents.

Q.—And the next fifty kilowatt hours per horsepower per month he gets for one cent?

A.—That is right.

Q.—And the balance, whatever he uses, he gets for half a cent?

A.—That is right.

10 Q.—Do you know of any lower rate than that existing about there for power of that kind, for such a small block?

A.—We have sold some small blocks of power in Aylmer and in Hull, but those were sold under exceptional circumstances, and they were lower than this rate I have given here, and I have put this rate in as a maximum. I am not taking the lesser; I am taking the higher.

Q.—It works against your interest the higher you put it?

A.—Yes, but considering the small amount involved that gives the maximum advantage to Mr. Cross.

20 BY MR. SCOTT:

Q.—You are charging \$48?

A.—No, we are giving him \$48. We would not expect to charge him that. We are giving him the advantage.

BY MR. KER:

30 Q.—You would be willing to compensate him on the basis of \$48 per horsepower?

A.—We would be willing to compensate him on the basis of \$48 per horsepower.

Q.—For the horsepower which he loses by reason of the elevation of 321.5?

A.—Yes.

Q.—In addition to the cost of raising the power house?

A.—In addition to the cost of raising the power house.

BY THE COURT:

40 Q.—Can he depend on that?

A.—That is dependable power.

BY THE COURT:

Q.—And you would not refuse to give him that?

A.—We would not refuse.

*In the
Superior Court*

No. 113.
Defendant's
Evidence.
(Supp. Hearing)
Carroll N. Simpson,
Examination
Oct. 19th, 1932.
(continued)

Mr. Ker: We are already supplying him with very much more than that.

His Lordship: It may be in your interests to do so. I would like to know what the attitude of the Defendant would be as to furnishing power to Mr. Cross at a price, when he wants it?

10 Mr. Ker: As far as I am aware, my Lord, I know of no case yet where anybody who has made an application to a power company such as the Defendant Company, and I am sure my learned friend, Mr. Scott, will bear me out, with regard to the Shawinigan Company or other companies where there is a demand for power, and the company is in the vicinity, the Quebec Public Service Commission will, in every case, compel them to give service to these people.

His Lordship: I understand the Company is in business for that purpose and it would be to their interests not to refuse them power.

20 Mr. Montgomery: That is a matter, my Lord, which comes under the Quebec Public Service Commission Act?

His Lordship: Are you sure of that.

30 Mr. Montgomery: The Quebec Public Service Commission can compel the giving of service. We frequently have these applications come up, and where the company has refused to extend its service, they usually have a reason for doing so, as for instance where the capital charge would be out of proportion to the revenue to be derived from it, and then an enquiry is made before the Quebec Public Service Commission as to the fact, and in certain cases where they find the circumstances are abortive, they order a deposit to be made of the amount of the capital charge, and that is returned as other customers come along the line. When they obtain enough to make up the capital, say \$75 for each customer, and when the line fills up the applicant's deposit is returned to him. Frankly there is a query upon that point as to whether you can be obliged to supply to a person who is already in competition with you. That question was
40 raised in the case of the City of Westmount, where the City of Westmount is competing with us in the same territory. Ordinarily speaking, the Quebec Public Service Commission can make any orders they like as regards any Public Utility Company under their jurisdiction and can order them to supply power and to fix rates and so on.

His Lordship: What Statute do you refer to?

*In the
Superior Court*
No. 113.
Defendant's
Evidence.
(Supp. Hearing)
Carroll N. Simpson,
Examination
Oct. 19th, 1932.
(continued)

Mr. Ker: I think it is chapter 17, but we will make reference to this point in our argument.

Mr. Montgomery: I think, Mr. Scott, what I have stated is the practice.

Mr. Scott: In numerous cases the companies refuse and there is a fight over it.

10 Mr. Montgomery: There was also the question of a large supplier of power in Outremont. The Power Company in Outremont were unable to agree on the terms of the contract and they made application to the Quebec Public Service Commission for an order compelling the Power Companies to supply them with power, and as a matter of fact the Quebec Public Service Commission referred it to their engineer, the late Louis Herdt, to determine what was just and reasonable in the way of rates, and on his report a contract was made.

20 BY MR. KER:

Q.—Even if your company were not operating there, if there was power available in the Gatineau Valley at the price of \$48 which you speak of, would that, in your opinion, meet any condition which might arise for that block of power under present circumstances?

A.—Yes.

Q.—As a matter of fact, you are at present selling Mr. Cross a certain amount of power, are you not?

A.—Yes.

30 Q.—Upon the direct order of the Quebec Public Service Commission?

A.—That is right.

Q.—I am asking you these questions now under reserve of the allegations in our plea that certain parts of the properties which are claimed from us are not a strict charge to us; they are too remote; they are not affected by the water in any way. Certain evidence has been made by the Plaintiff of the value of dams, the high up on top of the hill and various other assets. I just wanted to check one or two of the items of valuation which have been put in the Exhibit P-66
40 by the Plaintiffs. Have you made an estimate of the value of the power house, machinery, and the penstock?

A.—Yes.

Q.—Have you made a statement of it in writing?

A.—Yes.

Q.—Will you produce it as Exhibit D-154?

A.—Yes.

Q.—I observe that Exhibit D-154 is an estimate of replacement

*In the
Superior Court*
No. 113.
Defendant's
Evidence.
(Supp. Hearing)
Carroll N. Simpson,
Examination
Oct. 19th, 1932.
(continued)

value, depreciation, and present fair value of the penstock (that being the pipe running down the hill that supplies the water), the penstock between the saw mill and the power house and of the power house building and equipment at the Farm Point plant?

A.—That is right.

Q.—This does not include the saw mill?

A.—It does not include the dam, the penstock between the dam and the saw mill, nor the saw mill.

Q.—In other words, it starts from the saw mill down?

10 A.—Yes.

Q.—Would you indicate what the new value of those items are according to your way of thinking, for instance, the portion of the penstock from the saw mill down to the power house, what would you figure the new value or the replacement value would be?

A.—The new value or replacement I have estimated at \$9,460.

Q.—The total valuation for the penstock, power house building, and power house machinery, according to you, would be what?

A.—\$9,460.

20 Q.—As a hydraulic engineer, could you purchase entirely new material and rebuild that construction at the same price?

A.—In better condition. The depreciated value would be the present condition.

Q.—You could replace that new for that sum?

A.—You could replace it new for \$9,460.

Q.—What, in your opinion, is the depreciation on the power plant section of this business?

A.—I have marked opposite each of the items the per cent depreciation, and the depreciated value is \$4,995.

30 Q.—In other words, you would replace the whole business new for \$9,460, and in its present condition it is worth \$4,995?

A.—Yes.

Q.—Is this valuation that you are giving one which would have prevailed, and the depreciation which, in your opinion, would have prevailed in 1926?

A.—In 1926.

Q.—I understand you have not made an estimate of the value of the transmission system?

A.—No.

40 Q.—I understand that was made by Mr. Parker?

A.—Yes.

Q.—Assuming Mr. Parker's total depreciated value for transmission lines, added to your total depreciated value for the power plant and machinery, would that, in your opinion, represent the total value of power plant and distribution system, the actual fair physical market value of it at the present time, or at 1926?

A.—In connection with this power plant, there is a dam and a

*In the
Superior Court*
No. 113.
Defendant's
Evidence.
(Supp. Hearing)
Carroll N. Simpson,
Examination
Oct. 19th, 1932.
(continued)

section of penstock leading between the dam and saw mill which is used by both the saw mill and the power house, and the value of the power properties is also to be included with the dam and the penstock leading to the saw mill.

Q.—Their values are mixed up insofar as that is concerned above the saw mill?

A.—That is right.

Q.—Going up, then, to the dam, have you made any estimate of the cost of the dam at the top of the hill? I see in this it is referred to as being worth \$24,384. Have you examined that dam?

A.—Yes.

Q.—What condition is it in?

A.—The dam is constructed of rock, concrete and earth fill. The earth fill seems to be in excellent condition. The concrete, as concrete, is in fair condition, but the rock fill is in very poor condition, and from the fact that the rock fill is in such poor condition, the concrete is beginning to crack and tear away and is rendering the concrete in poor condition due to the poor condition of the rock fill.

Q.—Have you any photograph which would demonstrate that process which you speak of? This is, of course, a dam up on the hill which impounds the water before it begins to go down the hill into the saw mill and to the power plant?

A.—Yes.

Q.—This dam, of course, is in no way affected by the water in the Gatineau River?

A.—In no way. This photograph shows a hole that has been washed in the dam at the southerly end. That washing of the rock away, in my opinion, is due to the fact that there is wood mixed up with the rock fill, and that the wood is rotting and allowing the rock to wash away.

Q.—To disintegrate?

A.—Yes.

Q.—You might write on the back of that photograph what it is intended to be, due to disintegration of the south portion of the Meach Creek dam?

Mr. Chisholm: Does the witness say distintegration?

Mr. Ker: Disintegration was my own word. You can use any word you like to express it?

BY MR. KER:

Q.—Will you file this photograph as Exhibit D-155?

A.—Yes. I have a number of these photographs of this same spot where the rock has been washed away, which, I think, will be of interest to the Court.

*In the
Superior Court*

No. 113.
Defendant's
Evidence.
(Supp. Hearing)
Carroll N. Simpson,
Examination
Oct. 19th, 1932.
(continued)

Q.—Will you produce as Exhibit D-156 a photograph which also shows the same thing with a little larger view?

A.—Yes. This exhibit (D-157) shows the floor of the sluice-way where the timber mixed in with the rock has evidently rotted away, allowing the concrete to crumble and wash away with the rock.

Q.—That is also used, is it not, as a timber dam? Does it impound timber behind it in any way, the timber forming part of the dam you are speaking of?

10 A.—Yes. From my inspection of the dam I had the impression that this dam was a rock fill timber crib dam, and that later on the dam was faced with concrete on the upstream side, and the downstream, more rock was filled on the downstream side of this crib work.

Q.—Can you give me the replacement and depreciated value of that dam?

A.—I have made an estimate of the value of the dam and of the penstock leading down to the saw mill, a new value in 1926 of \$15,560, and a depreciated value in 1926 of \$6,145.

20 Q.—That also includes the penstock down as far as the saw mill?

A.—Yes.

Q.—Would you produce that estimate as Exhibit D-158?

A.—Yes.

Q.—Exhibit D-158 is the estimated replacement value, depreciation and present fair value of the dam on the top of the hill, and the penstock down as far as the saw mill on Meach Creek?

A.—The present fair value was the value in 1926.

30 Q.—Would you look at this photograph and say if that would indicate what the thickness of the concrete is there?

A.—D-157 indicates the thickness of the concrete in the floor of the sluice-way.

Q.—And what is it?

A.—I would judge here that it is about three or four inches thick.

Q.—Have you been supplied with the cross-sections to which Mr. MacRostie referred to in estimating the cost of this dam?

A.—Yes.

40 Q.—And what thickness of concrete does he work upon in those cross-sections in estimating this cost of \$24,000 or something of the kind?

A.—He does not indicate any definite thickness here, but scaling it off his drawing I would judge that he considers the concrete is about three feet thick.

Q.—As a matter of fact, is there from your observation any justification for such a value as that?

*In the
Superior Court*

No. 113.
Defendant's
Evidence.
(Supp. Hearing)
Carroll N. Simpson,
Examination
Oct. 19th, 1932.
(continued)

A.—Absolutely none.

Q.—It is upon that plan which scaled off, indicates three feet of concrete, that has been given to you in justification of the particulars of his valuation of this dam?

A.—Yes.

BY MR. SCOTT:

10 Q.—You have just been looking at a blue print which Mr. Ker has handed to you. You don't know whether that blue print has been filed in this case or not?

A.—I saw Mr. MacRostie with a blue print in his hand when he was in the box.

Q.—You are not referring to any exhibit that was filed in Court.

BY MR. KER:

20 Q.—Was not that the plan which was handed to you by Mr. MacRostie, to hand it to the Gatineau Power Company, in order to enable them to check his figures as to the cost of that dam?

A.—Yes.

Mr. Ker: I would like, my Lord, to reserve my right to examine this witness a little later on. I want if possible to finish with the power parts before I proceed to the lumber parts of the case, and I would like to have the opportunity to examine him on that point. I will then confine myself to the lumber question.

30 His Lordship: Is the evidence you have been making from this witness referred to in your plea?

Mr. Ker: I think so, my Lord.

BY MR. KER:

Q.—What was your estimate of the cost of that power?

A.—\$3,200.

Cross-examination

40

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

Q.—Mr. Simpson, you have been with the Gatineau Power Company as chief engineer since they commenced work at Chelsea. How long have you been with the Company?

A.—Since early in 1927.

Q.—And prior to that where were you?

A.—I was with the Fraser Brace Company.

*In the
Superior Court*

No. 113.
Defendant's
Evidence.
(Supp. Hearing)
Carroll N. Simpson,
Cross-examination
Oct. 19th, 1932.
(continued)

Q.—The Fraser Brace Company built this power plant at Chelsea and at Farmers' Point, did they not?

A.—Yes.

Q.—They are contractors?

A.—Yes.

Q.—I don't suppose you have ever owned or generated electricity and distributed it and sold it yourself?

A.—No.

10 Q.—You have never owned a plant?

A.—No.

Q.—A distribution plant of your own with three or four hundred customers?

A.—No.

Q.—And therefore, you have never suffered the experience that Mr. Cross has suffered in this case by having the waters in the Gatineau River raised against your tailrace?

A.—No.

20 Q.—The figures you have given us just now are based on what you, as an engineer, could estimate to be the loss in capacity, etc?

A.—Yes.

Q.—My friend, Mr. Ker, gave you a head of 74 feet at Meach Creek, and said, assuming a loss of seven and a half feet of that head, what would be the loss in capacity, and I think your answer was, it would be reduced by 13½ per cent?

A.—No.

Q.—I am not asking about the efficiency of the wheel?

A.—I did not say that. I said it would be 86½ per cent of the maximum rated capacity of the wheel.

30 Q.—It would only be 86½ per cent of the maximum rated capacity of the wheel?

A.—Yes.

Q.—Supposing the rate was reduced by ten and a half feet instead of seven and a half feet, what would be the capacity? Could you work it out?

A.—There would be approximately 82 per cent of the maximum rated capacity of the wheel.

Q.—Which would bring it down to 82 per cent?

40 A.—Approximately 82 per cent of the maximum rated capacity of the wheel.

Q.—Did you ever examine Mr. Cross' distribution system before the waters were raised?

A.—No.

Q.—You never saw it?

A.—No, I would not say I never saw it, but I never examined it.

Q.—You do not know what the load was on that system?

A.—No.

In the
Superior Court
No. 113.
Defendant's
Evidence.
(Supp. Hearing)
Carroll N. Simpson,
Cross-examination
Oct. 19th, 1932.
(continued)

Q.—No doubt you have heard a good deal about that since?
When did you first ever examine this system?

A.—I have never examined the distribution system.

Q.—The generating plant at Meach Creek?

A.—Sometime last summer.

Q.—Not until the summer of 1932?

A.—I mean the summer of 1931.

Q.—Not until the summer of 1931?

A.—That is right.

10 Q.—And that is over four years after the waters of the Gatineau
had been raised?

A.—Yes.

Q.—And in the summer of 1931 the plant was not operating?

A.—No, it was not operating.

Q.—I have no doubt you made a pretty careful inspection on
instructions from the company on that occasion in the summer of
1931?

20 A.—I don't know about on the instruction of the company; but
I made a fairly careful examination of it.

Q.—Did you ever have occasion to examine any other gener-
ating plant of the type of Mr. Cross' that had been flooded in a
similar way where the water had been backed up to the floor of the
power house?

A.—I have not had occasion to examine a plant similar to Mr.
Cross' where the water has been raised in just such a way as has
been raised in Mr. Cross' case. I would say that a condition like
this is somewhat exceptional.

30 Q.—You do not know what the load was on Mr. Cross' system
in the spring of 1926, do you?

A.—No.

Q.—A layman's language is not always the language of the engi-
neer, but supposing the system were, as I understand it, fully loaded
in 1926, and he was suddenly deprived of ten and a half feet of his
head, would that have a good effect on the capacity of his system?
How would that affect the system?

40 Mr. Ker: I object to the assumptions of my learned friend.
My learned friend assumes ten and a half feet of loss of head, none of
which are in issue in this case. There is no evidence of ten feet of
loss of head in this case.

(The Court reserves the objection.)

BY MR. SCOTT:

Q.—Assuming Mr. Cross suddenly lost ten and a half feet of

In the
Superior Court

No. 113.
Defendant's
Evidence.
(Supp. Hearing)
Carroll N. Simpson,
Cross-examination
Oct. 19th, 1932.
(continued)

head in 1926, and assuming that his system was fully loaded at that time, that his distribution system was fully loaded at that time, I think we can take it that it would not have a beneficial effect on his ability to serve his customers, would it?

A.—No. On the other hand, the characteristics of the load would have a bearing on that, and under some circumstances

Q.—You don't know the characteristics?

10 A.—I don't know the characteristics, but under some circumstances there would be a very sharp peak where the ten and a half feet head would not make much difference, and under other circumstances there would be the sustained peak for a considerable length of time, under which circumstances the reduction in head might have a bad effect.

Q.—And you, of course, quite frankly tell us you do not know what the characteristics of his load were at that time, you never having seen them?

A.—I don't know what the characteristics were at all.

20 Q.—Supposing he had a loss of seven and a half feet of his head in 1926, the same answer would apply, you do not know what effect it would have on his load?

A.—It would be the same answer.

Q.—In answering my friend, Mr. Ker, about the adverse effect on the wheel, and the percentage of loss of efficiency, etc., that answer was given independently of the characteristics of the load that was on his system at that time?

30 A.—The efficiency of the wheel has nothing whatever to do with the characteristics of the load under such conditions as that. When I speak of that, I am judging that the wheel is operating about a somewhat less than its normal rating, somewhere about half or three-quarters of its normal rating.

Q.—You told us you felt that your company would be prepared to sell Mr. Cross four horsepower at the rate of \$48 per horsepower year?

A.—Yes.

Q.—Can you give us in layman's language the charge per horsepower per annum you are now making to Mr. Cross on the power he has been purchasing from you while this litigation has been pending?

40 A.—Yes. In other words, I can explain the difference between the rate of \$48 per horsepower and the rate of \$1.66 per horsepower month, plus the two and a half and one and a half cents.

Q.—Can you reduce the whole thing down to so much per horsepower per annum? You must know, because you have been sending him bills monthly?

A.—The way Mr. Cross is taking his power, and the way with a distribution system such as Mr. Cross would use power, I would

In the
Superior Court

No. 113.
Defendant's
Evidence.
(Supp. Hearing)
Carroll N. Simpson,
Cross-examination
Oct. 19th, 1932.
(continued)

judge that his power rate would be between \$35 and \$40 per horse-power year.

Q.—At the present time?

A.—At the present time.

Q.—That has been continuing for the last couple of years?

A.—Yes.

Q.—And do you know about how much he is taking?

A.—I do not recall the horsepower.

10 Q.—About 80 horsepower?

A.—Somewhere around there.

Q.—Will you look at Exhibit D-154, under the heading of “ Power house building ”, there is no reference there to penstock, is there?

A.—The penstock is up above.

Q.—That is dealt with separately; is that the penstock to the power house?

A.—From the sawmill to the power house.

20 Q.—And Exhibit D-158 works from there up the hill, is that right?

A.—I don't know about the number of the exhibit.

Mr. Ker: It is the other way around.

BY MR. SCOTT:

Q.—What I meant to say just now, Mr. Simpson, is this: there is no mention of the draft tube under the title of “ Power house building ” on Exhibit D-154?

30 A.—The draft tube is included in the cost of the water wheel. My estimate of \$2,000 is the cost of the water wheel and governor, and includes the cost of the draft tube.

Q.—And the concrete?

A.—And the concrete is included in the substructure of the power house at one hundred cubic yards.

Q.—I don't suppose you know what Mr. Cross paid for that generator?

40 A.—No. I don't know what he paid for it; \$2,000 is my estimate of what that generator could be bought for in 1926, a new generator and a spare exciter.

Q.—Did you take into account that little concrete tunnel?

A.—That is just below the power house?

Q.—Yes.

A.—That is included in the substructure of the power house.

Q.—Listed under the heading of the substructure of the power house?

A.—Yes.

*In the
Superior Court*

No. 113.
Defendant's
Evidence
(Supp. Hearing)
Carroll N. Simpson,
Cross-examination
Oct. 19th, 1932.
(continued)

Q.—Do you recollect if there is more concrete in that than in the power house?

A.—I could not make a close check of the concrete in either the power house substructure or the tunnel, and that one hundred cubic yards is an estimate made from looking at the outside when making an inspection to see how far down the concrete went. That is the best estimate I can make, and I cannot tell you how far down the concrete goes, and I have not separated them out.

10 Q.—When were those photographs taken by you that are filed as Exhibits D-155, D-156 and D-157?

A.—They were not taken by me.

Q.—Were they taken this summer?

A.—They were taken just after the washing away of the rock occurred.

BY THE COURT:

Q.—Do you know that personally?

20 A.—Yes. I was up there and saw that and asked to have photographs of that thing taken for record purposes?

BY MR. SCOTT:

Q.—On what date? You must have made a note in your field book?

A.—I will look that date up for you if you like. I have not the date right now.

Q.—Will you look it up?

30 A.—Yes, I will look it up.

Q.—You never saw that dam up there in 1926?

A.—No.

Q.—You don't know personally when it was built?

A.—No, I don't know personally when it was built.

Q.—The first time you saw the dam was in the summer of 1931?

Q.—Yes.

Q.—That is at the same time that you made the inspection of the power plant?

A.—Yes.

40 Q.—You are not the person who decides who the company sells to, that is not a matter for the chief engineer?

A.—I have under some conditions decided when it should be sold, and when it should not be sold.

Q.—I understood it was Mr. Parker. Mr. Parker told us it came under his jurisdiction?

A.—It comes under his jurisdiction, but I am also familiar with some of these details.

*In the
Superior Court*
No. 113.
Defendant's
Evidence.
(Supp. Hearing)
Carroll N. Simpson,
Cross-examination
Oct. 19th, 1932.
(continued)

Q.—You are familiar with some of the details, but you are not the one who decides to whom to sell?

A.—How do you know I am not?

Q.—I am asking you?

A.—I told you that under some circumstances I have decided.

Q.—But usually who decides? The chief engineer or Mr. Parker?

A.—Sometimes the decision is with the branch managers and sometimes with Mr. Parker and sometimes with Mr. Gale.

10 Q.—Did the municipality at Farrelton at one time apply for electrical energy from the Gatineau Power Company?

A.—Yes.

Q.—Where is Farrelton?

A.—Farrelton is about half-way between Wakefield and Low.

Q.—Do you remember what year that was in? Was it in 1930?

A.—I think it was in 1930.

Q.—And did your company refuse to supply them with electricity?

20 Mr. Ker: To go into competition with your client, yes.

BY MR. SCOTT:

Q.—Did your company refuse to supply them with electricity?

A.—We did under some circumstances.

Q.—What does that answer mean?

A.—We did not absolutely refuse, but we refused to supply them with electricity in competition, where they were being supplied by another party.

30 Q.—What does that answer mean? I cannot understand that answer. Let us have the facts.

A.—Those are the facts.

Q.—What were they?

A.—Those are the facts.

Q.—As I understand it, then, the municipality of Farrelton some time in 1930 applied to the Gatineau Power Company for electricity, and you say the Company refused to supply them with electricity. Did your company supply it or did they not?

A.—Finally, I think we supplied them.

Q.—Finally, you supplied them?

40 A.—Yes, we are supplying Farrelton now.

Q.—But for the time being you held them up, did you?

A.—No.

Q.—Did you give them electricity as soon as they asked for it?

A.—No.

Q.—How long a time elapsed from the date of their application until the time you did supply it to them?

A.—I do not recall that.

In the
Superior Court

No. 113.
Defendant's
Evidence
(Supp. Hearing)
Carroll N. Simpson,
Cross-examination
Oct. 19th, 1932.
(continued)

Q.—Was it a matter of a week, two weeks or a month?

A.—It was more than two weeks.

Q.—Why did you refuse at first?

A.—That is a pretty small detail, Mr. Scott, that matter of Farrelton. I can recall the thing, but I am not prepared to answer that detailed question with regard to Farrelton, on account of the fact that the time is so long ago, and it was such a small matter, and I have not that information at the present time sufficiently in order to give you a fair answer.

10 Q.—Can you give us an impression of what you remember? You are surely not refusing to answer?

A.—Not at all.

Q.—Tell us, to the best of your recollection, what you know about it?

A.—You will have to admit that is quite a small thing and quite a long while ago, and that my answer to you is fair under the circumstances.

20 Q.—Unfortunately, Mr. Simpson, I am not giving evidence in this case. I am asking you, to the best of your recollection, to tell his Lordship about the Farrelton application, and its refusal by the Company and what happened?

A.—There was no refusal.

Q.—Give us your answer?

30 A.—I have told you practically everything I know, and the last question you asked me was about the length of time involved between the application for power and the time that we supplied power, and I cannot recall that. I said it is more than two weeks, but such a small detail as that, and considering the length of time that has elapsed, I cannot remember the details.

Q.—Why did you refuse to sell them power? You are the chief engineer of the Gatineau Power Company?

A.—Yes.

Q.—Why did you refuse to sell them power?

A.—For one thing, it was not an economical proposition. They only required a very small quantity of power, and the cost of putting in a transformer and running up the secondary wires to supply the town was more than any four to one or six to one ratio that we got as revenue.

40 Q.—And the result of competition, or possible competition, possibly entered into it, did it not?

A.—No, not at all.

Q.—What was the meaning of your first answer that you gave when I asked you about that?

A.—As long as there was a possibility of them being supplied by Mr. Cross, we did not care to enter the field. That is a principle that has been laid down by the Quebec Public Service Commission,

*In the
Superior Court*

No. 113.
Defendant's
Evidence
(Supp. Hearing)
Carroll N. Simpson,
Cross-examination
Oct. 19th, 1932.
(continued)

that they will fix a fair rate, and there will not be duplication of service so that the power companies are put to additional expense, and therefore have to raise their rates, and until we were satisfied that we could get in and serve Farrelton ourselves at a rate standard satisfactory to the Quebec Public Service Commission, we did not care to supply them.

Q.—You knew that, in 1930, Mr. Cross was not generating electricity himself, so surely that cannot be correct?

A.—He was selling electricity.

10 Q.—Sold to him by you?

A.—He was distributing electricity in a retail way up the Gatineau Valley, and Farrelton is not very far from the northerly end of his distribution system, and in order to save duplication of apparatus and transmission lines, the Quebec Public Service Commission allow us, or some other party, to serve a district by ourselves, and they fix a fair rate to be charged, so that the consumer will not pay more than a nominal rate, and so the power company or the distributing company can make a fair profit.

20 Q.—Let us be frank with each other. Mr. Cross had no distribution system at Farrelton?

A.—No, but he had a distribution system at Alcove and there was a possibility of Mr. Cross extending to Farrelton.

Q.—How far is Alcove from Farrelton?

A.—Five miles.

Q.—And your lines pass through Farrelton?

30 A.—Yes, primary lines, and we would have to spend considerable money in a transformer at Farrelton in order to serve the district at Farrelton. The voltage on the Gatineau Power Company's line at Farrelton was approximately 26,000, and we were required to serve the town of Farrelton at 2,300 volts.

Re-examination

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

Q.—Which would involve a very expensive transformer?

A.—It involved a great deal more expense than the revenue from the district warranted.

40 Q.—On the cost of the transformer alone, and revenue from Farrelton, did not, in your opinion, warrant the service being given?

A.—That is correct?

Q.—And, in addition to that, you have made it a rule not to go into competition in any way with Mr. Cross?

A.—Yes.

Q.—And it was five miles from Farrelton to the end of Mr. Cross' line?

A.—Yes.

*In the
Superior Court*

No. 113.
Defendant's
Evidence.
(Supp. Hearing)
Carroll N. Simpson,
Re-examination
Oct. 19th, 1932.
(continued)

- Q.—And that is another reason why you did not want to go into Farrelton?
A.—Yes.
Q.—Finally, the Quebec Public Service Commission obliged you to go into Farrelton?
A.—That is right.
10 (And further deponent saith not.)

*In the
Superior Court*

No. 114.
Defendant's
Evidence.
(Supp. Hearing)
Olivier Lefebvre,
Examination
Oct. 19th, 1932.

DEPOSITION OF OLIVIER LEFEBVRE, A WITNESS
PRODUCED ON BEHALF OF THE DEFENDANT

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

OLIVIER LEFEBVRE,

of the City of Outremont, civil engineer, aged 52 years, a witness produced on behalf of the Defendant, who, being duly sworn doth depose and say as follows:

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

- 30 Q.—You are an engineer by profession?
A.—Yes.
Q.—You are the chief engineer of the Quebec Streams Commission?
A.—Yes.
Q.—Are you familiar with the Meach Creek and Farm Point power development of Mr. Cross, the Plaintiff in this case?
A.—I have visited the sites.
Q.—Have you heard the evidence of Mr. Scovil as to the flow
40 of the Meach Creek which was made in this case today?
A.—Yes, I have.
Q.—Has Mr. Scovil, in your opinion, correctly and accurately expressed the situation which exists with respect to the flow of Meach Creek?
A.—His conclusions derived from the actual measurements of the flow of the Gatineau River and applying to Meach Creek are correct in my opinion.

- Q.—Did you hear Mr. Scovil's evidence with respect to the loss of power output which would be sustained by the reduction in the total head due to the raising of the water level to 321.5?
- A.—Yes, he gave a figure which is the product of the multiplication of the loss in head, which he estimated at seven and a half feet by the flow of the river on a certain percentage basis.
- Q.—That is a correct basis according to the art of engineering on which to figure that amount correctly?
- A.—That is the only way.
- 10 Q.—Have you of your own initiative had occasion to investigate in any way the extent of the loss of head which would be sustained by a water level of 321.5?
- A.—We had occasion some time in November, 1926. The levels of the water in the creek were taken as it stood on that day, the 10th November, 1926
- Q.—That was some time before the water was raised?
- A.—Yes, but the idea was to determine approximately, or to determine what would be the effect of granting the Power Company certain privileges on the Gatineau River.
- 20 Q.—This was not made at the instance of the Company.
- A.—No, not at all.
- Q.—This was made at the instance of the Government?
- A.—At the instance of the Government, yes.
- Q.—And to determine in a general way how he was going to be affected?
- A.—Yes.
- Q.—At that time were the expropriation proceedings which the Company took in existence?
- 30 A.—I don't know. I did not know at that time. I don't know whether they were or not.
- Q.—That matter was referred to you as chief engineer of the Quebec Streams Commission to investigate, is that the case?
- A.—Yes, and report on.
- Q.—Would you state as a result of that investigation what you estimate as the total available head under normal conditions?
- A.—On that day, the 10th of November, the difference in level between the water in the head pond and the water in the tailrace was 72.7 feet.
- 40 Q.—Do you remember the exact elevation of the head pond at that time?
- A.—No.
- Q.—Did you make a report as to that?
- A.—I made a report, but I have not the report with me. I have not the copy of the report with me.
- Q.—Would it be possible for you to let us have a copy of it?
- A.—I can produce the report.

In the
Superior Court

No. 114.
Defendant's
Evidence.
(Supp. Hearing)
Olivier Lefebvre,
Examination
Oct. 19th, 1932.
(continued)

Q.—Have you an idea what the level of the tail water was at that time?

A.—On that day the tailwater, if I rememebr—I think I noted it here; it was 313.8.

Q.—That is the level that was found by Mr. Boisvert some months afterwards. He said 313.9? That was the level of the tailwater at that time?

A.—Yes, on that day on the 10th November.

10 Q.—Where was that tailwater measured at? Was it just below the draft tube?

A.—It was measured just at the outlet of the water, where the water comes out from the draft tube.

Q.—Would that, in your opinion, represent the true tailwater of that development?

A.—Yes, as it stood on that day.

Q.—And the measurement at that point would be, in your opinion, the proper place to measure it in order to ascertain the exact tailwater level?

20 A.—Yes.

Q.—At any time?

A.—Yes, as affecting the operation of that plant.

Q.—And the difference, I suppose, in any elevation would be due to how much water was coming down the hill through the plant, is that right?

A.—Well, the tailwater at that point might be affected by the flow of the water in the creek outside of what is going to the plant, for example.

30 Q.—The Gatineau River could rise up to that point without affecting the power of Mr. Cross' power plant as far as tailwater was concerned?

A.—Yes.

Q.—313.8, I think you said on that date?

A.—Yes.

Q.—So if we are to estimate the effect which the rise in tailwater, due to this development, would have, we would have to begin at 313.8?

A.—313.8 is right.

40 Q.—That is where we would have to begin before we would estimate any reduction in head to the Gatineau Power Company, is that right?

A.—Yes.

Q.—Assuming that level to be the lowest point in his tailrace, the point at which you should begin to take the head up to the top of the pond, how many feet would be cut off provided you raised the water to 321.5?

A.—I want to make it clear that this elevation of 313.8 is not by

*In the
Superior Court*

No. 114.
Defendant's
Evidence.
(Supp. Hearing)
Olivier Lefebvre,
Examination
Oct. 19th, 1932.
(continued)

any means given as being the lowest possible level that this tailrace level ever reached, but I am giving it as being the level as found on that day, the 10th November, 1926. Now, we do not know whether the next day it was higher, or whether the previous day it was lower, but on that day it was 313.8.

Q.—As a physical possibility could it have got much lower than that and got through the culvert?

A.—Oh, no.

10 Q.—Do you know the level of the bottom of the culvert through which this runs?

A.—No. My recollection is that when I saw the plant last this tailrace was below the culvert and was lower downstream than the bridge crossing the river below the power plant.

Q.—Have you information as to what the level of the power house floor is?

A.—I have no information other than what is in the record for 321.5.

20 Q.—In your opinion, would it be possible to operate that plant with the water level of 321.5, that is, a level practically corresponding to the level of the power house floor?

A.—It would be possible to operate the plant under such conditions, but no one would design a plant to be operated under conditions such as that. This is a condition which might prevail for a short time every year, and one has to put up with the condition, but it is not a desirable position to be in, but it is possible.

Q.—It would be inconvenient?

A.—It is possible to operate.

30 Q.—What would be your idea with respect to making it perfectly convenient? What could be done to eliminate that inconvenience?

A.—The thing to do is to simply raise the power house floor and raise the turbine and generator, something which can be done rather easily.

Q.—It is not much of a job? It is a physical possibility?

A.—Yes, it is quite easy to do that.

Q.—Have you examined Mr. Simpson's estimate of the cost of raising the power house?

A.—Yes.

40 Q.—Would you consider that was a fair estimate?

A.—That is a fair estimate of the cost of doing that work.

Q.—And with that cost extended, the other adverse effect would be the effect only in loss of power due to loss of head through the raising of the tailrace?

A.—That would be the only factor decreasing the amount of power to loss of head.

*In the
Superior Court*

No. 114.
Defendant's
Evidence.
(Supp. Hearing)
Olivier Lefebvre,
Examination
Oct. 19th, 1932.
(continued)

Q.—That would be the only physical effect on that power plant whatsoever?

A.—Yes.

Q.—Would you consider that the date you were there when you found this level of 313.8, that conditions were normal or in a natural state on the Gatineau River and in the creek at that time?

A.—I can only answer that question in a general way. On that date, in the second week of November, 1926, conditions on the Gatineau River were quite normal for that time of the year.

10 Q.—And that, under those normal conditions, the loss of head up to 321.5 would have been, according to your estimate, 7.7 feet?

A.—According to that measurement, yes. I think in your question you stated, that date I was there myself. I was not there.

BY MR. SCOTT:

Q.—You were not there?

20 A.—Mr. Ker seems to be under the impression that on November 10th, 1926, I visited the place myself.

Mr. Scott: I was under that impression myself.

Witness: If I have put the Court under that impression I want to correct that, because, while the property was examined on November 10th, 1926, and measurements were taken and so on, these measurements were not taken by me. They were taken by an engineer of the Quebec Streams Commission under my instructions.

30 BY MR. KER:

Q.—The matter was referred to you, and you had those measurements taken?

A.—And subsequently to that I reported to the department. My report is dated November 13th, 1926, and the figures mentioned in that report all relate to levels which were taken on November 10th, 1926, but not taken by me.

40 Mr. Scott: In view of the explanation made by Mr. Lefebvre, I object to all evidence rendered by him with respect to elevations, and ask that it be struck from the record.

BY MR. KER:

Q.—The report was made covering those levels under your direction and through engineers of your department?

A.—Yes, and under instructions from me.

*In the
Superior Court*

No. 114.
Defendant's
Evidence.
(Supp. Hearing)
Olivier Lefebvre,
Examination
Oct. 19th, 1932.
(continued)

Q.—And upon that report, you made a report based upon those figures? You made a report as chief engineer to your superiors at Quebec?

A.—That is it.

His Lordship: I understood the witness was charged to make an investigation in November, 1926, and that he went and found such a state of things. It was said certainly in such a way as to give me the impression that the witness had been there.

10

Witness: I certainly had no intention of misleading the Court in that sense at all.

Mr. Ker: You are quite right in drawing attention to it.

Witness: And if I did, I am sorry.

His Lordship: I will reserve the objection. It will not have any effect on the case unless what Mr. Lefebvre has stated is proven by the parties who were sent.

20

Witness: The man who made the investigation is Mr. Massue.

BY MR. KER:

Q.—Is he in Montreal?

A.—He was then engineer working for the Quebec Streams Commission. He is working today for the Shawinigan Water and Power Company.

30

Cross-examination

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

Q.—Under reserve of my objection, you do not know what the normal conditions were at that time on November 10th, 1926, on the Gatineau River?

A.—Excuse me, I do know perfectly well what the conditions were on the Gatineau River at that time, because I was travelling up and down the Gatineau River supervising the construction of the big storage dam up the river, and I am quite familiar with the conditions of the river as they existed in the fall of 1926, and all during the year of 1926.

40

Q.—Do you know whether there was snow on the ground at Meach Creek on the 10th November, 1926?

A.—It does not matter at all. It would not matter at all. It would not change my answer.

*In the
Superior Court*

No. 114.
Defendant's
Evidence.
(Supp. Hearing)
Olivier Lefebvre,
Cross-examination
Oct. 19th, 1932.
(continued)

BY THE COURT:

Q.—When you talk of the river, what river do you refer to?

A.—I am speaking of the Gatineau River.

BY THE COURT:

Q.—I understood you to refer to Meach Creek?

10 A.—The question was put to me, whether I was familiar with the conditions on the Gatineau River in the fall of 1926, and incidentally of Meach Creek.

BY MR. SCOTT:

Q.—My question is, whether normal conditions were prevailing on the 10th November at Meach Creek?

A.—Well, so far as I know on the Gatineau River.

Q.—That is your answer?

20 A.—My answer is completely for the Gatineau River.

Q.—I understand you told my learned friend that you had discussed Mr. Simpson's figures with him prior to giving evidence here?

A.—Well, some time before, yes, I did.

Q.—I suppose you discussed the situation with Mr. Scovil beforehand?

A.—Yes.

Q.—And you were here nearly every day throughout the first part of this trial?

A.—No.

30 Q.—How many days?

A.—I have not been here at all for three weeks.

Q.—Last winter?

A.—Last winter I was here for a couple of days. I was not here the best part of the time. I was in Court for about the equivalent of six days, I think.

Q.—As a matter of fact, you were retained by the Gatineau Power Company for the purposes of this case, were you not?

A.—I have not been retained by the Gatineau Power Company for the purposes of this case.

40 Q.—They have been paying you for your time spent in Court?

A.—They have not paid me yet.

Q.—You have expectations, like Mr. Cross?

A.—I expect to put in a bill and be paid, but I have not been paid yet, nor has that matter been discussed with them at all.

(And further deponent saith not.)

*In the
Superior Court*

No. 115.
Defendant's
Evidence.
(Supp. Hearing)
H. J. G. Geggie,
Examination
Oct. 20th, 1932.

DEPOSITION OF HAROLD J. G. GEGGIE, A WITNESS
PRODUCED ON BEHALF OF DEFENDANT.

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

HAROLD J. G. GEGGIE,

10

of Wakefield, Quebec, Physician and Surgeon, who, being duly sworn, doth depose and say as follows:

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

Q.—You are a physician and surgeon?

A.—Yes.

20

Q.—You are a resident of Wakefield?

A.—Yes.

Q.—How long have you resided there?

A.—Twenty-one years in June.

Q.—And you are practicing your profession at Wakefield?

A.—I am.

Q.—And I suppose in the district about Wakefield?

A.—Twenty miles around.

Q.—You say you came to Wakefield about twenty-one years ago?

30

A.—Yes.

Q.—Are you a customer of Mr. Cross taking electricity from his system?

A.—Yes.

Q.—When did you become a customer?

A.—About 1915. I am not sure of the date.

Q.—What were you paying when you began to be a customer of his?

A.—A flat rate of \$12.00 a year.

40 for that?

Q.—That is to say, you had no meter, you burned what you liked

for that?

A.—We burned what we liked.

Q.—What sort of service was being given on that line from the time you went on his system?

A.—Very fair for the greater part of the year, taking a rural standard.

Q.—And for other parts of the year?

A.—It was very spotty.

*In the
Superior Court*

No. 115.
Defendant's
Evidence.
(Supp. Hearing)
H. J. G. Geggie,
Examination
Oct. 20th, 1932.
(continued)

Q.—What do you mean by that?

A.—Well, if there was enough water, we got light, and if there was not, we did not.

Q.—You mean enough to run his plant with?

A.—Apparently.

Q.—Was the service continuous night and day all the time?

A.—I am only speaking from memory, but at times we would have it only at night, and part of the night, and at times we would have it only part of the day. It varied a great deal.

10 Q.—As a physician, for instance, speaking from your own point of view, and I presume having to do a considerable amount of night work in your profession, would you find the service at night satisfactory all the time?

A.—Oh, no, not all the time. I would not say that.

Q.—Were there intervals where you would get up and find no lights in your bulbs?

A.—Quite often.

20 Q.—What knowledge have you of the efficiency or adequacy or otherwise of the maintenance and operation by him of the system at Farm Point?

A.—I think it was bad.

Q.—It was not all you think it might be?

A.—No.

Q.—To what do you attribute that particularly?

A.—Partly to the fact that Mr. Cross was a very busy man. He is all over the country from Hull to Gracefield. Possibly his attention was not on it as much as it might have been, and those who were employed to look after it, well, they were not up to scratch.

30 Q.—Those who were employed to look after it were not, in your opinion, quite efficient?

A.—No.

Q.—Who really was looking after it?

A.—I think Frederick and his wife had a good deal to do with it, and his sons.

Q.—Would you think that the attention Mr. Frederick gave it, from your knowledge, was adequate?

A.—Not over the week-end.

Q.—For what reason?

40 A.—He was drinking too much.

Q.—When he was drinking, how would the system be looked after?

A.—Well, if it went, it went, and if it stopped it stayed stopped until he got sober.

Q.—And during that time what happened to the service?

A.—We had none, that is all.

In the
Superior Court

No. 115.
Defendant's
Evidence.
(Supp. Hearing)
H. J. G. Geggie,
Examination
Oct. 20th, 1932.
(continued)

Q.—Could you give me any instance where service was really interrupted for a considerable time in a year?

A.—I think in 1929 there was a long interruption.

Q.—How long?

A.—From about August to November.

Q.—When you were without service?

A.—I know it was the 6th of August, but I don't know when it quit.

10 Q.—It was the 6th August, and quit in November some time?

A.—It started again.

Q.—It started again in November?

A.—Yes.

BY THE COURT:

Q.—Was there no service at all during that space of time?

A.—Well, negligible.

20 BY MR. KER:

Q.—Almost none?

A.—Perhaps an hour or half an hour during the day, during the twenty-four hours.

Q.—Can you recollect any year between the time you went on to the lines in 1915 and, let us say, 1925 or 1926, that you had absolutely continuous service all the time?

A.—I cannot answer that, that is, I don't know anything about continuous service. I could not say.

30 Q.—Were there any times when you did not have interruptions?

A.—I think there must have been interruptions every year more or less of a temporary nature.

Q.—And in the first parts of the time you were on, how did you carry on when there was no electric light service?

A.—Well, with a flashlight and candle, and coal oil lamp.

Q.—Did that make any particular difference to your profession as a doctor?

A.—Sometimes.

40 Q.—I suppose you had occasion to travel along the roads a great deal in your profession?

A.—Yes.

Q.—Could you give us any idea of what the condition of the lines and wires of his service were at that time?

Mr. Scott: I object to this question. I do not think the witness should be asked to express an opinion on the condition of electrical transmission lines.

*In the
Superior Court*

His Lordship: You might ask him how he found the system.

No. 115.
Defendant's
Evidence.
(Supp. Hearing)
H. J. G. Geggie,
Examination
Oct. 20th, 1932.
(continued)

BY MR. KER:

Q.—How, in a general way, did you find the lines and poles of the system on the roads?

A.—I think it was seasonal, it depended on the weather and storms, and so forth. It varied.

10 Q.—In what state did you find them?

A.—Not good altogether.

BY THE COURT:

Q.—Along all the lines of the roads on which you travelled?

A.—Well, you know what rural lines are. I think it was no worse than the general run of rural lines, which is not good, of course, in the country at any time.

20 BY MR. KER:

Q.—Do you know of any instance where injury has been caused to anybody by reason of the wires?

A.—Well, I have one case, a child burned by climbing a cedar tree through which the wires ran. The child climbed the tree and was badly burned on the hands and feet.

Q.—In any event, the wires were in contact with the tree?

A.—Yes, exactly.

30 BY THE COURT:

Q.—That happens often in Montreal?

A.—Yes.

BY MR. KER:

Q.—I understand you did not always have a meter?

A.—No, we did not always have a meter.

Q.—About when do you think you got a meter?

40 A.—I don't know. I think we had a meter for about a year
and a half or so before 1926.

Q.—It would probably be 1925 some time?

A.—I am only guessing.

Q.—Up to that time you were on the flat basis?

A.—Yes.

Q.—Between 1915 and 1925, whenever it was the meter was put
in?

*In the
Superior Court*
No. 115.
Defendant's
Evidence.
(Supp. Hearing)
H. J. G. Geggie,
Examination
Oct. 20th, 1932.
(continued)

A.—Most of the time, on the flat rate.
Q.—Was the same rate applicable to everybody about the place?
A.—Not at all.
Q.—Am I to understand, then, that you would perhaps pay one rate, and the man next door might pay a lower or a higher rate?
A.—Exactly.
Q.—You have a meter now?
A.—Yes, I have a meter now.

Cross-examination 10

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

Q.—Do you have any interruptions now?
A.—Yes.
Q.—You have interruptions now?
A.—Occasionally.
Q.—I suppose your requirement for electricity is more than those of the average inhabitants around that rural community?
20 A.—Yes.
Q.—Considerably so?
A.—Considerably so.
Q.—Have you an X-ray machine in your office?
A.—No.
Q.—In what way are your requirements higher than those of the average inhabitant living around there?
A.—I do more at night. I have a bigger establishment, and I perhaps have more electrical equipment, that is, a stove and the rest of it, the ordinary heavy appliances, a washer and the rest of it.
30 Q.—If I remember rightly, you told us that in a general way this system was no worse than the general run of rural systems?
A.—No, I do not think it is any worse.
Q.—Did you make any complaint to the Quebec Public Service Commission prior to the time the Gatineau Power Company flooded back the waters of the Gatineau River in 1926?
A.—No, not prior to that.

Re-examination

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

40

Q.—Prior to that time, I suppose, there was no other source of supply of electricity available?
A.—There was no other source of supply.
Q.—Could you give me from your own personal knowledge any idea of the attitude Mr. Cross adopted with respect to the lighting service before the Gatineau Power Company came up there? Did his sawing operations seem to have any effect on the lighting system?

*In the
Superior Court*

No. 115.
Defendant's
Evidence
(Supp. Hearing)
H. J. G. Geggie,
Re-examination
Oct. 20th, 1932.
(continued)

A.—Well, yes. I think sawing was his primary occupation, and he used what he had for his logs, and gave us the rest.

BY THE COURT:

Q.—And you were glad to get that?

A.—Yes, we were.

10 BY MR. KER:

Q.—You were circumspect?

A.—No, we were not circumspect with Mr. Cross.

BY THE COURT:

Q.—Where is Gracefield?

A.—Forty-five miles north of Wakefield.

20 BY MR. KER:

Q.—I suppose he was going up there for his other operations?

A.—He had saw mills over seventy miles of country.

Q.—He does not serve Gracefield with electric light?

A.—No. In fact, I do not know anything about his occupation in Gracefield, except that he has a mill there occasionally.

(And further deponent saith not.)

30

40

Ce vingtième jour du mois d'octobre, de l'an mil neuf cent trente-deux,

A comparu:—

BENJAMIN NORMANDIN,

ingénieur civil, âgé de quarante-neuf ans, demeurant à Québec, témoin produit de la part de la défenderesse.

10 Lequel après serment prêté sur les saints Evangiles, dépose et dit:—

Je ne suis pas intéressé dans l'évènement de ce procès; je ne suis ni parent, ni allié, ni au service d'aucune des parties en cette cause.

INTERROGE PAR Me KER, C.R.,
PROCUREUR DE LA DEFENDERESSE:

20 Q.—Vous êtes ingénieur civil par profession?

R.—Oui, monsieur.

Q.—Quelle est votre occupation dans le moment?

R.—Comme assistant ingénieur en chef du service hydraulique, et ingénieur en charge de l'approbation des plans de barrages, travaux dans les cours d'eau.

PAR LE JUGE:

Q.—Est-ce ingénieur du gouvernement?

30 R.—Ingénieur en charge de l'approbation des plans de travaux en rivières.

PAR Me KER, C.R.:

Q.—Vous avez votre bureau dans l'hôtel du gouvernement, à Québec?

R.—Oui, monsieur.

Q.—Quelle est la nature ordinaire de vos devoirs?

R.—Aviser technique, une partie de l'administration.

40 Q.—Aviser technique du département hydraulique?

R.—Oui, monsieur.

Q.—Et vous dites que vous vous occupez, dans le cours ordinaire de vos devoirs, des demandes d'approbation de plans qui sont soumis pour le développement des pouvoirs d'eau?

R.—Oui, monsieur.

Q.—Ces demandes sont soumises en vertu des dispositions de la loi des eaux courantes, chapitre 46 des statuts refondus de Québec?

*In the
Superior Court*

No. 116.
Defendant's
Evidence.
(Supp. Hearing)
B. Normandin,
Examination
Oct. 20th, 1932.
(continued)

R.—Oui, monsieur.

Q.—Est-ce que votre département a des instructions, ou formules d'instructions imprimées pour ceux qui veulent développer leurs pouvoirs d'eau, qu'ils doivent suivre en faisant leur application pour approbation?

R.—Nous avons une formule d'instructions sur la manière de préparer les plans qui doivent être soumis pour approbation.

10 Q.—Est-ce que vous avez copie de cette formule? Voulez-vous prendre connaissance, s'il-vous-plaît, de cette formule que je vous exhibe, qui est la forme C, et que je produis comme pièce D-159?

(Objecté par Me Scott, C.R., à cette preuve).

(Objection réservée).

R.—Ce sont les instructions du service hydraulique au sujet de la préparation des plans qui doivent être soumis pour approbation en vertu du chapitre 46 des statuts refondus de Québec.

20 Q.—En vertu et suivant ces règlements est-ce que la compagnie défenderesse a soumis des plans pour l'approbation du département?

R.—La Gatineau Power?

Q.—La Gatineau Power?

R.—Oui.

Q.—Ou son auteur l'International Paper Co.?

R.—L'International Paper a soumis des plans.

Me Scott, C.R.—Ces plans sont admis par le demandeur.

30 Q.—Vous n'avez jamais reçu de plans pour aucun développement, ni aucune application de M. Cross, le demandeur, pour un développement?

R.—Pas à ma connaissance.

Q.—Les plans de la compagnie défenderesse ont été produits à Québec pour le développement de Chelsea?

R.—Pour le développement de Chelsea.

Q.—Les annonces ont été faites dans les journaux?

R.—Oui, toutes les formalités de la loi ont été remplies.

40 Q.—C'est d'ordinaire pour avertir tout le monde qu'il y a un développement projeté?

R.—Le dépôt des plans a été fait au bureau d'enregistrement et les avis donnés dans la Gazette Officielle et dans les municipalités concernées.

Q.—Après que les plans ont été produits est-ce qu'il y a eu des protêts?

R.—Oui, M. Cross par l'entremise. . . .

(Objecté par Me Scott, C.R., à toute cette preuve).

*In the
Superior Court*

No. 116.
Defendant's
Evidence.
(Supp. Hearing)
B. Normandin,
Examination
Oct. 20th, 1932.
(continued)

PAR LE JUGE:

Q.—Les protêts ont été faits par M. Cross?

R.—C'est M. Cross qui protestait par l'entremise de ses avocats, je crois que ce sont les avocats Lafleur & MacDougall.

PAR Me KER, C.R.:

10

Q.—Par écrit?

R.—Par écrit.

(Preuve permise sous réserve).

Q.—Il a objecté par écrit, et après il est allé à Québec?

R.—A Québec, il a demandé une entrevue pour se faire entendre.

Q.—Il a été entendu à Québec?

20

R.—Il a été entendu.

Q.—Par le ministre?

R.—Par le ministre, je crois, par nous autres.

PAR LE JUGE:

Q.—Le savez-vous personnellement? Ne parlez que pour vous-même personnellement?

R.—Personnellement je n'ai pas assisté à la réunion, mais je sais que M. Cross est venu avec son ingénieur à mon bureau, et
30 qu'il était à mon bureau, supposé être avec ses avocats.

Q.—Et c'est tout ce que vous savez personnellement?

R.—Personnellement; par la correspondance officielle du département, la correspondance du département atteste que ses avocats sont venus au département protester.

PAR Me KER, C.R.:

Q.—Et ses ingénieurs aussi?

R.—Et les ingénieurs de M. Cross.

40

Q.—Et l'approbation a été donnée?

R.—L'approbation a été donnée.

PAR LE JUGE:

Q.—Savez-vous cela encore personnellement?

R.—La correspondance officielle du département, que j'ai ici, atteste qu'ils sont venus au département protester, et moi person-

*In the
Superior Court*

No. 116.
Defendant's
Evidence.
(Supp. Hearing)
B. Normandin,
Examination
Oct. 20th, 1932.
(continued)

nellement je sais que M. Cross, avec son ingénieur, est venu à mon bureau.

Q.—Cela ne signifie rien qu'il soit allé à votre bureau?

R.—Ils sont venus au bureau pour protester.

Q.—Ont-ils protesté devant vous? le savez-vous personnellement? Vous savez la différence qu'il y a entre une preuve que vous voulez faire personnellement et un preuve faite par d'autres?

R.—Il est venu pour cela, et il l'a fait la protestation.

Q.—Alors vous le savez personnellement, vous le jurez?

10 R.—Je le jure, personnellement.

PAR Me KER, C.R.:

Q.—Après que l'approbation des plans a été donnée par le gouvernement, la compagnie défenderesse a fait une application pour un autre order-en-conseil lui permettant d'exproprier les propriétés de M. Cross, n'est-ce pas?

R.—Oui, monsieur.

20 Q.—Les avis de cette application et les plans ont été signifiés à M. Cross avant, n'est-ce pas?

PAR Me SCOTT, C.R.:

Q.—Savez-vous cela personnellement?

R.—Nous avons un certificat d'huissier, je crois, qui atteste que copie a été livrée à M. Cross.

(Objecté par Me Scott, C.R., à toute cette preuve).

30 (Preuve permise sous réserve).

PAR LE JUGE:

Q.—Voulez-vous produire certificat?

R.—C'est un certificat du bailli Couture, de Hull. Maintenant, ce sont nos originaux, si vous n'avez pas d'objection, Votre Seigneurie, je pourrais en produire une copie.

Q.—Vous avez l'original?

40 R.—C'est l'original.

Q.—Voulez-vous me laisser voir?

(Le témoin exhibe à la Cour l'original en question).

PAR Me SCOTT, C.R.:

Q.—Quelle est la date de la signification?

R.—Cela a été signifié le 4 décembre 1926, et le certificat est daté du 4 décembre 1926.

PAR Me KER, C.R.:

Q.—Est-ce que M. Cross a encore protesté contre l'ordre-en-conseil autorisant l'expropriation?

(Objecté par Me Scott, C.R., à cette preuve).

10 (Preuve permise sous réserve).

R.—Nous avons un protêt écrit. M. Cross, par l'entremise de son avocat, a filé un protêt contre l'approbation des plans soumis pour l'expropriation.

PAR LE JUGE:

Q.—L'avez-vous le protêt?

R.—J'ai le protêt ici.

20 PAR Me KER, C.R.:

Q.—Et l'approbation autorisant l'expropriation a été accordée?

R.—A été accordée.

Q.—Les plans qui ont approuvé le développement de Chelsea Falls jusqu'au canal de fuite de Paugan Falls?

R.—Oui.

Q.—Et incluant le petit rapide chez M. Cross?

30 R.—Oui, les plans approuvés refoulaient les eaux aude-là du rapide des Cascades, c'est-à-dire jusqu'au pied pratiquement du pouvoir Paugan.

Q.—Et qu'elle est l'étendue de cette partie. . . . ?

R.—Submergée, les eaux ont été refoulés.

Q.—Est-ce que vous avez aucune information sur cette partie, l'étendue. . . . ?

R.—La hauteur de chute?

Q.—Oui?

R.—D'après les documents que nous avons.

40 (Objecté par Me Scott, C.R., à cette preuve).

PAR LE JUGE:

Q.—Vous ne connaissez rien personnellement de ces élévations?

R.—Je n'ai pas fait d'inspection spéciale du rapide des Cascades, seulement nous avons une foule de rapports au département, et c'est d'après les rapports et les plans que nous avons au département.

In the
Superior Court

No. 116.
Defendant's
Evidence.
(Supp. Hearing)
B. Normandin,
Cross-examination
Oct. 20th, 1932.
(continued)

CONTRE-INTERROGE PAR Me SCOTT, C.R.,
PROCUREUR DU DEMANDEUR:

Q.—Vous avez dit, je crois, qu'aucun plan de M. Cross n'avait été soumis à votre département? Vous n'avez reçu aucun plan soumis par M. Cross ou ses avocats?

R.—Aucun plan soumis pour un aménagement en vertu du chapitre 46.

10 Q.—A propos des Cascades?

R.—A propos des Cascades.

Q.—Quelle est la date de l'ordre-en-conseil? C'est daté du 21 mai 1926, n'est-ce pas?

R.—Du 21 mai 1926.

Q.—C'est l'ordre-en-conseil concernant l'approbation des plans pour le développement à Chelsea?

R.—Oui, monsieur.

Q.—Et la date de l'ordre-en-conseil concernant l'expropriation est daté du 17 décembre 1926?

20 R.—17 décembre 1926.

PAR Me KER, C.R.:

Q.—Mon savant confrère a référé, dans ses explications au juge, au fait qu'il y avait une clause: " Cette approbation est donnée sans préjudice, etc.", est-ce que ce paragraphe est dans tous les autres ordres-en-conseil?

(Objecté par Me Scott, C.R., à cette preuve).

30

(Objection maintenue).

Q.—Référant à l'ordre-en-conseil qui a été approuvé et qui est produit comme Exhibits D-1 et D-2, dont vous avez copie, voulez-vous dire, s'il-vous-plaît, sur la clause N° 1: " Cette approbation est demandée sans préjudice, etc." est une clause ordinaire qui est entrée dans tous les ordres-en-conseil qui sont émis pour approuver les plans?

40 (Objecté par Me Scott, C.R., à cette question comme illégale).

(Objection réservée).

R.—Cette phrase entre dans tous les ordres-en-conseil dans l'approbation des plans.

PAR LE JUGE:

*In the
Superior Court*
No. 116.
Defendant's
Evidence.
(Supp. Hearing)
B. Normandin,
Cross-examination
Oct. 20th, 1932.
(continued)

Q.—Etes-vous certain de cela?
R.—Oui, monsieur. C'est moi qui prépare les projets d'arrêté
du conseil.
Q.—Depuis quand faites-vous cela?
R.—Depuis 1919.
Q.—Et vous n'y avez jamais manqué?
R.—Je ne suis pas prêt à dire qu'il n'y aurait pas eu une ex-
ception quelques fois, mais généralement parlant je suis prêt à dire
qu'il y a 99 pour cent que je prépare, pour ne pas dire 100 pour cent.

10

(Et le déposant ne dit rien de plus).

DEPOSITION OF SIDNEY E. FARLEY, A WITNESS
PRODUCED ON BEHALF OF THE DEFENDANT

*In the
Superior Court*
No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
Examination
Oct. 20th, 1932.

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

SIDNEY E. FARLEY,

of the City of Ottawa, Ontario, land surveyor, aged 46 years, a wit-
ness produced on behalf of the Defendant, who, being duly sworn,
doth depose and say as follows:

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

Q.—Mr. Farley, I understand you were previously examined in
this case?

A.—Yes.

Q.—What is your occupation?

A.—Principally land surveying.

Q.—Are you a licensed Quebec land surveyor?

A.—Yes.

Q.—You are also a surveyor for the Province of Ontario?

40 A.—Ontario and Quebec.

Q.—I understand you have done a great deal of land surveying
work in connection with the hydraulic development on the Gatineau
River?

A.—Since the inception of the work.

Q.—You are not an employee of the Gatineau Power Company?
You are practising for yourself?

A.—I have always practised for myself.

*In the
Superior Court*
No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
Examination
Oct. 20th, 1932.
(continued)

Q.—You made numbers of surveys upon which this great development was based, I believe?

A.—I had charge of the surveys.

BY THE COURT:

Q.—For the Company?

A.—For the Company Defendant.

10 BY MR. KER:

Q.—I suppose that required very active and intensive work to get these measurements correctly?

A.—It required very extensive work.

Q.—Are you familiar with the general topography at Meach Creek and Farm Point, particularly the land about Meach Creek belonging to Mr. Cross?

A.—Yes.

20 Q.—And which are in issue in this case?

A.—Yes.

Q.—Have you a plan of those properties prepared (I am speaking now particularly with respect to the properties in Meach Creek proper) indicating the piling ground at Farm Point?

A.—Yes, I have a plan which was prepared under my instructions, and which I have verified personally in all essentials details.

Q.—Will you file a copy of this plan as Exhibit D-160?

A.—Yes.

30 Q.—On the lower part of this plan is shown the Gatineau River running north and south practically?

A.—Yes.

Q.—And we have at the lower left hand side the pond on which the Meach Creek enters into the Gatineau River?

A.—That is correct.

Q.—And the word " Bridge ". There is a little bridge down there?

A.—It shows crossing under a bridge on the railway.

Q.—That is the Canadian Pacific Railway bridge?

A.—The Canadian Pacific Railway bridge.

40 Q.—This bridge is about where the Meach Creek enters into the Gatineau River, where the railway crossing is?

A.—It is where the railway crossing is over the creek.

Q.—Then, going upward you have certain land coloured in yellow. Would you explain to me what that land is, and what the extent of it is. I think that generally represents the land that is hitherto referred to as the Delta in this case, outlined in yellow?

A.—The part marked, included in parcel A, and coloured yellow,

*In the
Superior Court*
No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
Examination
Oct. 20th, 1932.
(continued)

referred to before as the Delta, is the land extending to elevation 318.

Q.—That yellow or lemon-coloured line around parcel A is the extent of land about the bed of the creek which is comprised up to the level 318?

A.—That is correct.

Q.—What is the area of that piece of land?

A.—We have tabled that area. I prepared a table of areas on the plan itself, which gives the different areas of the different parcels and between different elevations.

10

BY THE COURT:

Q.—I see on this plan you have here, “ 316 ”?

A.—316, 318, 321 and 321 and a half.

BY THE COURT:

20 Q.—On your plan you have “ Creek ”, I suppose it is Meach Creek?

A.—Meach Creek. It shows the area forming the different elevations, parcel A below elevation 314, 3.05. The area between 314 and 316 is 6.23, and a total is given then for the whole area to that point. Those are merely added together and carried out, and then, the elevation 316 and 318, 5.32 acres, and that is added to the elevation below 316, making a total of 15.05 acres and so on.

BY MR. KER:

30 Q.—That is a very large map? On what scale is it?

A.—One hundred feet to the inch.

Mr. Ker: The river runs practically north and south, my Lord.

His Lordship: That is what I understood from the beginning.

BY MR. KER:

40 Q.—I would ask you to give me the area comprised in the property of the creek and about the bed of the creek up to the level 318, that is, included in the yellow outline?

A.—The area below 318 is 15.05 as shown in the table.

Q.—That is shown in the table of areas?

A.—Under parcel A.

Q.—Under parcel A with the note “ Total area below 318 ”, that is, 15.05 acres?

A.—Yes.

*In the
Superior Court*
No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
Examination
Oct. 20th, 1932.
(continued)

Q.—Would you give the area in parcel A between the level 318 and the level 324.5 which is coloured in green, extending over the top of the yellow, as it were?

A.—Two acres and thirty-four hundredths.

Q.—So that the total of the 318 level, together with that portion in green above the yellow level, is 15.05 plus 2.34?

A.—Plus 2.34, a total of 17.39/100.

10 Q.—I see in the upper right hand portion of parcel A you have a section coloured in red; will you tell me what that is?

A.—That is the section of the piling ground.

Q.—The section of the piling ground between 318?

A.—And 324.5, containing an area of 1.9/10 acres.

Q.—How many acres does the part bordering in red, which is piling ground, contain?

A.—1 and 9/10 acres.

His Lordship: That is the part inside the red line.

20 Mr. Ker: Between the level 318 and 324.5, which is three feet higher than we have to pay for, my Lord.

Witness: I am marking on the exhibit, " 324.5 contour " with an arrow indicating it.

BY MR. KER:

30 Q.—In order that we may understand this matter quite clearly, I understand you to say that the portion on the right hand side of parcel A, that is, the portion coloured in red, represents piling ground?

A.—Yes.

Q.—And it represents piling ground between the level 318 and the level 324.5?

A.—Yes.

Q.—That is to say, it represents piling ground three feet above 321.5?

A.—That is correct.

40 Q.—And what is the area of that piling ground that you have in red between the levels 318 and 324.5?

A.—One and 9/10 acres.

Q.—Although this plan does not show it, could you give me what portion of the ground which would be affected up to 321.5?

A.—Approximately one acre.

Q.—But you have allowed on that plan for three feet above the 321.5 level in your red lines?

A.—Yes.

*In the
Superior Court*
No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
Examination
Oct. 20th, 1932.
(continued)

Q.—Could you tell me, apart from the portions of this land, which are coloured for piling ground, how much piling ground in addition normally existed to Mr. Cross?

BY MR. SCOTT:

Q.—To your knowledge.

A.—Approximately two acres.

10 BY MR. KER:

Q.—So that the level between 318 and the 324 uses up about one-half of the original normal piling ground, is that correct?

A.—That is correct.

Q.—What would the 321.5 level use be in the matter of normal ground, which the Act provides for?

A.—About one acre.

20 Q.—Assuming the total original piling ground under normal conditions to have been four acres, and the part which you have coloured in red to be 1.9 acres, what is the general level of the balance over that 1.9 acres? Is it higher than 321.5?

A.—Portions of it are considerably higher.

Q.—None of it is lower?

A.—None of it is lower.

Q.—And what do those ranges run to, from 321.5 up to how far?

A.—As high as 336 and thereabouts.

Q.—Those are shown as spot elevations?

A.—Spot elevations are shown on the plan.

30 Q.—I see running to some extent across the top of this parcel A parallel black lines with the word " Road " in them.

A.—They indicate the road running from the Muluva Hill Road and the portion of the road called the Dunlop Road, through the property of Mr. Cross to and along the houses that are built along the property, workmen's houses built along the front of the property.

Q.—Am I right in saying that your plan indicates that none of that road is affected at the level of 324 save a small portion south of the creek?

40 A.—There is a small portion along by the Power House, which would be below elevation 321.5.

BY THE COURT:

Q.—What is that Muluva Hill Road?

A.—The upper portion has already been referred to as the Dunlop Road.

*In the
Superior Court*

No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
Examination
Oct. 20th, 1932.
(continued)

BY MR. KER:

Q.—It is the road out into the main highway?

A.—The outlet from the main Gatineau Highway.

Q.—Would you point out on this plan just where the saw mill is?

A.—It is indicated by an arrow marked "Saw Mill".

Q.—At the apex of parcel A?

10 A.—No, towards the end of the piling ground, or the upper end of the spur line.

Q.—What is the lowest level that you find in relation to the saw mill itself?

A.—You mean ground level?

Q.—Yes.

A.—I have ground level at the lowest point 333.2.

Q.—Of course, that is not in issue in this case. It is high, and away up the hill above the water. It would not in any way be physically affected by the water at 321.5?

A.—No.

20 Q.—It is following up from the saw mill? I see you have noted here "Dam"?

A.—Yes.

Q.—Am I right in saying that is the dam which impounds the water, and that the line running down below from the letter "D" in "Dam" and into the saw mill is a penstock carrying the water in to motivate the saw mill?

A.—Yes, and it is so written on the plan as "Centre line of penstock".

30 Q.—When the penstock goes into the saw mill, a portion of the water running down the penstock is diverted into the saw mill to motivate the wheels of it?

A.—That is correct.

Q.—It is not steam power. It is merely motivated by raw water power?

A.—Yes.

Q.—And the balance of the water, whatever it may be, after the saw mill is worked, runs through down the penstock, that black line, and goes into the Power House down below?

40 A.—Yes, marked "Power House No. 11."

Q.—Just where is that?

A.—It is indicated as number 11.

Q.—What is the elevation of the water behind the Dam, ordinarily.

BY THE COURT:

Q.—Right above the word "Dam", what is that?

*In the
Superior Court*
No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
Examination
Oct. 20th, 1932.
(continued)

A.—That is the top of the dam above that, which on March 25th, 1932 was 387.3.

BY MR. KER:

Q.—The level and the date are marked on the plan?

A.—Yes.

Q.—And it is from that point that the water goes down to motivate both the Power Plant and the Saw Mill?

10 A.—Yes.

Q.—From the Dam down to the penstock it is the same penstock which carries the water over both?

A.—Yes, the same penstock goes right through.

Q.—Is it possible at the saw mill to divert the whole flow of the penstock into the saw mill and cut the Power House off entirely?

A.—I do not think so. I would not be positive.

Q.—In other words, it takes what it needs and the balance goes on down?

A.—That is as I understand it.

20 Q.—That water which goes through the saw mill and motivates the saw mill is not used again down below?

A.—No, it runs away into the Creek. It discharges into the Creek.

BY THE COURT:

Q.—It discharges from the saw mill into the Creek?

A.—It discharges from the saw mill directly into the Creek above the power house.

30

BY MR. KER:

Q.—Where does it run into the creek?

A.—The creek is shown "centre line of creek".

Q.—Would you put a line on His Lordship's plan, showing, after it gets through approximately where the water flows into the creek after it has done its work in the saw mill?

A.—It is right where we see the break in the penstock.

Q.—The penstock is the steel pipe taking the water down?

40 A.—The penstock is the steel pipe taking the water down from the pond to the wheels.

Q.—What is the diameter of the pipe?

A.—It is about thirty inches. Pardon me, shall I mark on this plan the discharge?

Q.—Will you mark on the plan the approximate place where the water discharges into the creek after having motivated the saw mill?

*In the
Superior Court*

No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
Examination
Oct. 20th, 1932.
(continued)

A.—I will mark it, "Approximate discharge from saw mill".

Q.—So that if the saw mill and the power property are working together, it is only the balance which the saw mill does not use which comes down into the power house?

A.—That is right.

Q.—And what the saw mill uses discharges direct into the creek after it has done with it?

A.—It discharges, just as I have said, into the creek directly.

10 Q.—I see coming out from the lower right hand side of the saw mill a square line turning at right angles partly: would you indicate what that is?

A.—It is a lorry line for taking lumber out from the mill to the piling ground.

Q.—And above the highest point of the red line, in taking the piling ground, and above that up to the point where that line comes within the saw mill, there is a considerable extent; how far would that be from the top of the piling ground up to the saw mill, approximately?

20 A.—A little over three hundred feet.

Q.—And over the course of that three hundred feet, there is an overhead conveyor for lumber?

A.—Yes. There is a trestle and a conveyor running on the upper trestle.

Q.—And on the side of that three-hundred-foot line, lumber is piled.

Mr. Scott: Ask him, is it piled?

30 BY MR. KER:

Q.—Is there lumber piled on the side of the line?

A.—Lumber is piled at the present time on, I would say, the northwest side.

Q.—Above the words "Piling ground", shown there?

Mr. Scott: Let us get that more clearly.

BY THE COURT:

40 Q.—Above the words "Piling ground"?

A.—It is on the northwest side, on the side marked "Piling ground", in reference to the centre line of the lorry line.

BY MR. SCOTT:

Q.—That is piling ground with the word "Lumber" underneath it in brackets—above the road?

In the
Superior Court

No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
Examination
Oct. 20th, 1932.
(continued)

A.—Above the public road.

BY MR. KER:

Q.—The centre line you speak of coming out from the mill between piling ground and lumber is an overhead track?

A.—An overhead track.

Q.—And lumber may be piled on either side?

A.—Lumber is piled on either side.

10 Q.—Then, following that overhead track down, how far does it go?

A.—A total distance?

Q.—From the middle of the track?

A.—A total distance of approximately 500 feet.

Q.—So there would be approximately a couple of hundred feet of that which would be within the red portion?

A.—Approximately, yes.

Q.—Then, it ends, is that right?

A.—Then it ends.

20 Q.—As a conveyor of lumber?

A.—It ends within two hundred feet of the part marked in red. That is the end of the trestle.

Q.—Stopping for a moment, and turning to the lower portion coloured in red, I see the C.P.R. right-of-way was coming in at the bottom?

A.—Yes.

Q.—Will you indicate just where the spur line breaks off and runs into Mr. Cross' property?

30 A.—It is marked "Siding" and intersects the west limit of the main line at point marked "A" on plan—and intersects the westerly limit of the main line at point marked "A".

Q.—And it runs up through the red portion and connects with the overhead siding, or how far does the siding run?

A.—It runs right through to the mill.

Q.—Is it alongside of the overhead, or is it underneath the overhead, or where is it?

A.—It is to one side.

40 Q.—And it runs from the Canadian Pacific Railway line right up to the saw mill?

A.—Right through to the saw mill.

Q.—But most of it, I see, lies in this coloured red portion?

A.—Possibly, yes—possibly two-thirds more.

His Lordship: But there is some sort of side track at the penstocks, what is that? Is that a spur?

Mr. Ker: The siding, my Lord, runs from the C.P.R. right

*In the
Superior Court*

No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
Examination
Oct. 20th, 1932.
(continued)

up to the mill, and then, to one side of it, five hundred feet down from the mill is this overhead conveyer which is alongside of the siding.

Witness: There is a branch.

BY THE COURT:

Q.—Running out to the word “Penstock”?

10 A.—Running out to the word “Penstock” that is a part of the siding.

BY MR. KER:

Q.—None of the siding would be affected or submerged that you have just spoken about, outside of this red line?

A.—No. You mean with reference to elevation 324.5?

Q.—With reference to elevation 324.5, and you have the spot levels showing the various levels outside of that?

20 A.—Yes.

Q.—So that in the operation of the mill the lumber is carried out on this conveyer and piled alongside the conveyer, and also along the siding, is that correct?

A.—Yes.

Q.—I am speaking now of under normal conditions? On which side of the siding is most of the lumber piled?

Mr. Scott: At the present time.

30 BY MR. KER:

Q.—Under normal conditions?

A.—I would say on the northwest side, on the side that the trestle is on.

Q.—And what, in a general way, is the level of the siding? It would be affected at 321.5, would it not?

A.—Well, yes, a portion of it would be under water at 321.5.

Q.—And a portion of the ground surrounding it would also be under water?

40 A.—Would also be under water.

Q.—Impossible for use as a piling ground, or impossible for use as a siding at 321.5?

A.—Without raising the ground.

Q.—In other words, the spur line would have to be raised to equal the stated level of the ground?

A.—Yes.

Q.—You have told me that all the land above the road running

*In the
Superior Court*

No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
Examination
Oct. 20th, 1932.
(continued)

across the plan and marked in heavy black lines, insofar as that road goes to the creek itself, there is none of it affected?

A.—That is right.

Q.—On the north side of the creek there is none affected?

A.—That is right.

Q.—Will you look at this exhibit filed as P-29, which is a panoramic photograph of this place, dated on its face, September 21st, 1926, and will you explain where you find lumber piles seen on that photograph, where they would be in reference to your plan? Are they above that road?

A.—Yes, they are above the road mentioned.

Q.—They are all above the road mentioned?

A.—Yes.

Q.—So that in 1926, before the water was raised

Mr. Scott: This is your witness, Mr. Ker.

BY MR. KER:

Q.—What, therefore, with respect to piling, would this photograph P-29, filed by the Plaintiff, indicate was the piling ground, or where lumber was piled in 1926, with reference to the road shown on your plan?

A.—The piling ground shown on this photograph is above the road mentioned.

Q.—I am referring to the Plaintiff's photograph merely to tie it to some extent with the locations which are shown in your plan, in other words, to have you identify on your plan the positions at which the lumber is shown to be piled in 1926; am I right in showing those positions?

Mr. Scott: Ask the witness what they show.

BY MR. KER:

Q.—Well, what do the piles of lumber show on the photograph P-29? Where do they show as being located in reference to the road shown on your plan?

A.—They are above the road and on the portion marked "Piling ground lumber".

BY THE COURT:

Q.—Above the road on the west side?

A.—On the west side, that is correct.

BY MR. KER:

In the
Superior Court

No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
Examination
Oct. 20th, 1932.
(continued)

Q.—Not below, but above, on the westerly side?

A.—Yes.

Q.—Does that show the complete parcel as shown in your plan?
I am speaking of the overhead trestle?

A.—You do not see the trestle there.

Q.—Before we leave the power house I would like to ask you a question or two with regard to it. The elevation of the floor of this power house, I understand, is 321.55?

A.—Yes.

10 Q.—Did you take that elevation yourself?

A.—I did.

Q.—That is, the floor of the power house?

A.—Yes.

Q.—The turbine which motivates the generator of the power house is below the floor?

A.—Yes.

Q.—At what level would the turbine be?

A.—I don't know.

20 Q.—Then the outlet from the turbine runs out of the power house and runs through a little culvert, does it not?

A.—From the turbine it goes through the draft tube, and from the draft tube the water makes its way through a culvert under the public highway in front of the power house and then out to the Meach Creek.

Q.—Would you say the water coming through the draft tube, in order to get through the culvert, must at least be as high as the bottom of the culvert?

A.—Yes.

30 Q.—What is the general elevation of the bottom of the culvert?

A.—The culvert is a concrete culvert, a small bridge culvert, and has a base elevation of 314.6, and then scoured to the elevation of 312.8.

Mr. Ker: This, my Lord, is in reference to what we were referring to yesterday when Mr. Lefebvre was examined. That really determines the beginning of loss of head.

BY MR. KER:

40

Q.—It is that elevation, because below that water could come right up to that point and not affect the power house, is that right?

Mr. Scott: You are not putting that as a question to the witness, are you?

Mr. Ker: Perhaps not, Mr. Scott.

In the
Superior Court

No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
Examination
Oct. 20th, 1932.
(continued)

Mr. Scott: Perhaps we will find that Mr. Farley was never on the ground, like Mr. Lefebvre.

Mr. Ker: I do not think this remark is called for.

BY MR. KER:

Q.—Have you any diagram or graph indicating the situation existing at the power house?

10 A.—I merely made a small sketch of what I think the situation is at the power house.

Q.—Would you explain this diagram to his Lordship?

A.—I file a rough drawing of the outlet of the water at the power house as Exhibit D-161. It is really a section from the power house across the road.

Q.—Will you explain how the water operates in this power house?

20 A.—The water comes down through the penstock, through the wheel. As a matter of fact, this dotted outline, or, at least, heavy outline, shows the approximate position or elevation of the power house that the penstock and wheel go into, and the draft tube. The water then drops into the lower basin. This lower basin, of course, is all covered over, and we cannot see what it is like, but presumably it is as shown on this sketch, and the water must make its way through the culvert across the roadway. The base of the culvert is at elevation 312.8; the water must force its way through that culvert in order to get away; in order to attain any depth in the culvert it should run to at least 314.

30 Q.—The base of the culvert normally is 314, but it is scoured down?

A.—The ground is scoured away to the elevation of 312.8.

Q.—But at that point no water would be coming through at all?

A.—No. If the water was down to elevation 312.8 it could not go through the culvert, therefore it must be running at some elevation higher than that.

And to have any depth you probably would have to be somewhere around 318. The bottom of the culvert is here, but the earth is washed away down.

40 Q.—But normally if the culvert had not been washed away the water would have to be higher than that in order to run through it?

A.—Yes.

Q.—Therefore, am I right in saying that this is the creek running out to here (indicating)?

A.—I am indicating the direction of the discharge by arrows.

BY THE COURT:

*In the
Superior Court*
No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
Examination
Oct. 20th, 1932.
(continued)

Q.—And that is discharging into the creek?

A.—It runs across the road and then finds its way eventually to the creek.

BY MR. KER:

Q.—Am I right in assuming that you would have to back the water in the creek up to at least 314, or whatever this culvert is at, before you could affect the operation of the power?

10 A.—Yes. It would have to be to the elevation of 312.8 before the effect could be produced in that scoured distance.

Q.—The normal elevation being 314?

A.—Yes.

Q.—And it is from that point that any backing up of the water would cause actual loss of head on this development?

A.—Yes.

20 Q.—I asked you this morning about the turbine wheel, and its relation to the power house. I am afraid you may not have understood my question correctly. Where is the turbine in relation to the power house?

A.—Above the floor.

Q.—Above the level of the power house floor?

A.—Above the level of the power house floor. I think my answer indicated it was below the power house floor. As a matter of fact, that is not so: it is above. It is right at the end of the penstock.

Q.—That would be shown on the little drawing you filed this morning?

A.—Yes

30 Q.—Just in order to check with the figures given by Mr. Scovil, would you please tell us what head the saw mill works under?

A.—All the elevations are on the plan.

Q.—To make the story short: Mr. Scovil estimated the saw mill was working under a 53-foot head. Is that correct?

A.—The head would be 53 feet.

Q.—And, what is the head under which the power plant works?

A.—If we take 314 feet for tailwater elevation, we would have a 74-foot head.

Q.—That is assuming what pond elevation?

40 A.—388.

Q.—For the purpose of the record may I put it this way: a raise in the water of the tailrace to level 321.5 would bring about how many feet, or what percentage, of reduction of the total head?

A.—It would leave the head 66.5 feet; or a reduction of 7½ feet.

Q.—What percentage of the total head would that be? Approximately 10 per cent, would it not?

A.—Approximately 10 per cent.

In the
Superior Court

No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
Examination
Oct. 20th, 1932.
(continued)

Q.—That is quite certain?

A.—Yes.

Q.—Before passing on to the plan, I would like to refer you to the evidence of Mr. MacRostie, a witness examined for the Plaintiff. He gave the following evidence, at page 14 of his deposition:

“ Q.—What effect has the raising of the water to controlled elevation 321.5 had on the Farm Point mill?

10 A.—It has totally destroyed the piling ground, or will totally destroy the piling ground. The raising of the water to 321.5—that is a permanent controlled elevation—will completely destroy the piling ground.”

What have you to say to that?

A.—In my opinion, the piling ground lying west of the public road would not be affected in any way by a controlled elevation at 321.5.

20 Q.—In other words, you still maintain that your percentages of acreage in respect of what has been submerged, against the whole piling ground, exist as you have stated them this morning?

A.—I do.

Q.—May I ask you to say again what was the area submerged at elevation 321.5?

A.—Approximately one acre.

Q.—And how much additional from 321.5 to 324?

A.—Possibly affected by seepage, would be about nine-tenths of an acre.

30 Q.—Would there be any effect whatever upon the remainder of the piling ground?

A.—There would be no effect from holding the water at 321.5.

Q.—Referring to your plan Exhibit D-160, I notice although the Act deals with a water level of 321.5, your plan shows piling ground affected to elevation 324.5—three feet higher than the level given by the Act. Why do you take in that additional elevation?

A.—To cover any possible effect that might be caused through seepage or otherwise, and to fully cover any effect there might be by holding the water to that elevation.

40 Q.—It has been suggested there would be a seepage effect at 321.5?

A.—Yes, and this is fully to compensate for that condition.

Q.—And the total area above 318, affected at 324.5 (which is three feet above the proposed permanent controlled level of the water) is about two acres, out of four?

A.—Yes.

Q.—1.9 acres, as a matter of fact.

A.—Yes.

*In the
Superior Court*
No. 117.
**Defendant's
Evidence.**
(Supp. Hearing)
S. E. Farley,
Examination
Oct. 20th, 1932.
(continued)

Q.—When you are giving this testimony, are you or are you not giving it from a knowledge of the conditions which existed along the Gatineau previous to 1926, and previous to the time the water was raised?

A.—I have been on the Gatineau for close on to twenty-four years. I was on this property numerous times previous to 1926. I made surveys around it, and close to it, and upon it.

Q.—Would you give me a statement as to the general configuration of the land immediately surrounding behind the piling ground?

10 A.—The piling ground is actually surrounded by hills, which have steep slopes; and is subject to receiving the surface water from those hills the whole year round, consequently it is naturally in a moist condition.

Q.—That is water coming from above?

A.—Coming from above—from the hills.

Q.—Is that a condition which you had yourself noted there before 1926?

A.—Yes.

20 Q.—And have you noticed it since?

A.—Yes.

Q.—What visible manifestations have you seen of it?

A.—Soft, wet ground in the immediate vicinity, and right in the piling ground itself.

Q.—That is, when the water was normally under low conditions—when the water was in its normal condition?

A.—Yes.

Q.—How far up would that condition subsist?

30 A.—It would be naturally in the lowest portion of the piling ground.

Q.—What is the physical cause of that? Is it seepage coming down from the hills?

A.—It is surface water coming down from the higher levels.

Q.—Did you observe the piles of lumber in Mr. Cross' yard before 1926?

A.—Yes.

Q.—How was the lumber piled?

A.—I could not remember how it was piled previously to 1926.

Q.—Was it piled as the photograph showed, up along

40 Mr. Scott (interrupting): Do not lead the witness. He has said he does not know.

Mr. Ker: All I wanted to know was where it was piled.

Mr. Scott: Then ask him where it was piled.

BY MR. KER (continuing):

In the
Superior Court

No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
Examination
Oct. 20th, 1932.
(continued)

Q.—Before 1926 had you seen Mr. Cross' lumber piled in the places indicated on the photograph produced?

A.—Yes.

Q.—Please refer again to the photograph Exhibit P-29. In the foreground of this photograph I notice vacant land, with vegetation. What is the nature of that vegetation?

A.—It shows seaweeds, and vegetation that grows in wet ground.

10 Q.—What is the nature of the ground? Is it low land, or is it high land?

A.—The character of the vegetation there would indicate that the ground was wet possibly several times during the course of the year.

Q.—That is part of the land referred to as the delta?

A.—That land is typical of the whole area shown as Parcel "A" on my plan.

Q.—And particularly of the area up to elevation 318?

20 A.—More particularly of the area up to 318. That is the area included in yellow.

The creek runs as shown on the plan.

Q.—Your remarks with regard to the general character of that land apply in general to the part within the yellow line, Parcel "A" ?

A.—That is correct.

Q.—Have you any physical evidence or reasons for believing that land was flooded before the waters of the Gatineau were raised? Have you anything to support your opinion in respect to the flooding of that particular portion?

30 A.—Yes. I have here a photograph showing water over that area previous to the raising of the water in the river.

Q.—What is this photograph, and where did you get it, and how did you get it, and who took it?

A.—As a matter of fact, I think I discovered it myself, in the Air Branch of the Topographical Survey in Ottawa.

Q.—The Government Aerial Photography Department?

A.—Yes.

I asked them to enlarge the original, and send us a copy, which was done.

40 Q.—Did you, or did the Company Defendant, in any way instigate the taking of this photograph?

A.—No. I discovered it really by accident when looking through some photographs they had on record.

Q.—How did they happen to make those photographs?

A.—They map certain sections of the country, sometimes for private interests, and sometimes in the public interest. At the present time they are actually engaged in reproducing accurate maps of the

*In the
Superior Court*

No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
Examination
Oct. 20th, 1932.
(continued)

whole country. They take one district at a time. At the present time they are using photography in their mapping.

Q.—According to the records, when was this photograph taken?

A.—According to the records, this photograph was taken by the Royal Canadian Air Force on November 23rd, 1926.

Q.—That was four months before there was any raising of the water of the Gatineau River by the Company. Is that correct?

A.—As far as I know, yes.

10 BY MR. SCOTT:

Q.—The photograph now before you is an enlargement, is it not?

A.—Yes.

BY MR. KER (continuing):

Q.—Will you produce this photograph as Defendant's Exhibit D-162, being an aerial photograph purporting to have been taken
20 November 23rd, 1926, showing the locality of Farm Point and Meach Creek, and which is an enlargement of the original as taken by the Royal Canadian Air Force?

A.—Yes.

BY MR. SCOTT:

Q.—Did you make the enlargement?

A.—No.

30 Q.—Who made it?

A.—The Department made the enlargement.

BY MR. KER (continuing):

Q.—Will you explain to His Lordship just where Parcel "A" is on this photograph, and will you say what it indicates?

Mr. Scott: Of course it is understood the Plaintiff reserves his right to check the date on which the photograph was taken.

40

Mr. Ker: Absolutely. The witness did not take the photograph.

It is clear this photograph was taken before the water was raised, because the islands in the river can be seen.

Witness: The railway and the highway are shown running close to the water.

*In the
Superior Court*

No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
Examination
Oct. 20th, 1932.
(continued)

BY MR. KER (continuing):

Q.—Will you please indicate the delta, known as such—Parcel
“A”?

A.—I have marked it “Delta”.

Q.—Was that covered with water at that time?

A.—Yes, it is shown covered by water.

10 BY THE COURT:

Q.—That was in 1926?

A.—Yes.

BY MR. KER (continuing):

Q.—Under natural conditions?

A.—Yes.

20 BY THE COURT:

Q.—Before the raising of the water?

A.—Yes.

Q.—You said you were on the ground before 1926?

A.—Yes.

Q.—Were you there often?

A.—Yes, quite often.

Q.—In what part of the year?

A.—Different seasons.

30 I was called on to make surveys at different times, and I did
actually make a survey of the toy factory, which is a portion of that
property. I have been on the property for Mr. Cross several times.
I have been on that particular property.

Q.—Were you there in 1925, for instance?

A.—I would not say I was there in 1925. I was there at different
times. I would not say just at what time in each year I was there.
I will say, however, I know the property very well.

40 Q.—It is in relation to the dampness of the soil I am asking
you these questions. What part of the year did you see or observe
this land was damp—that is where the piling ground was, and a
little further up?

Witness: You are referring now to previous to 1926?

His Lordship: Yes: before the flooding caused by the raising
of the water.

A.—I am afraid I would not be able to give you any definite
dates, or particular times.

*In the
Superior Court*

No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
Examination
Oct. 20th, 1932.
(continued)

Q.—On what do you base yourself to testify that the soil was moist?

A.—I have been on that ground a number of times. I would not specify the dates, but I have made surveys in that immediate vicinity, and I know at that time the ground was moist and wet.

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

A.—Would you permit me to give you that evidence later, after looking at my field books? If I have an opportunity of consulting my field books I would be more certain.

10

BY MR. KER:

Q.—You have records of it?

A.—Yes.

BY THE COURT:

Q.—If you wish to refer to your field books, you may do so.

20

A.—I would prefer to do so. Unfortunately they are in Ottawa.

BY MR. KER (continuing):

Q.—And, you will get them, so that we may precise the times you were there, and at what period of the year you noticed the wetness of the soil?

A.—Yes.

30

Q.—Referring to the yellow portion of your plan, which is land below elevation 318, and which, according to you, is land that was submerged at times (as indicated on the photograph): what would be your idea of the value of that land per acre? Because it will be submerged with the water at elevation 321.5?

A.—I did not actually place a value on that land up to elevation 318 of itself. I did place a value on it up to 324.5 altogether—increasing the acreage a bit: from 15.05 acres to 17.39 acres—on which I placed a value of \$100 an acre. I did not subdivide.

Q.—In other words, you took the whole land up to elevation 324.5, apart from the piling ground?

A.—Yes; and gave that a value per acre.

40

Q.—What acreage did you find?

A.—17.39 acres.

Q.—And, you valued it at \$100 per acre?

A.—Yes.

Q.—As a matter of fact, is this land within the yellow available to any extent for any purpose?

A.—The land is not really fit for cultivation the season round, because at certain times it is inundated.

*In the
Superior Court*

No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
Examination
Oct. 20th, 1932.
(continued)

In my opinion the figure I have allowed is a fair value.

Q.—Your line of 324.5—apart from the portion which consists of piling ground—appears to take in a certain number of buildings on the upper side of Parcel "A"?

A.—Yes.

Q.—What were the group numbers of those buildings, as indicated in the present proceedings?

A.—Groups 5, 6, 9 and 10, were the four in that area.

10 321.5? Q.—I see No. 9 is above the road. It is not affected by elevation

A.—No. 9 is above the 321.5 contour. We included it because of the aforementioned reasons.

Q.—Possible seepage?

A.—Possible seepage.

Q.—The power house is affected, as you have explained?

A.—Yes.

Q.—Up to the floor?

A.—Yes.

20 be affected? Q.—On that section, those are the only buildings that would

A.—Yes.

Q.—I do not know whether you made a valuation of those buildings. Did you?

A.—Yes, I did.

Q.—What valuation did you place on them?

A.—\$6,000 on the four buildings.

Q.—You placed a valuation of \$6,000 on the four buildings together?

30 A.—Yes.

Q.—And the land, 17.39 acres, at \$100 an acre?

A.—Yes; \$1,739.

Q.—What is your estimate of the buildings and the land in Parcel "A", apart from the piling ground and apart from the power house?

A.—\$7,739.

Q.—Leaving Parcel "A" for the moment, and turning to Parcel "B"—east of the C.P.R.?

40 A.—That lies between Mulvihill Road and the main Gatineau Highway, the Canadian Pacific Railway, and lot 23-A. It has a total area of 5.3 acres.

Q.—That is, to level 324.5?

A.—Yes, practically up to 324.5.

Q.—Is the little piece I notice north of the Mulvihill Road part of Parcel "B"?

A.—No.

*In the
Superior Court*

No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
Examination
Oct. 20th, 1932.
(continued)

His Lordship: It is indicated on the plan as Parcel " C ".

BY MR. KER (continuing):

Q.—How many acres are there in Parcel " B "?

A.—5.3 acres.

Q.—Are there any buildings affected there?

A.—Yes, one building.

10 Q.—What is the number of that building?

A.—Group No. 30.

Q.—At what figure do you value that land?

A.—Up to 321.5, there are 3.73 acres; and I put a valuation of \$100; and 1.57 acres between 321.5 and the boundaries, which I have already given at \$300—making \$471 for that area.

Q.—For land?

A.—Yes.

Q.—And the building?

A.—\$2,500.

20 Q.—Are those areas shown on your table?

A.—Yes.

Making a grand total of \$3,344.00.

Q.—Land and buildings in Parcel " B ", \$3,344?

A.—Yes.

BY THE COURT:

Q.—The whole of Parcel " B " belongs to Mr. Cross?

A.—The whole of Parcel " B " belongs to Mr. Cross, yes.

30 " B " Q.—Can you state what damages you fix for the whole of Parcel

A.—That is the figure I have just given.

Q.—\$3,344?

A.—Yes.

BY MR. KER (continuing):

Q.—\$2,500 for the house, and the land accounting for the difference?

40 A.—Yes.

Q.—Will you now take Parcel " C "—the little piece of land on the other side of Mulvihill Road—and will you say what it is?

A.—That is land possibly affected by seepage. It is above elevation 321.5. It is only a very small area—five one-hundredths of an acre. I just simply put down an amount of \$25 for that.

BY THE COURT:

*In the
Superior Court*
No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
Examination
Oct. 20th, 1932.
(continued)

Q.—That goes as far as Parcel " D " ?

A.—No. It is just the little triangle coloured green.

BY MR. KER (continuing):

Q.—And you put a nominal value of \$25 on that little piece of land?

A.—Yes.

Q.—It is above elevation 321.5?

10 A.—Yes; and if affected at all it will only be through seepage.

Q.—Let us now take up Parcel " D " .

A.—Parcel " D " has a total area, to elevation 324.5, of 3.64 acres.

Q.—What is the nature of the ground there, and what, if anything, is on it?

A.—This portion of the ground is traversed by a creek, which runs under the Canadian Pacific Railway, to and across the Gatineau Highway.

20 Q.—What is the nature of the land in Parcel " D " ?

A.—The land in Parcel " D " affected, or possibly flooded, to 324.5, on either side of the creek, is rather lower than the property immediately surrounding. As a matter of fact, I suppose the banks rise seven or eight feet, and possibly more, on either side.

Q.—The banks of the creek?

A.—No, not the creek proper. As you get away from the creek the banks are rather steep. They have a rise of several feet.

BY MR. SCOTT:

30 Q.—You are not now speaking of Meach Creek?

A.—No. This is a small creek which runs across this property.

BY THE COURT:

Q.—And goes under the road?

A.—Your Lordship will notice it is marked " Centre line of creek ". It goes under the road, and into the river.

40 BY MR. KER (continuing):

Q.—Is that the piece of land Mr. MacRostie spoke of as a possible subdivision?

A.—Yes. This forms a portion of that land. It forms a portion of the property shown on that plan.

Q.—I think the exhibit number is P-100, and I would like to

*In the
Superior Court*

No. 117.
**Defendant's
Evidence.**
(Supp. Hearing)
S. E. Farley,
Examination
Oct. 20th, 1932.
(continued)

have you tie the general location of that subdivision or proposed subdivision in with the plan.

I now show you Exhibit P-100, which is a sort of subdivision of portion of the property of which you are now speaking?

A.—Yes.

Q.—In a general way, where does that subdivision lie in your plan?

10 A.—The same boundaries on Exhibit P-100 are shown on my plan, and the same lettering. The Canadian Pacific Railway on the west, and the Gatineau Road on the east.

Q.—It takes up practically the whole of your Parcel " D " ?

A.—Yes, it takes Parcel " D ", and more.

Q.—You spoke of a creek running through Parcel " D ". Will you indicate which of the numbered lots on the subdivision plan that creek runs through, or say whether it would run through any of the lots of the subdivision plan?

What I want to establish is the fact that there is a creek running through Mr. MacRostie's proposed subdivision.

20 A.—I mark in pencil on the plan Exhibit P-100 the approximate position of the creek crossing this property.

Q.—Did that creek exist under natural conditions in the river, before there was any raise in the water?

A.—Yes.

Q.—In your opinion, what would be the effect of that creek running through there on the land for subdivision purposes?

A.—It would greatly affect the properties, not only through which the creek passed but on either side.

30 BY THE COURT:

Q.—That creek goes across Parcel E-2 also?

A.—Yes. E-1 and E-2.

Q.—On the southern side?

A.—Yes, your Lordship.

BY MR. KER (continuing):

40 Q.—Mr. Mac Rostie gave the following evidence:

" Q.—Is there a creek running right through, and which always did run right through that subdivision?

A.—No.

Q.—I think your plan shows that.

A.—I think my plan does not show it.

Q.—Are you quite sure?

A.—Absolutely sure".

In the
Superior Court

No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
Examination
Oct. 20th, 1932.
(continued)

Do you consider that to be an accurate statement of the fact in regard to that location?

A.—All I can say is what I know.

Q.—And, you are speaking of what you personally know?

A.—Yes.

Q.—And, to the best of your knowledge you have entered the approximate place on the subdivision plan where that creek runs, and where it has always been?

A.—Yes.

10

Mr. Scott: To what page do you refer in citing Mr. MacRostie's evidence?

Mr. Ker: Page 183.

BY MR. KER (continuing):

Q.—In regard to the creek that crosses over Parcel E-2, it does not appear on the subdivision plan Exhibit P-100?

20

A.—It does not appear on the subdivision plan Exhibit P-100.

Mr. Ker: It is attempted to charge us up with what might be a subdivision, and I am just pointing out the fact that there is a creek running through the land. The property has never been subdivided, but the possibility of subdivision has been indicated.

BY MR. KER (continuing):

Q.—At what figure do you value the land in Parcel " D " ?

30

A.—\$250 an acre.

Q.—Throughout the Parcel?

A.—No. The 3.64 acres up to elevation 324.5.

Q.—What is the area of land in that parcel up to elevation 321.5?

A.—1.89 acres.

Q.—1.89 acres up to elevation 321.5?

A.—Yes.

Q.—And what is the total up to elevation 324.5—3 feet above the established level?

40

A.—3.64 acres.

Q.—So, there is really more above 321.5 than there is below?

A.—Yes.

Q.—And, which would not be submerged?

A.—Just possibly affected.

Q.—Possibly affected by seepage?

A.—Yes.

Q.—Your total, therefore, is 3.64 acres?

*In the
Superior Court*
No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S E. Farley,
Examination
Oct. 20th, 1932.
(continued)

A.—Yes.

Q.—What valuation do you allow for that?

A.—\$250 per acre.

Making a total of \$910.

Q.—What buildings, if any, are there?

A.—There is no building within the 324.5 affected. There are no buildings within Parcel D affected.

Q.—Where is the hotel, in relation to your map?

10 A.—The hotel lies immediately to the south of Parcel "D", marked Route 31.

Q.—I observe you have not made any reference to the hotel?

A.—No.

Q.—What is the level of the hotel cellar?

A.—The lowest point of the floor of the cellar is 324.9. There are other parts of the cellar which are a foot to a foot and a half higher than that.

Q.—What kind of cellar is it? An earth cellar?

20 A.—Yes, the natural ground. There has not been anything done towards making a floor.

Q.—And, it is within one-tenth of a foot of elevation 325?

A.—Yes. That is the lowest point.

Q.—And that is the reason you have not mentioned it as being within the 324.5 level?

A.—Yes.

Q.—In your opinion, is that a piece of land which could be affected by seepage with the water at 321.5?

A.—No, I do not believe it.

30 Q.—There has been some evidence of the hotel being damp. Some of the tenants have stated it was damp, and that the floors warped. Can you give any explanation as to how that possibly have come about?

A.—If the water got into the cellar through seepage through the walls—and, by way, the foundation walls are badly decomposed and falling in, especially on the east side—and if that water was not let out, it would certainly stay there for the greater part of the season, and the moisture and dampness would naturally affect the building.

40 Q.—With the water level of the Gatineau at elevation 321.5, is there any reason why there should be water in any part of that cellar at any time as an effect of the river?

A.—I do not believe it.

Q.—How many feet is the bottom of the cellar above the level of the river? In other words, how much drainage is there?

A.—A minimum of 3½ feet.

Q.—As I understand it, water has been observed in that cellar. Where could it come from? A broken drain, or what?

*In the
Superior Court*
No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
Examination
Oct. 20th, 1932.
(continued)

A.—The reason is, of course, it is not let out. If there was drainage for it, it would not be there. I actually saw water when I was in the cellar, but there is no reason in the world for that water to have been there, if there was an outlet. I have seen water in there several inches deep.

Q.—When the river level was much below that?

A.—When the river level was possibly less than 320.

10 Q.—You understand, I would like to know if we are damaging that building, because if we are we should pay something for it. I want to make sure whether there is any possibility of it being affected, although it does not appear on your plan. Is the explanation you have given the reason why it is left off?

A.—That is the reason I left it off, yes. If the outlet pipe were broken, and the water was prevented from going out, of course the water would stay there. Naturally there must be some cause for damage to the house. If we are the cause of breaking that outlet pipe, and preventing the water from going out. . . .

20 Q.—(Interrupting) And in that case what would be your opinion as to the measure or the extent of compensation? Would it be a matter of clearing out the drain?

A.—If the conclusion is arrived at that the breaking of the drain was caused by the action of the Gatineau Power Company, I believe this drainage should be corrected, that the cellar walls should be rebuilt, and possibly the cellar concreted, and any other necessary repairs made to bring the doors back into shape, and so on.

BY MR. SCOTT:

30 Q.—What about the drain itself?

A.—I included repairing the drain.

BY MR. KER (continuing):

Q.—All of which you predicated upon the drain being repaired so that it might function?

A.—Yes.

Q.—Have you made any estimate of the cost?

A.—I should say, in round figures, something about \$900.

40 Q.—That is, provided it is found to be the result of the fault of the Company?

A.—Precisely.

BY THE COURT:

Q.—The piece of land upon which this building is erected is not indicated as a parcel on this plan?

*In the
Superior Court*

No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
Examination
Oct. 20th, 1932.
(continued)

A.—No, because we are not affecting it.

Mr. Ker: I only refer to it, your Lordship, because it has already been brought up. The lowest part of the cellar is more than three feet above the level we are asked to compensate for.

BY THE COURT:

10 Q.—324.9 indicates the cellar elevation?
A.—Yes, sir.

Mr. Ker: The lowest point in the cellar.

BY THE COURT:

Q.—Therefore, there is a difference of 3.4 feet?
A.—Yes.

20 Mr. Ker: That is why we have not included it.
I only refer to it because of the evidence which has been made. Frankly speaking, we want to be generous. If we are responsible we should have to pay. The evidence I am now making is with regard to what we should have to pay, if we are responsible. I do not think any fault has been proven against us, but on account of the dampness being there it might appear as a presumption of fault against us.

BY MR. KER (continuing):

30 Q.—Did you take all the acreage in Parcel "D" at the same figure?
A.—Yes, I did.
Q.—And what was the value?
A.—\$250 an acre. A total of \$910.
Q.—3.64 acres, I think you said?
A.—Yes.

BY MR. SCOTT:

40 Q.—That is for everything in Parcel "D"?
A.—Yes.

BY MR. KER (continuing):

Q.—Let us now deal with Parcel E-1—below the highway—just on the edge of the water.

*In the
Superior Court*

No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
Examination
Oct. 20th, 1932.
(continued)

His Lordship: Just below the Gatineau Road.

Mr. Ker: Between the road and the river.

Witness: It is a narrow strip of land, with banks leading down to the water's edge.

BY THE COURT:

- 10 Q.—What is the depth of that land?
A.—It varies. It might be anywhere from 40 feet to 50 feet in width.
Q.—A little narrower than the Gatineau Road?
A.—Yes, your Lordship.

BY MR. KER (continuing):

- 20 Q.—Where would Parcels E-1 and E-2 be on the aerial photograph?
A.—E-1 runs along on the curve. E-2 runs along in front of the hotel.
Q.—And where is " D " ?
A.—Just north of the hotel property.
Q.—E-1 and E-2 are little strips between the road and the river?
A.—Yes.

BY THE COURT:

- 30 Q.—Could they be built upon?
A.—Hardly.
Q.—Why not?
A.—Well, I would not say it could not be built upon, but it would not be a very desirable place, because apparently it is ground which is rather low, and it is too narrow. Of course, it might suit some person's fancy to build on a little narrow strip. It is a great deal a matter of fancy.

BY MR. KER (continuing):

- 40 Q.—Coming back for a moment to the building we have just been discussing. Could you find any drain outlet?
A.—We were not able to find an outlet in the cellar, nor the outlet at the river, or any place around.
Q.—Did you search?
A.—We searched, yes. We wandered around the cellar. It was not a very nice place to go around, but we did it. We could not find any outlet in the cellar, or at the river, or towards the creek.

*In the
Superior Court*

No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
Examination
Oct. 20th, 1932.
(continued)

BY MR. SCOTT:

Q.—When was that?

A.—About a week or ten days ago.

BY MR. KER (continuing):

Q.—Let us now deal with Parcel E-1.

A.—I lumped Parcels E-1 and E-2 together.

10 Q.—Are they shown in your total?

A.—The total area is 2.29 acres. I did not figure E-1 could have any buildings on it, on account of the nature of the ground. It is almost a slope from the road to the river. In any event, I put a valuation of \$250 an acre on both parcels; 2.29 acres, at \$250, \$577.

BY THE COURT:

Q.—That is for E-1 and E-2 together?

20 A.—Yes.

BY MR. KER (continuing):

Q.—Is not that a rather high figure?

A.—No, I do not think it is high.

Q.—I was thinking of it in relation to Parcel " D ", which looks to be better?

30 A.—There is a possible building site along in front of Parcel " D ", and it might suit some person's fancy to pay a little additional money for it. I do not think there is really any site along Parcel E-1.

Q.—You are not taking advantage of Mr. Cross in allowing him \$250 an acre for it?

A.—Well, the figures are so small.

His Lordship: Of course, it is on the river side.

Mr. Ker: But it is only a narrow strip, close to the road.

BY MR. KER (continuing):

40 Q.—Does your plan Exhibit D-160 include all the land of Mr. Cross at the Farm Point location physically affected, or which could be physically affected, by the water level at 321.5?

A.—Yes.

Q.—In the evidence for the Plaintiff reference was made to land of the Plaintiff between Mulvihill Road and the beginning of Parcel " D ". Why have you not put that in?

A.—Because, as I understand it, no proof of title has been made.

*In the
Superior Court*
No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
Examination
Oct. 20th, 1932.
(continued)

Q.—In whose name does the parcel fronting on the Mulvihill Road and the Gatineau (the strip between the dotted lines) appear to be?

A.—There is a portion in the name of Mrs. Cross.

BY THE COURT:

Q.—Mrs. F. T. Cross?

10 A.—Yes, your Lordship.

BY MR. KER (continuing):

Q.—To the best of your knowledge, have you given credit for everything to which you have been shown title in Mr. Cross, which would be affected up to elevation 324.5?

A.—I have, on all the titles I have been able to find.

20 Q.—In any event, does that section between Mulvihill Road and your Parcel "D" (to whomsoever it may belong) appear to be land which would be affected with the water at elevation 321.5?

A.—A section might be affected, as I have said before, through seepage.

Q.—Up to 324.5?

A.—Yes.

Q.—Your spot levels there do not seem to indicate anything?

A.—The 324.5 contours are on.

30 Mr. Ker: If there is anything else you can show us, Mr. Scott, that does belong to Mr. Cross, we will put it in. As far as Mr. Farley is concerned, he has included everything.

Witness: I know of nothing else.

BY THE COURT:

Q.—There seems to be a stream running down on Mrs. Cross' lot?

A.—No, your Lordship. They are just contour elevations.

40 BY MR. KER (continuing):

Q.—The reason I asked you the question, Mr. Farley, is because the ostensible subdivision plan produced by Mr. MacRostie shows the whole subdivision running right up to the Mulvihill Road, from your Parcel "D". Do you know any warrant for claiming that land?

Mr. Scott: That was just referred to by Mr. MacRostie as sales having taken place—as fixing value.

*In the
Superior Court*

No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
Examination
Oct. 20th, 1932.
(continued)

BY THE COURT:

Q.—What is the size of the lot belonging to Mrs. Cross?

A.—Approximately 170 feet by 260 feet.

BY MR. KER (continuing):

10 Q.—The point I desire to clear up is with reference to the Plaintiff's plan, prepared by Mr. Papineau, Exhibit P-17. You will notice there is a considerable area shown by Mr. Cross, which you have not shown?

A.—Yes.

Q.—To the best of your knowledge, based upon levels and deeds which you have seen, you have entered the properties of Mr. Cross which will be affected by an elevation of 324.5?

A.—Yes.

BY MR. SCOTT:

20 Q.—Would you say that Exhibits P-17 and P-27 are plans of the same property?

A.—The property shown on the blueprint Exhibit P-27 is all shown on Exhibit P-17.

Q.—The colouring is different?

A.—Yes.

Q.—Your answer is, then, that all the coloured property on Exhibit P-27 is also shown in colour on Exhibit P-17?

A.—It is included in P-17.

30 BY MR. KER (continuing):

Q.—Referring again to Exhibit P-100. What would be the numbers of the lots which are in no way affected under your plan Exhibit D-160?

A.—Would you allow me to do that during the adjournment, and give you an answer in the morning?

40 Mr. Ker: I consider it to be of some importance, and perhaps it would be as well for the witness to take the necessary time to get the information.

This plan has been put forward boldly as though we had ruined that subdivision, and I want to clear up the point.

BY MR. KER (continuing):

Q.—With regard to the plan Exhibit P-100, we are asked to

In the
Superior Court

No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
Examination
Oct. 20th, 1932.
(continued)

pay a large sum of money for the land as a subdivision. Has there ever been a subdivision of this land?

A.—Not to my knowledge.

Q.—Is there any registration of a subdivision in the Registry Office?

Mr. Scott: Mr. MacRostie stated frankly there has never been any subdivision.

10 Mr. Ker: Then Mr. Farley may answer the question by saying there has never been any subdivision.

Mr. Scott: We never said there was.

BY MR. SCOTT:

Q.—Will you also ascertain during the adjournment the cubic feet second flow on the Gatineau River on November 23rd, 1926, the date the aerial photograph was taken?

20 A.—I will have to get it from the officials.

BY MR. KER (continuing):

Q.—Dealing for a moment with the east side of the river. Mr. Cross has some properties there?

A.—Yes.

Q.—Have you a plan of the properties on the east side of the river?

30 A.—Yes, I have.

Q.—You now show me a blueprint of Mr. Cross' properties at Farm Point, on the east side of the river, lot 23-B, range 16?

A.—Yes.

Q.—Will you produce this blueprint as Defendant's Exhibit D-163?

A.—Yes.

The property referred to on this Exhibit, D-163, is marked "Gravel Pit" on Exhibit D-162, and the frontage of the lots affected is also shown in front of the gravel pit.

40 Q.—Will you please explain what the blueprint Exhibit D-163 represents?

A.—It shows the contour lines on the front of lot 23-B in the 16th range affected by seepage or otherwise; the entire extent possibly affected being four-tenths of an acre.

Q.—That is possibly affected at elevation 324.5?

A.—Yes.

Q.—Are there any buildings on that four-tenths of an acre?

*In the
Superior Court*

No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
Examination
Oct. 20th, 1932.
(continued)

A.—No buildings.

Q.—Are there any buildings which would be affected by the water at elevation 324.5?

A.—No.

Q.—The gravel pit is on that lot?

A.—Yes.

Q.—What is the elevation of the gravel pit?

A.—The lower elevation is around 354. From 354 to 360. It varies. It is on the side of a hill.

10 Q.—It is well above the water?

A.—Oh, yes, well above the water.

Q.—This property forms part of lot 23-B in the 16th range of Hull?

A.—Yes.

His Lordship: It is close to the Reid property, I think?

Mr. Ker: I think Reid is either the next or the second farm.
20 He also has gravel on his property.

Witness: It is quite close.

BY MR. KER (continuing):

Q.—This is the property referred to in paragraph 21 of Plaintiff's Amended Declaration in the words "That the Plaintiff is the owner of a portion of lot 23-B in the 16th range"?

A.—Yes.

30 Q.—And also in paragraphs 22 and 23?

A.—Yes.

Q.—What would you say as to the value of that four-tenths of an acre of that property which has been submerged?

A.—I have put it down at \$200 per acre. \$80 for the four-tenths of an acre.

Q.—Do you consider that to be fair and reasonable compensation for four-tenths of an acre on that side of the river?

A.—I think so.

Q.—As a matter of fact, has the raising of the water on that lot
40 depreciated the remainder of the property in any way?

A.—I do not think so.

Q.—In Paragraph 5-D of Plaintiff's Statement of Particulars reference is made to five lots on the east side of the river, which lots form part of lot 23-B of the 16th Range, fronting on the Gatineau River, the front portions of which have been flooded. Is there any subdivision of lots in that frontage?

In the
Superior Court

No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
Examination
Oct. 20th, 1932.
(continued)

Witness: You mean officially subdivided?

Counsel: Yes.

A.—Not to my knowledge. It is merely a certain river frontage.

10 Q.—The reason I ask you is because in Paragraph 23 of Plaintiff's Declaration the value of the property on the east side of the river is stated to be \$3,000, which would appear to be his valuation of the whole property, but later he proceeds to charge up five lots forming part of the same property for which he has already charged \$3,000. Are there any special subdivided lots in that section?

A.—No.

Q.—Have you ever seen Mr. Cross' property at Alcove?

A.—Yes.

Q.—Has the water physically affected that property?

A.—No.

Q.—I understand it is not claimed for, in any event?

A.—That I cannot say.

20 Q.—The only other property I have to deal with is the one which has been affected at mileage 12. Have you a plan of the mileage 12 property?

A.—Yes, I have.

Q.—The plan you now show me seems to have been made in 1932. Have you anything which would show the property as it was in 1926?

A.—I have a copy of a plan of the mileage 12 property in 1926.

Q.—Will you produce it as Defendant's Exhibit D-164?

A.—Yes.

30 Q.—What is the date of that plan?

A.—November 22nd, 1926.

Q.—What was the area of the parcel before the water was raised?

A.—If I remember rightly, I think it was around five acres.

Q.—The total area, under natural conditions, was about five acres?

A.—Yes.

Q.—Can you tell me what area would be submerged with the water at elevation 321.5?

40 A.—Submerged, and possibly affected, 1.3 acres.

Q.—That is up to elevation 321.5?

A.—Up to 324.5.

Q.—Would there be any actual effect on any buildings on that property at that level?

A.—I believe it would pass through a part of where the old portable mill site stood, so that a portion of that building might be affected.

*In the
Superior Court*

No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
Examination
Oct. 20th, 1932.
(continued)

Q.—What was the nature of the building?

A.—I think there is a photograph of it here. In any event, my recollection is it was just some posts, with a wooden cover. I am not even sure whether the sides were filled in or not. It was merely a shed.

Q.—In which a portable mill was placed, when it was there?

A.—Yes.

Q.—There was a Canadian Pacific Railway siding on the property?

10 A.—Yes, into this property.

Q.—What actually happened to that property?

A.—The siding was inundated—covered with water,—and the railway, which passed formerly between it and the river, was moved to cut through the property at a higher elevation.

Q.—The Canadian Pacific Railway right-of-way was moved?

A.—To a higher elevation: cutting through the property.

Q.—And its new location cut through the property?

A.—Yes.

20 Q.—Behind the flowage line, naturally?

A.—Yes.

Q.—Have you any idea of the acreage taken by the new right-of-way?

A.—I think about three-quarters of an acre.

Q.—In extent?

A.—Yes.

Q.—Was that the subject of expropriation between the Canadian Pacific Railway and Mr. Cross?

A.—Yes.

30 Q.—Which is still pending, I understand?

A.—So I understand.

Q.—Will you look at the photograph I now show you, and which will be produced as Defendant's Exhibit D-165; and will you state if it is the photograph to which you have referred as showing the saw mill building at mileage 12?

A.—Yes.

Q.—It was merely a sort of canopy or cover over the mill?

A.—Yes: to protect it from the rain and weather, I suppose.

Q.—That was before the water was raised?

40 A.—Yes.

Q.—In your estimation, what would be a fair and reasonable value of the land inundated and of the buildings destroyed (if any) at mileage 12?

A.—In preparing the figures I did not make any estimate or make any allowance for a disrupted or dislocated industry. They were merely figures made on what I considered was the value of

*In the
Superior Court*

No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
Examination
Oct. 20th, 1932.
(continued)

ordinary land. With that proviso, I have 1.3 acres, at \$250 an acre, \$325: buildings, \$500—making a total of \$825.

Q.—Have you any personal knowledge of when the portable saw mill was moved away from that site?

A.—No.

Q.—It was some time before the flooding, was it not?

A.—I am not in a position to say.

Cross-examination

10

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

Q.—I think you told us in your examination-in-chief that you did considerable work for the Canadian International Paper Company, and, subsequently, the Gatineau Power Company, in connection with the lands they acquired above the Chelsea site—between Chelsea and Paugan?

A.—Yes.

20 Q.—I understand you were, as a matter of fact, the land surveyor who signed the certificates of value which accompanied the various notices of expropriation?

A.—Yes.

Q.—You prepared the general survey plans for that area?

A.—Yes

Q.—Were you also the land surveyor who gave a certificate of value attached to the notices of expropriation taken by the Canadian Pacific Railway in connection with the expropriations which fell to them on account of their having to relocate their tracks?

A.—Yes.

30 Q.—No doubt you have appeared on behalf of the Gatineau Power Company in a great number of those damage, or flooding, or expropriation cases in that territory?

A.—I have appeared in a number, yes.

Q.—In most of them, have you not?

A.—I would say I have appeared in a number of them. I do not know whether I appeared in most of them or not. I did not appear in many of those expropriation cases.

Q.—Even although you had signed the certificate of value?

A.—In many cases I did not appear.

40 Q.—Looking at your plan Exhibit D-160, I would be inclined to say it is a plan which took quite a considerable time to prepare?

A.—Yes.

Q.—Was it prepared on the date it bears?

A.—It was signed on that date.

Q.—It was signed by you on April 7th, 1932?

A.—Yes.

Q.—Can you tell us how much of that plan you personally pre-

*In the
Superior Court*
No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
Cross-examination
Oct. 20th, 1932.
(continued)

pared? What elevations did you use? What data did you take? What material did you rely upon or depend upon in preparing the plan?

A.—As a matter of fact this plan was compiled a great deal from data supplied by myself from my own surveys.

Q.—A great deal of it was prepared from data supplied from surveys made by you?

10 A.—Yes. I have made a great many surveys. Practically the whole of this area was covered by me before this, at different times. This plan is a reproduction of those surveys, together with some additional information.

Q.—Who supplied the additional information which you did not possess? The Gatineau engineers, was it not?

A.—I had two or three men from the Gatineau, who were working under my instructions.

Q.—There were some men lent to you by the Gatineau Company to assist you in preparing the plan?

A.—They assisted me.

20 Q.—Who assisted you? Mr. Woollcombe?

A.—No.

Q.—Mr. Simpson?

A.—No. I had two or three men.

Q.—Two or three of the Company's engineers?

A.—Field men.

Q.—Of the Gatineau Company?

A.—Yes.

30 Q.—Can you tell us what elevations appearing on this plan were taken by yourself? Let us take Parcel "A". How many of the elevations on Parcel "A" were taken by you directly?

A.—On Parcel "A", possibly half a dozen or so.

Q.—How many elevations appear on Parcel "A"? Perhaps I might put it to you in another way: to establish this contour line at 316, how many elevations did you personally take? Just what did you do personally?

A.—I am afraid I cannot say just how many I took. What I did was to check this contour line on the ground at various places, to satisfy myself that it was properly plotted.

40 Q.—Who gave you the contour line in the first instance? Those field men supplied you by the Gatineau Company?

A.—They were working under my instructions, yes.

Q.—Those field men supplied by the Gatineau Company gave you certain contour lines with respect to Parcel "A", and, if I understand your evidence correctly, you checked it here and there to see whether it was more or less correct?

A.—Not to see whether it was more or less correct; to see whether it was correct.

In the
Superior Court

No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
Cross-examination
Oct. 20th, 1932.
(continued)

Q.—Can you show me your field notes, which would let me know how many of those contour lines were checked, and where they were checked, with respect to Parcel "A"? It is important to Mr. Cross to know that.

A.—Those field notes were taken at different times, and I do not think I have any consecutive field notes. They were possibly taken in different books. I do not think I have any consecutive field notes that I could supply you with to show you exactly where I took them, or how. I say, however, I did take them at different times. I
10 was up there several times, and I would check it here and there to see whether the work had been properly reported, and so on.

Q.—But you must be fair to the Plaintiff. This plan Exhibit D-160 is a work of art to the layman observing it for the first time. It has evidently been very carefully compiled and prepared. It contains a record of elevations which have an important bearing on some of the issues in this case. Can you not assist the Court by indicating exactly what you personally know to be correct, first, with respect to Parcel "A". I will give you all the time and all the latitude
20 you require.

A.—What I did was this: this plan was plotted from the field notes on the ground. Then I took the plan and checked it with spot levels here and there, to see whether the levels and contour lines were properly set out; but I did not get any consecutive notes.

Q.—Let us shorten this as much as we can. You know perfectly well that on April 7th, 1932, the whole of Parcel A was under water?

A.—That would not make any difference.

Q.—Is it not a fact that it was under water?

A.—Possibly so.

Q.—Were you using field notes taken in 1925, or were you using
30 field notes taken in 1926, or in what year were your field notes taken?

A.—As a matter of fact, this survey had been going on for several months. We did not work on this consecutively.

Q.—What do you mean by "this survey had been going on for several months"?

A.—The survey of those properties.

Q.—Made by you?

A.—As I said before, I was not on the ground all the time. The work was being carried on when other work was not going on—when
40 we had time.

Q.—Did you make any surveys, or any check, since the flooding—since the water was raised, in March, 1927?

A.—Yes.

Q.—I mean with respect to Parcel "A", which is totally submerged?

A.—Since 1927, yes.

*In the
Superior Court*

No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
Cross-examination
Oct. 20th, 1932.
(continued)

Q.—Will you let me see your field notes for the year 1927, with respect to Parcel "A"?

A.—I can only say what I did. I do not think I can give you a record of those notes I took, because I had the plan on the ground, and just checked the elevations wherever I thought it was necessary or advisable. When the plan was correct, I just let it go at that.

Q.—Is it not a fact that those contour lines, or what purport to be contour lines, on Parcel "A" are taken from records made prior to the flooding? Let us be frank with each other.

10 A.—No.

Q.—Then will you show me what data you have to establish those contour lines on Parcel "A", which had been taken by you personally since the flooding?

A.—I am afraid I cannot, because I have not that record.

Q.—Where is it?

20 A.—I did a lot of this from loose leaf note books. As I said before, this plan was constructed and I went on the ground and checked it here and there, and I did not keep those notes. So long as the plan was O.K., I left it at that. I went on the ground, and identified this plan.

BY THE COURT:

Q.—You wanted to control it?

A.—I wanted to satisfy myself it was correct, and I took sufficient notes and made sufficient checks to do that, and that was all.

Cross-examination
(continued)
Oct. 21st, 1932.

30

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

SIDNEY E. FARLEY,

and his cross-examination was continued as follows:

BY MR. SCOTT, K.C.:

40 Q.—Are you now prepared to give the information we asked for yesterday?

A.—Yes, I think so.

The flow of the Gatineau on November 23rd, 1926, was 30,550 second feet.

Q.—How does that compare with the average flow on the Gatineau before the storage? It would be about nine or ten times greater, would it not?

In the
Superior Court

No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
Cross-examination
Oct. 21st, 1932.
(continued)

A.—I have not made a study, really, of the flows, to arrive at the average.

Q.—But I understood you to say you have been familiar with the Gatineau River for the last fifteen or twenty years. 30,000 second feet is a tremendously large flow, is it not?

A.—It is an abnormal freshet, due to heavy rainfall.

Q.—There must have been a cloudburst, or something of the kind?

10 A.—No, I would not say that. I would say probably due to heavy rains.

Q.—You give the date as November 23rd, 1926. That was the date this aerial photograph you produced yesterday was taken?

A.—Apparently, yes.

Q.—What was the other information you were to get?

A.—The other information was in answer to a question of the Court.

I was asked by the Court to plot the 321.5 contour on Exhibit P-100. I have done so, in pencil, and marked it "321.5".

20 I have also marked contour 318.

Mr. Ker: It is superimposed on Plaintiff's Exhibit P-100.

BY MR. SCOTT (continuing):

Q.—You have superimposed these in pencil on Exhibit P-100?

A.—Yes.

Q.—What did you use in order to plot this line on Exhibit P-100?

30 A.—The information shown on Defendant's Exhibit D-160.

Q.—The big plan we were discussing yesterday afternoon?

A.—Yes.

Q.—Did you use the information shown on Exhibit D-160 in plotting this contour line on Exhibit P-100?

A.—Yes, I did.

Q.—And nothing else?

A.—Nothing else.

40 Q.—I think His Lordship questioned you yesterday with reference to some remark you had made about this delta being a damp spot, and you said you had made some surveys, or had some notes, that you could look up to refresh your memory?

A.—It was not in connection with the delta. It was in connection with the nature of the soil at the piling ground.

Q.—Only in connection with the nature of the soil at the piling ground?

A.—Yes.

Q.—Then what you told us yesterday was a little too general, was it not?

*In the
Superior Court*

No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
Cross-examination
Oct. 21st, 1932.
(continued)

A.—No, not at all.

Q.—What did you tell us yesterday?

A.—I think the evidence is clear.

Q.—And what was the evidence?

A.—Please put a question to me, and I will answer it.

I said that the general character of the delta was soft and wet, and basing myself on my own knowledge, and the photograph, I was firmly of the opinion that the ground is wet at times; or has been wet, in any event, at different periods.

10 Q.—But all ground gets wet at different periods. For instance, the ground on St. James Street is wet this morning, because it is raining. Is that what you mean by your answer?

A.—No.

I mean the character of the vegetation is an indication that the ground is wet very often, and remains wet.

Q.—After a rainfall?

A.—Due to rainfall, or it might be due to some other cause.

20 Q.—If my recollection is correct, I think you were asked whether you had any field notes that were made when you made surveys, as you said, in the vicinity of this delta—notes that would refresh your memory as to the condition of this ground prior to the flooding by the Gatineau Company?

30 Mr. Ker: Perhaps I might correct my learned friend. What happened was this: Mr. Farley said he considered the delta to be low lying ground, and he produced the aerial photograph. He said that, in his opinion, the piling ground to the north of the track was also wet ground in its nature by reason of seepage from the higher hills, and that he had observed that fact. In answer to a question put by His Lordship, the witness said he would try to find the references in his field notes, which were in Ottawa, to the times he had observed that condition before the raising of the water. Mr. Farley did not make those remarks with respect to the delta, and the photograph he produced shows the delta completely submerged.

40 His Lordship: What I wanted to know was if the witness had visited this part above the piling ground at different times of the year, and if he had ascertained by his study or examination what the conditions were, and whether the ground was damp at the times he visited it. In other words, whether he arrived at the conclusion that this land was wet and damp by its nature.

Mr. Ker: By reason of its location, at the bottom of the hill.

His Lordship: And in order to put it into the mind of the witness, I asked him how many times he visited the place, and in what season or seasons.

*In the
Superior Court*

No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
Cross-examination
Oct. 21st, 1932.
(continued)

BY MR. SCOTT (continuing):

Q.—Have you any field notes showing the times you visited the area marked Parcel "A" on Exhibit D-160, prior to the flooding by the Gatineau Company?

A.—No, I do not say I would have any notes covering that.

Q.—Have you, or have you not, any field notes?

10 Witness: Of what?

Counsel: Showing the times you inspected the property marked Parcel "A" on Exhibit D-160 prior to the flooding?

A.—No, I did not keep specific notes for that purpose.

Q.—And, you have not any?

A.—No.

Q.—Did you make any special examination of Parcel "A" prior to the flooding? I mean an examination as a land surveyor?

20 A.—Yes, I have.

Q.—How many times?

A.—I cannot tell you that. I do not know how many times, but I have made examination of Parcel "A".

Q.—And, what is your answer with reference to dampness?

A.—I said Parcel "A", by its nature, was damp.

Q.—And does that apply to the area used by Mr. Cross as a piling ground?

A.—No, not the same. I said on the piling ground it was damp due to the flow of surface water from the surrounding hills.

30 Q.—From the hills behind?

A.—Correct.

Q.—In your opinion was it continually damp?

A.—No, I would not say it was continually damp.

Q.—Then, what would you say?

A.—Whenever there was a rainfall the rain came down and affected it, and dampened the ground.

Q.—After a rainfall the ground got damp?

A.—Yes.

40 Q.—Prior to the flooding of the Gatineau, when there was not a rainfall what would be the condition of that piling ground?

A.—It would dry up. Most of it would dry up.

Q.—But not all of it?

A.—I presume practically all of it would dry up.

Q.—You presume practically all of it would dry up after the rain was over?

A.—Well, yes.

Q.—My friend Mr. Ker put several questions to you yesterday

*In the
Superior Court*
No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
Cross-examination
Oct. 21st, 1932.
(continued)

afternoon with reference to Exhibit P-29—the photograph of Farm Point—which is dated September 21st, 1926. Would you say that the area you are looking at now was damp when it was not raining?

A.—I am looking at hills, and at low lying ground.

Q.—The low-lying area that my friend Mr. Ker pointed out to you yesterday afternoon. Was that damp when it was not raining?

A.—I think we will have to specify some particular limit.

Q.—You specified a good many limits yesterday afternoon. Can you specify any more this morning?

10 A.—I would say the land in the foreground would be moist practically all the time.

Q.—By “ the foreground ” you mean the land between Meach Creek stream and the bottom of the photograph?

A.—Yes, and the other side.

Q.—And above Meach Creek too?

A.—And above the creek, yes.

Q.—How far above the creek? Back to those pine trees?

A.—No.

20 Of course, this photograph is not really to scale, and it is hard to identify the land limits precisely.

Q.—I quite agree with you; but you spoke a good deal about it yesterday afternoon.

A.—I said the land in the foreground.

Q.—That is between Meach Creek and the bottom of the photograph?

A.—Naturally there would be some land on the other side of Meach Creek also which would be as low as the land in the foreground, and which would also be affected.

30 Q.—After a rainfall?

A.—No, I did not say that.

Q.—All the time?

A.—At different seasons of the year.

Q.—How many seasons did you see it before the Gatineau Company raised the water?

A.—Irrespective of when I saw it. If the water in the river comes to a certain elevation it will cover a certain portion of that ground. For instance, if the water in the river comes to 315, it will cover a portion of that ground.

40 Q.—We all know that. To your personal knowledge how many seasons of the year did you see this ground prior to the flooding by the Gatineau Company?

Witness: How many seasons of what year?

Counsel: Of any year.

*In the
Superior Court*

No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
Cross-examination
Oct. 21st, 1932.
(continued)

A.—That is a pretty general question. I am afraid it is very difficult to answer. I have been there many times, but to say specifically just what time and what season, I am afraid I cannot do it.

Q.—And you cannot tell me at all how many times you examined it prior to the flooding by the Gatineau Company?

A.—I will say I examined it some times, but I cannot say how many times.

10 Q.—In other words, long before the Chelsea development was ever contemplated, you were paying attention to Mr. Cross' land shown as Parcel "A"?

A.—I do not think that is so.

Q.—It is not so?

A.—No.

Q.—Then, you were not paying particular attention to it?

A.—I mean I was not up there just to pay particular attention to that parcel; but I was on the ground, and I know the nature of the ground, and I knew it before 1926.

And, you considered it damp ground?

20 A.—I did, and I do yet.

Q.—Yesterday we were discussing your plan Exhibit D-160, and if I remember correctly you said you obtained assistance from field engineers of the Gatineau Company in plotting out the plan and making elevations?

A.—In getting data to make this plan. That is a common practice.

Q.—Were they the ones who suggested parcelling it out into the various parcels shown on the plan: "A", "B", "C", and so on?

A.—No.

30 Q.—Was that your idea?

A.—We arrived at that by consultation.

Q.—Whom do you mean by "we"? Mr. Woolcombe and yourself?

A.—Myself and some of the officers of the Company.

Mr. Ker: The witness said he tried to make the plan as clear as possible.

40 Mr. Scott: And from the Company's point of view it is most illuminating.

BY MR. SCOTT (continuing):

Q.—Let us deal for a moment with the area edged in red on this plan. It is not given any parcel number?

A.—No. It really forms part of Parcel "A".

Q.—How did you describe it?

In the
Superior Court

No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
Cross-examination
Oct. 21st, 1932.
(continued)

A.—I said the portion coloured red was a piling ground.

Q.—Then let us call it a piling ground. Looking at this piling ground area edged in red on your plan, and looking first at an apparent contour line marked "321.5" at the lower or east side of the area. Speaking with reference to the figures "321.5", will you tell me if you personally took any elevation at that point?

A.—At that particular point, I do not think so.

Q.—Let us move on from the figures "321.5", and proceed westerly along this contour line. Will you show me what elevations
10 you personally took along that contour line?

A.—I took elevations from the east end of the elevated trestle.

Q.—But on this plan?

A.—That is what I am answering.

Q.—Where do you consider to be the east end of the elevated
trestle?

A.—At the point I mark "X" on the plan.

Q.—And then you worked downwards?

A.—No, I worked towards the west.

Q.—So your answer is that you took elevations beginning at the
20 point you have marked "X" in lead pencil?

A.—On that particular contour.

Q.—On this particular contour, naturally. Working westerly, or upwards, on the plan?

A.—Yes.

Q.—So, between the point marked "X" and the easterly or lower end of the plan you personally did not take any elevations on this contour line 321.5?

A.—I did not personally take any elevations on this line east of
30 this point, but I did take quite a number of other elevations.

This was done merely to check the accuracy of the field work.

Q.—To make it perfectly clear: between the point marked "X" and the easterly or lower end of the plan, Exhibit D-160, you did not personally take any elevations along the contour line 321.5?

A.—Personally, no.

Q.—You took an elevation at the point marked "X" on the plan?

A.—Yes.

Q.—When did you take that elevation?

A.—It was checked
40

Q.—(interrupting) But I am not speaking about checking. When did you take it personally?

A.—It was done about two weeks ago.

Q.—By you?

A.—By me, personally.

Q.—Have you the field notes you made on that occasion?

A.—I can get them.

In the
Superior Court

No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
Cross-examination
Oct. 21st, 1932.
(continued)

Q.—Will you please do so?

A.—They are in Ottawa. I can get them.

Q.—What benchmark were you using in establishing the elevation?

A.—I used the benchmark—it is referred to the benchmark at Wakefield.

Q.—That is the benchmark on the United Church at Wakefield?

A.—Yes.

10 Q.—In arriving at that elevation were your instruments on top of the sawdust or refuse?

A.—Not for this particular elevation, no.

Q.—Not for the particular elevation marked "X"?

A.—No.

Q.—You went down to the natural ground?

A.—Yes.

20 Q.—Following along this contour line of 321.5, and going upwards, or westerly, what elevations did you take personally? You will understand I am not offering any criticism of the fact that you did not take any. I am speaking of the portion between the point marked "X", following the 321.5 contour line westerly and upwards?

A.—I took them practically along the railway line, and right through to the mill. I took some elevations from that point right through to the mill.

Q.—I am speaking of elevations along this contour line.

A.—I said I took elevations from that point to the mill. I could not follow contour 321.5 through. It runs right down to the creek, as a matter of fact. Actually there was some slab wood piled.

30 Q.—Personally you did not take any elevations along this contour line 321.5 between the point marked "X" and the upward or westerly portion?

A.—No. I took ground elevations from that point. I was not following the contour line 321.5, except I wanted to see if I could get where it intersected the natural ground.

Q.—You checked at the point marked "X"?

A.—Yes.

Q.—And you found it at the elevation of 321.5?

A.—Yes.

40 Q.—And otherwise you are satisfied that is the contour line, from data supplied to you by the persons you mentioned?

A.—Yes.

Q.—Do you know what area Mr. Cross was using as a piling ground prior to the flooding by the Gatineau Company? If you do not know, just tell us. Can you swear to the area he was using as a piling ground prior to the flooding by the Gatineau Company?

A.—I know it in a general way. I could not swear to the area.

Q.—This piling ground area edged in red on this plan is the

*In the
Superior Court*

No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
Cross-examination
Oct. 21st, 1932.
(continued)

piling ground area that was supplied to you by somebody else? I am now speaking about the area; not elevations.

A.—Not at all. As far as appearances go it is quite evident where the piling ground was.

Q.—Are you prepared to swear that Mr. Cross did not use any land below the southerly boundary of this area as a piling ground prior to the flooding by the Gatineau Company?

A.—I would not swear that.

10 Q.—Do you not think, as a matter of fact, that he did use ground below the southerly boundary of this area?

Mr. Ker: I object to this evidence. The southern portion of that land is on the 318 contour, and the Plaintiff himself sets up in his action that he did not require that in any way for his lumber operations. I cannot see why my learned friend should attempt to have this witness contradict a statement made by his own client. The paragraph of the Declaration is perfectly clear that if the Company had raised the water in the Gatineau River to 318 it would not have affected his lumber business.

20 Mr. Farley has stated in his examination in chief what he knew about the piling ground.

Mr. Scott: I am not dealing with Pleadings, or Allegations, at all. I am simply asking the witness what he knows Mr. Cross had been using prior to the flooding. If he does not know, he may say so.

Witness: I think I answered the question a moment ago.

30 BY MR. SCOTT (continuing):

Q.—How did you answer it?

A.—I said from the general appearance of the ground it was quite evident where the piling ground was.

Q.—From the general appearance of the ground on what date? This summer?

A.—No. I mean previous to 1926.

Q.—Is that your answer?

A.—From my knowledge of the ground, yes.

40 Q.—Then your answer is not based on what you saw prior to the flooding, but only from your knowledge of the ground?

A.—From seeing it.

Q.—From seeing the ground?

A.—Yes.

Q.—Not from seeing the piles of lumber?

A.—I am quite satisfied there were no piles of lumber below
318.

In the
Superior Court

No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
Cross-examination
Oct. 21st, 1932.
(continued)

Q.—Let us forget about 318 altogether.

A.—But that is what we are talking about, I understand?

Q.—Let us forget 318 for the moment. How much of the ground on the southerly side of the Canadian Pacific Railway siding was being used by Mr. Cross in 1926 and previously?

A.—As nearly as I know, approximately along the boundary of the 318 contour.

Q.—And that answer is based on the appearance of the ground?

A.—My knowledge of the ground.

10 Q.—We may come back to the piling ground again. Will you please tell us what portion of Mr. Cross' property as shown on this plan Exhibit D-160 you consider might be described as the delta?

A.—The major portion of Parcel "A".

Q.—Is that all?

A.—And a portion of Parcel "B".

Q.—And any portion of what you have termed the piling ground area?

A.—I do not think I would describe that as part of the delta.

Q.—You would not?

20 A.—No.

Q.—You would not describe any portion included in the red-edged piling ground area as part of the delta?

A.—I do not think so.

Q.—You are not a geologist, of course?

A.—No.

Q.—Would you consider the whole of Parcel "B" as part of the delta?

A.—No. A portion of Parcel "B".

30 Q.—Will you indicate on the plan Exhibit D-160 in pencil what portion of Parcel "A" you consider to be the delta?

Mr. Ker: It appears very clearly on the photograph, and it is specially marked as "Delta".

BY MR. SCOTT (continuing):

Q.—You may take whatever time you think necessary to do what I ask, but I would like you to indicate it.

40 A.—Of course, "Delta" is a rather wide term.

Q.—I do not want you to look at the aerial photograph. I would like you to look at the plan.

Mr. Ker: Why should he not look at the aerial photograph?

Mr. Scott: I submit the question I have put to the witness is a perfectly clear and perfectly plain one. If he does not know, let him say so.

*In the
Superior Court*

No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
Cross-examination
Oct. 21st, 1932.
(continued)

His Lordship: I think the witness may answer the question.

Witness: It is pretty hard to define the actual boundaries of a delta or deposit. I have not made an examination or test to see where the boundaries of the deposit were, or to fix the outline of the deposit. I said it would form the major portion of Parcel "A" and a portion of Parcel "B". I do not think I can go any further than that.

10 BY MR. SCOTT (continuing):

Q.—You do not know, because you have made no tests to ascertain? Understand, I am not blaming you at all; I just want you to tell us.

A.—I cannot define the exact boundaries of that delta.

Q.—And that applies generally to the properties shown on the plan?

A.—Of course, the delta only applies to Parcel "A" and Parcel "B"; and on those two parcels it is pretty difficult to place the
20 boundaries of that delta.

Q.—Because you have not made any test to ascertain the nature of the deposit?

A.—Yes.

Q.—And that applies generally?

A.—To those two parcels.

Q.—Only those two parcels?

A.—That is the only place where the delta exists.

Q.—Only Parcels "A" and "B"?

A.—In that neighbourhood.

30 Q.—But there are other properties in that neighbourhood?

A.—I say it does not go beyond the limits of Parcel "A".

Q.—You say that delta deposit is confined to Parcels "A" and
"B"?

A.—So far as I know.

Q.—But you have made no tests to ascertain that?

A.—No.

Q.—The ties of that railroad spur are covered by water at elevation 321.5?

A.—Yes.

40 Q.—Since the raising of the water in the Gatineau River, have engines from the C.P.R. gone in along that siding?

A.—Speaking from my own knowledge, I have never seen any.

Q.—And speaking from your own knowledge—and that is really what we want—do you know whether engines went in before the water was raised by the Gatineau Power Company?

A.—Certainly.

Q.—And they no longer do?

*In the
Superior Court*
No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
Cross-examination
Oct. 21st, 1932.
(continued)

A.—As far as I know.

Q.—As a matter of fact, is there not a notice board up there warning the engine drivers against using that spur line?

A.—The spur line would have to be raised.

Q.—Since the raising of the water by the Gatineau Power Company, has not the C.P.R. put up some sort of notice or sign warning their engine drivers not to go on that spur line?

A.—I believe so.

Q.—Do you believe it, or do you know it?

10 A.—Yes, there is a sign.

Q.—Did you tell us yesterday you were acting for the C.P.R. in connection with some expropriations they had to make for the purpose of the relocation of their track?

A.—Yes.

Q.—Do you remember when the C.P.R. raised their track in front of Mr. Cross' property at Farm Point?

A.—Just speaking from recollection, I think it was in the fall of 1926. That is just from memory.

20 Q.—That was before the water came up: because the water did not come up until March, 1927?

A.—Again speaking from memory.

Q.—Were you on the scene at the time?

A.—I was up and down there every day.

Q.—You were a pretty busy man at that time?

A.—Well, I do not know.

Q.—At that time you were a pretty busy man with the Gatineau Company and the C.P.R.?

30 A.—I was not only working for the Gatineau Company when I was up there.

I was busy.

Q.—Looking at Exhibit D-160 I see two rectangular areas marked "Piling Ground", and underneath the words "Piling Ground" I see the word "Lumber".

A.—Yes.

Q.—To your knowledge, before the raising of the water by the Gatineau Company was that space ever used by Mr. Cross for piling lumber?

A.—Yes.

40 Q.—Are you prepared to swear that?

A.—Certainly for the portion to the west of the public road.

Q.—Let us not misunderstand each other, and let us have it perfectly clear.

To your knowledge, before the raising of the waters by the Gatineau Company was that space ever used by Mr. Cross for piling lumber?

A.—Yes.

In the
Superior Court

No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
Cross-examination
Oct. 21st, 1932.
(continued)

Q.—Will you mark the portions that were so used by Mr. Cross for piling lumber prior to the raising of the water by the Gatineau Company?

A.—I mark it with the letter " Y " in pencil.

Mr. Ker: My learned friend's own photograph, produced as an Exhibit, answers the whole thing.

10 Mr. Scott: I submit my friend should not interrupt the witness, and should not interrupt me in my cross-examination. The witness is deposing to a very important plan, and he is giving very precise evidence, and my friend should not interrupt in my cross-examination.

BY MR. SCOTT (continuing):

20 Q.—You have now marked with the letter " Y " in pencil a rectangular portion of property on your plan Exhibit D-160, which is labelled " Piling Ground ", with the word " Lumber " underneath it?

A.—Yes.

Q.—And you say that prior to the flooding by the Gatineau Company Mr. Cross was using all that property for piling lumber?

A.—I would not say all, but I have seen lumber on that portion.

Q.—Have you any idea of the quantity of lumber? I am not speaking of slab wood now.

A.—I did not pay that particular attention to it, to arrive at any idea of quantity.

30 Q.—Then, why do you come to Court and give us the impression that the whole of this area was used by Cross for piling lumber before the water was raised? Was that suggested to you by somebody else? Or were you basing yourself on your own recollection?

A.—Basing it on my own recollection of the piling ground as it was.

Q.—Just basing yourself on your recollection of what was going on prior to 1926?

A.—Yes.

40 BY THE COURT:

Q.—You are now referring to the piling ground just west of the road?

A.—No, my Lord. In answer to the last question, I understood we were referring to all of the piling ground.

Q.—West, and east of the road?

*In the
Superior Court*
No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
Cross-examination
Oct. 21st, 1932.
(continued)

A.—Yes.

Q.—How far east from the road?

A.—Really I am taking in all of the piling ground. Practically all the portion east of the public road, as well as a portion to the west.

Q.—Both those portions are marked on the plan "Piling Ground", and underneath "Lumber". On the east side I see it is also marked "Piling Ground" under which there is the word "Lumber". How far does that go?

10 A.—The piling ground shown dotted in outline was really the lumber piling ground. Where the trestle is also. The remainder of it was used as a piling ground sometimes for slab wood.

Q.—I presume as far east as the circle where I see the words "Boring No. 3"? Did it go as far as there?

A.—The trestle goes as far as that point.

Q.—What about the ground farther east, towards the end of the trestle?

20 A.—That is also piling ground. Of course, the siding extends from that point right through, and alongside the siding has been used as a piling ground.

BY MR. SCOTT (continuing):

Q.—Will you mark in pencil with the letter "Z" the other rectangular block labelled "Piling Ground" with the word "Lumber" underneath?

A.—I mark it with the letter "Z".

30 Q.—If I understand your evidence correctly, you considered that the whole, or a portion, of the area marked with the letters "Y" and "Z" by you was used by Mr. Cross for piling lumber prior to the flooding by the Gatineau Company?

A.—Yes.

Q.—The whole of it?

A.—He used a portion, anyway.

Q.—How much of that portion was occupied by the trestle you speak of?

A.—It is a kind of a strip, I suppose, probably eight or ten feet wide.

40 Q.—Running down through the middle of both those portions?

A.—Yes.

Q.—Will you please scale off the area for us?

Witness: In acres?

Counsel: Anyway you like.

A.—Approximately 30,000 square feet.

*In the
Superior Court*
No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
Cross-examination
Oct. 21st, 1932.
(continued)

- Q.—What portion of an acre would that be?
A.—About three-quarters of an acre.
Q.—And that area is arrived at from your recollection? You never measured that area before the flooding?
A.—No, I did not.
Q.—It is based on your recollection?
A.—Yes.
Q.—Not based on any data supplied to you by anybody else?
A.—No.
10 Q.—You are the only one who can speak of that area as far as this plan is concerned?
A.—Yes. As I said before, I was very familiar with it.
Q.—How far is the letter “Y” from the nearest point of the sawmill?
A.—About 130 feet. Of course, I might have put the “Y” down a little farther.
Q.—Of course you knew that prior to the flooding the C.P.R. engines used to come in up as far as the sawmill?
A.—There was no reason why they should not.
20 Q.—Will you please look at the plan again and say if you can give me the elevation of the ground where is situated the building on the property of Mr. F. T. Cross? Approximately where the house is, and what is the elevation?
A.—I have not that elevation with me.
Q.—Can you tell me by looking at the plan?
A.—I should think it would be around elevation 325, or over. I would not be positive. I do not show the house on this plan.

30 Mr. Ker: Is that in issue in the case, Mr. Scott?

Mr. Scott: It is introductory to some further questions.

BY MR. SCOTT (continuing):

- Q.—Your plan shows where the building is?
A.—No, it does not.
Q.—What is the figure “27”?
A.—I think that is the Stevenson house?
40 Q.—Where is the other house?
A.—It is not shown.
Q.—Is it down near the road?
A.—It is on that portion of the property marked “Mrs. F. T. Cross”.
Q.—Is it near the Gatineau Road, or is it further back?
A.—It is about half way between the rear line of the property and the road. It is about the centre of the lot.

In the
Superior Court

No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
Cross-examination
Oct. 21st, 1932.
(continued)

- Q.—The Stevenson property is about the centre of the lot?
A.—No. There is a division line here (witness indicating).
Q.—There is a faint division line running parallel to the Gati-
neau Road and separating the property?
A.—Yes.
Q.—Would it not be somewhere around where the words “ Mrs.
F. T. Cross ” appear?
A.—Yes, somewhere around there.
10 Q.—Do you know whether the water at elevation 318 ever af-
fected that property?
A.—I cannot say.
Q.—You do not know?
A.—I do not know.
Q.—How does the elevation of the ground at the house we have
just been speaking of compare with the elevation of building No. 30
on Parcel “ B ”?
A.—Not knowing precisely the elevation at the building of Mrs.
Cross, I cannot make a comparison.
20 Q.—What is the elevation of building No. 30?
A.—321.79. That is the floor.
Q.—How do you think that compares with the elevation of the
building we have been speaking of on Mrs. Cross' property?
A.—Have I not just answered that?
Q.—Will you answer it again, please? I mean the elevation of
the ground at the site of the building?
A.—As I said before, I cannot answer that. I have not the data.
Q.—You do not know whether it is comparable or not?
A.—It is somewhere close, but I cannot say precisely.
30 Q.—You spoke yesterday of a creek that runs across Parcel
“ D ” on this plan, and you also superimposed it upon one of the
plans filed by the Plaintiff?
A.—Yes.
Q.—I would like you to tell us something more about this creek.
Does it not run dry in the summer time?
A.—Very possibly.
Q.—Does it, or does it not?
A.—Yes, in dry seasons certainly it would go dry.
Q.—Only in dry seasons?
40 A.—I would not say that. I would say it would go dry in the
summer season.

BY THE COURT:

- Q.—Have you seen it dry?
A.—No, I would not say I have seen it dry; but I would not say
it would not go dry.

*In the
Superior Court*

No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
Cross-examination
Oct. 21st, 1932.
(continued)

Q.—Then you just presume it could go dry?

A.—No, your Lordship. This creek is really the run-off from the hills behind, and it takes in a certain watershed. It does not come from a lake, or anything of that nature—it is flowage water from the hills. It runs under the railway track, through this property, to the river. There is a culvert under the railway track, and a culvert under the highway.

BY MR. SCOTT (continuing):

10

Q.—Do you not think it might more properly be described as a run-off (to use your own words) and not as a creek?

A.—I do not think so.

Q.—You would define it as being a creek?

A.—Yes. A natural watercourse.

Q.—You would define it as being a creek?

A.—Yes.

Q.—And you swear to that?

A.—Yes. I would define it as a natural watercourse, or creek.

20

Q.—Have you ever looked at it in the middle of July?

A.—As I said before, I do not know whether I ever did or not.

Q.—Then why did you put it on this plan, indicating it as a very substantial watercourse? If you never looked at it, why did you put it on this plan? Were you basing yourself on information given to you by others?

A.—I am basing myself upon my own knowledge of the ground.

Q.—You are basing yourself on your knowledge of the ground, not on what you saw?

30 was
A.—And from what I saw, yes. My knowledge of the ground obtained from seeing the ground.

Q.—Surely you were not basing yourself on elevations?

A.—No.

Q.—You were basing yourself on what you saw?

A.—What I know.

Q.—What is the difference between what you know and what you saw?

40
A.—You are trying to make a distinction. I mean from what I know of the ground, from personal knowledge of the ground—from walking over it, and seeing it.

Q.—Yet you have told us you do not know whether this run-off or creek goes dry?

A.—I did not say it would not go dry. The question was specifically asked me if I ever saw it dry, and I said I did not see it dry.

Q.—You were the gentleman who prepared the original expropriation plan for the Gatineau Company with reference to this Farm Point property of Mr. Cross?

*In the
Superior Court*
No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
Cross-examination
Oct. 21st, 1932.
(continued)

A.—Yes.

Q.—And you are the Mr. Farley who certified to the description of the property?

A.—Yes.

Q.—Looking at Exhibit P-95, you are the Mr. Farley who signed the affidavit stating that the sum of \$12,155 “ offered by the said Gatineau Company is, in my opinion, a fair compensation for the land and premises, and for all damages ” ?

A.—Yes.

10 Q.—Does the plan Exhibit P-95 give any indication of the location of the building on Mrs. Cross' property, of which we have been speaking?

A.—Yes.

Q.—Having looked at the plan Exhibit P-95 (which you say shows the location of the building on Mrs. Cross' property), can you assist us by marking where that building is on your Exhibit D-160?

A.—I have plotted in pencil the approximate location of the house on Exhibit D-160.

20 Q.—Will you please indicate it by the letter “ B ” in the middle?

(The witness does as requested.)

Q.—Does that help you at all now to give us the elevation? It is below the apparent 321.5 contour line, is it not?

A.—The greater part of the building would be below the 321.5 contour.

30 Q.—Still looking at the plan, I would like to ask you one more question with reference to this creek or watercourse across Parcel “ D ”. Do you remember whether there was grass growing on the bottom of this creek (or whatever you wish to call it), or was it stones?

A.—I do not think it was stones.

Q.—You do not think it was stones?

A.—No.

Q.—It would more likely be grass?

A.—If there was any growth. My recollection of it is it was clay.

Q.—The grass had been worn away by the water?

40 A.—My recollection is it was running over the clay. The bottom was short of chopped up—loose earth.

Q.—How wide was this stream?

A.—The stream is comparatively narrow; except I remember distinctly having to make a jump to get over it at one time.

Q.—Whereabouts on the plan?

A.—Right close to the railway track.

Q.—You had to make a jump to get over the stream?

A.—The wet ground. The wet bottom of the creek, and adjoining ground.

*In the
Superior Court*
No. 117.
*Defendant's
Evidence.*
(Supp. Hearing)
S. E. Farley,
Cross-examination
Oct. 21st, 1932.
(continued)

- Q.—I hope that was not on this famous date, November 23rd, 1926, when there were 30,000 second feet flowing down the Gatineau River after a cloudburst?
A.—I did not say that.
Q.—It was not, by any chance, on November 23rd, 1926?
A.—No.
Q.—You have plotted this creek on the plan Exhibit D-160 running through the middle of Parcel "D" ?
A.—Yes.
10 Q.—You have established the centre line, and contour lines, etc. Did you take those elevations personally for that area?
A.—I just checked over two or three elevations, that was all.
Q.—You checked over two or three elevations?
A.—Yes.
Q.—On the ground?
A.—Yes.
Q.—When?
A.—Comparatively recently. This summer.
20 Q.—And when you checked over those elevations, you do not remember whether grass was growing in the bed of this stream or not?
A.—The water was up away over the bed of the creek.
Q.—Is it flooded now?
A.—Yes.
Q.—So your recollection is based on conditions as they were prior to the flooding?
A.—Yes.
30 Q.—You had never taken any elevations of this creek prior to the flooding?
A.—No.
Q.—So you are basing yourself on information supplied to you, or what you imagined was the case, prior to the flooding?
A.—I did not imagine anything. I just based myself on what I knew.
Q.—And your knowledge is better than what you saw?
A.—Do you want me to answer that?
Q.—In the figures you gave us yesterday with reference to Mileage 12, you stated you were not attempting to give any valuation
40 for any possible disruption of Mr. Cross' business?
A.—That is correct.
Q.—And I suppose the same answer applies with respect to the Farm Point properties?
A.—Correct.
Q.—You have never been in the lumber business?
A.—No.
Q.—You know Mr. Cross has been in it?

In the
Superior Court

No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
Cross-examination
Oct. 21st, 1932.
(continued)

A.—Yes, certainly.

Q.—Will you tell us what elevations you took personally in and around the mouth of the draft tube of the power house?

A.—I took the elevations at the culvert—not the draft tube; the power house floor; the elevation of the pond; and the floor elevation of houses; and that sort of thing.

Q.—Is the draft tube indicated on this plan?

A.—No. It is under the power house.

Q.—I mean, the mouth of the draft tube?

10 A.—No. It is under the power house.

Q.—But it comes out of the power house, does it not?

A.—Then we come into the road, really. I might have indicated it, I suppose, but it is underground, naturally, right in front of the power house.

Q.—Let us look for a moment at your sketch Exhibit D-161. At the bottom, towards the left hand side of the sketch, I see marked "Elevation 312.8"?

A.—Yes.

20 Q.—Did you take that elevation yourself?

A.—Yes.

Q.—When?

A.—Some time during the summer. I do not recollect the date.

Q.—Would you mind getting your field notes for that?

A.—Yes, I could get my field notes for that.

Q.—Did you take any other elevations then?

30 A.—As a matter of fact, I was there several times during the last year or two, checking up; so that I do not really know offhand just what particular elevations I took on any particular day—with the exception of that one elevation.

Q.—Elevation 312.8?

A.—Yes.

Q.—That was taken some time last summer?

A.—Some time during this year, yes.

Q.—And will you let us see your notes on that?

A.—Yes.

Q.—The top of the culvert is marked "Elevation 318.1"?

A.—Yes.

Q.—Where does the top of the culvert appear on the sketch?

40 A.—It is just a dotted line.

Q.—Where is it?

A.—Right under the writing. The word indicates it.

Q.—Under the writing, "Top of Culvert: Elevation 318.1"?

A.—Yes.

Q.—Did you take that yourself?

A.—Yes.

Q.—At the same time as you took the elevation 312.8?

In the
Superior Court
No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
Cross-examination
Oct. 21st, 1932.
(continued)

A.—Yes.

Q.—I also see the legend: “ Bottom of Concrete Culvert: Elevation 314.6 ”?

A.—The same thing applies.

Q.—Then I see the word “ Discharge ”, and underneath it “ Bottom of Scoured Ground ”.

A.—Yes.

Q.—You did not get down there to see that?

10 A.—You could put a rod right down.

Q.—Did you do it?

A.—I put the rod right down by the culvert.

Q.—This portion marked “ Bottom of Scoured Ground ” would be underneath the culvert?

A.—Yes.

Q.—You did not put any rod down there?

A.—You could see the culvert where it went out.

20 Mr. Ker: I was wondering whether there is any actual difference between us on the level of that culvert; because it is an absolutely open fact what it is. Is there any difference between us on it?

Mr. Scott: There is a difference between us.

Mr. Ker: This is a somewhat important elevation, and I thought we were in accord on it. I think, as a matter of fact, Mr. MacRostie has given a higher elevation than we have.

BY MR. SCOTT (continuing):

30 Q.—Will you mark on the sketch with the letter “X” where the culvert comes out?

A.—I now mark with the letter “X” on the sketch Exhibit D-161 approximately the end of the culvert, alongside the travelled road.

Q.—At what elevation is that?

A.—314.6.

Q.—And that elevation was also established by you at the same time?

40 A.—Yes.

Q.—Do you know the nature of the soil underneath the culvert? And the part I am particularly referring to is where I see the words “ Bottom of Scoured Ground ”?

A.—No, I did not make any particular observation of it.

Q.—I also see on this sketch the legend: “ Probable Bottom of Draft Tube ”, with an arrow on the left hand side. What does that mean?

*In the
Superior Court*
No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
Cross-examination
Oct. 21st, 1932.
(continued)

A.—In order to get the elevation in the draft tube lower than that going through the culvert it must naturally be lower than the culvert itself or the scoured portion of the culvert.

Q.—Did you ascertain whether it was?

A.—No.

Q.—It is merely a supposition?

A.—As it is marked there.

Q.—Did you not tell us yesterday that you could raise the water of the Gatineau to elevation 314.6 without injuring the head of the power plant?

A.—I do not think so. I said the water of the Gatineau would have to be above elevation 312.8 before it would interfere with the tailwater of the power house.

Q.—So you are taking the tailwater as being 312.8?

A.—No. I said that in order for any quantity of water to flow through the culvert it would require the water to be somewhere around 314.

Q.—But the culvert could be cleared out, could it not?

A.—I suppose it could be done.

Q.—It would be a matter of half an hour, or an hour, or a day's work?

A.—There is a concrete culvert at the road where it takes this tailwater. It is not a half hour job.

Q.—But it would be quite feasible to clear it out?

A.—Oh, yes, you could clear it out, certainly.

Q.—In that case this portion above the words "Bottom of Scoured Ground" would disappear, and we would have everything on the same level, would we not?

A.—Yes. If you lower that elevation you can bring it to whatever elevation you like.

Q.—Will you make a rough sketch showing the location of the valve that is used to regulate the water that goes to the sawmill or to the power plant?

Mr. Ker: There is no valve there.

Mr. Scott: The witness spoke about it yesterday.

Mr. Ker: No. He said the penstock was divided.

BY MR. SCOTT (continuing):

Q.—Will you make a sketch showing how the water could go to the sawmill, and how the water could go to the power plant?

A.—I have now prepared, and file as Exhibit P-124, a very

*In the
Superior Court*
No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
Cross-examination
Oct. 21st, 1932.
(continued)

rough sketch of the penstock in the vicinity of the waterwheel in the mill.

BY MR. KER:

Q.—This rough sketch you have just made is only diagrammatic; it is not to scale?

A.—It is not to scale at all. It is just a very rough sketch.

10 Mr. Scott: It is not my intention to use this on the basis of its being drawn to scale.

Mr. Ker: If my learned friend will tell me what he wants to establish we may be able to admit it.

Mr. Scott: I want the witness to show the valve or machinery for adjusting the distribution of water between the sawmill and the power house.

20 Witness: I do not know anything about it.

BY MR. SCOTT:

Q.—But you spoke about it yesterday?

A.—No, I did not.

I have indicated on the sketch the penstock to the power house.

Q.—The penstock you have sketched as Exhibit P-124 is divided?

30 A.—Yes.

Q.—One branch going to the waterwheel under the sawmill?

A.—Yes.

Q.—And the other to the power house?

A.—Yes.

Q.—And if the sawmill were not operating it would be quite possible for the power house to get the benefit of all the water?

A.—If a valve was installed, certainly. If a valve was installed in the penstock, closing off the water to the sawmill waterwheel, certainly it would go down to the power house.

40 Q.—Prior to the flooding of the Gatineau was it not possible for Mr. Cross to use all the water for the power plant when he wanted to do so?

A.—I do not know what arrangement he had. I do not know what arrangement there is in the penstock.

Q.—You know he could divert all the water in Meach Creek into the power house?

A.—I do not know.

*In the
Superior Court*

No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
Cross-examination
Oct. 21st, 1932.
(continued)

- Q.—Can you tell me how high the water was raised at Mileage 12? How many feet?
A.—I do not know. It might be 15 or 20 feet. I am not sure. Possibly about 20 feet.
Q.—The new highway is considerably back from where the old building was for the portable mill?
A.—Very considerably.
Q.—Prior to the raising of the water the highway ran. . . .
A.—(Interrupting): In front of the property.
10 Q.—Practically in front of the property?
A.—Yes.
Q.—Approximately how far back would you say the highway is now from where the site of the old portable mill was?
A.—Possibly half a mile.
Q.—Was the C.P.R. track relocated, or was it raised?
A.—It was relocated at a higher elevation.
Q.—I suppose you prepared the plan for the C.P.R. expropriation?
20 A.—Yes.
Q.—And your certificate or offer to Mr. Cross was \$75?
A.—Yes.
Q.—You prepared the plan and the certificate in connection with the proposed expropriation of Mr. Cross' property by the Gatineau Company?
A.—Yes.
Q.—How much did you offer him in your certificate?

Witness: For the flooded land?
30 Counsel: Yes.

A.—\$325 for the land, and \$500 for the buildings.
Q.—That was the evidence you gave us yesterday in stating your valuation. Is that the same figure as you gave in the Notice of Expropriation?
A.—I think so.
Q.—With reference to house No. 30, on Parcel " B "; did you give us the elevation of the ground on which the building is situated?
40 A.—I cannot give you the elevation of the ground. I have only the elevation of the floor of the building.
Q.—Did you actually take the floor elevation yourself?
A.—No, not of that particular building.
Q.—That was supplied to you by somebody else?
A.—Yes.

BY THE COURT:

In the
Superior Court

No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
Cross-examination
Oct. 21st, 1932.
(continued)

Q.—That is the elevation 321.79?

A.—Yes, your Lordship.

BY MR. SCOTT (continuing):

Q.—What is elevation 321.79?

A.—The floor elevation of the buildings. It is marked " F-1 ".

BY THE COURT:

10

Q.—Why do you speak of the land in Parcel "A" and Parcel " B " as a delta? On account of the shape?

A.—No, your Lordship; on account of the nature of the deposit, as explained by the geologist who was examined here the other day. It is the soil carried down from the upper elevations.

20

Mr. Ker: I think the expression originated with Mr. Langford. I think his definition of a delta is land formed by deposit at the mouth of a river. He described it as a delta, and we have so spoken of it since through the case.

BY THE COURT:

Q.—Did you go up towards the source (if it had any) of the creek indicated as flowing through Parcel " D " ?

A.—No, your Lordship.

Q.—You do not know where it came from?

A.—No, I cannot say definitely. I have a pretty good idea.

30

I would not like to give the impression it is a large creek. It is really flowage surface water from the hills not far back. It has a distinct course, and on each side of it is higher land. It has a distinct course and flow during rain and in the spring of the year.

Q.—Would the water pass near Mr. Cross' piling ground?

A.—Not in Parcel " B ".

Q.—I mean, farther up?

A.—No, your Lordship, it would not go there at all.

Re-examination

40

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

Q.—You were asked by my learned friend, Mr. Scott, to state what the per second flow of the Gatineau River was when Exhibit D-162 was taken?

A.—Yes.

Q.—And, I think you stated it was 30,550 cubic feet per second?

A.—Yes.

In the
Superior Court

No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
Re-examination
Oct. 21st, 1932.
(continued)

Q.—I think you said those figures were taken under natural conditions in the river, before the water was raised by the Company?

A.—Yes.

Q.—Am I right in stating that every time there was a flow of 30,550 cubic feet per second in the river under natural conditions the same condition would exist on that delta land?

A.—Yes.

10 Q.—Have you any tables, or documents, or information which would enable you to indicate exactly how often that happened per year, or over a period of years, before the Company came on the river at all? Can you give us any information about that?

A.—I have a table of dates supplied to me by the officers of the Company.

Q.—Just what is it, and what does it show?

A.—Showing the number of times from 1912 to 1926, and the periods during those years when the water at Farm Point was at elevation 314, 316, and 318.

20 Mr. Scott: I think the person who knows about this should give the evidence, and I object to this witness giving testimony on it, on the ground that such testimony is hearsay. The witness does not know about it personally.

Mr. Ker: Unless Mr. Farley can say the figures were taken by himself, or were obtained from official records, I think my friend is right. But, Mr. Scott, have you any objection to him making the proof?

30 Mr. Scott: My objection is it is not proof.

Mr. Ker: Do you object to my making it by this witness?

Mr. Scott: We certainly do.

Mr. Ker: Then I will have to prove the table by the person who compiled it.

BY MR. KER (continuing):

40 Q.—It is possible to indicate how many times each year, and for what periods during each year, from 1912 to 1926, the same condition as is shown on this photograph existed?

Mr. Scott: If my recollection is correct, the witness told me he did not know.

Mr. Ker: I am making the evidence because, in spite of my

*In the
Superior Court*

No. 117.

Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
Re-examination
Oct. 21st, 1932.
(continued)

objections, my learned friend referred to this as a cloudburst in the river.

Mr. Scott: The witness said very clearly it was an abnormal condition. If this is a record taken by Mr. Farley of all the times there were abnormal conditions on the Gatineau River, I have no objection to his assisting the Court by putting it in. On the other hand, if he did not make the record, and if it is a record given to him by officers of the Company, I object to this witness speaking to it.

10

Mr. Ker: All this information is of record in Official Government Archives, and if my learned friend wishes to put me to the trouble of getting it in that way, I suppose I will have to do it. My idea is to eliminate any thought of cloudbursts.

BY MR. KER (continuing):

Q.—Is it to your knowledge that the flow of the Gatineau River has been higher than 30,000 cubic feet per second?

20

A.—Oh, yes, certainly.

BY MR. SCOTT:

Q.—To your personal knowledge?

A.—Yes.

Q.—From stream flow measurements you took?

A.—No. I am more specifically thinking of spring conditions. I have made no stream flow measurements.

30 Mr. Ker: Of course, my learned friend was willing to take the statement of the witness at 30,000 cubic feet per second for the particular date in regard to which he was being questioned.

BY MR. KER (continuing):

Q.—Where did you get the statement in regard to the 30,550 cubic feet second which you gave to Mr. Scott and which he was quite prepared to accept?

40 Mr. Scott: I did not say I was prepared to accept it. That was the answer he gave me.

Witness: I got it from the records of the stream flow measurements, and Government records.

BY MR. KER (continuing):

Q.—Which indicate those facts?

A.—Yes.

*In the
Superior Court*

No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
Re-examination
Oct. 21st, 1932.
(continued)

Q.—Can you during the lunch adjournment make those records available, so that you can give the information I asked you for?

A.—Yes.

Q.—I believe your estimate of the extent of the normal piling ground which Mr. Cross enjoyed before the water was raised was something in the neighbourhood of four acres?

A.—Yes.

10 Q.—At page 124 of Mr. MacRostie's deposition I find the following:

“ Q.—Can you give me a rough idea of it? Would it be three acres?

A.—I should say some place within 318 and 321, possibly about four acres. Don't hold me to this as an absolute figure ”.

That is approximately accurate?

A.—Yes.

20 Q.—My learned friend sought to find out whether you had actually physically measured four acres. Do I understand you did not do that?

A.—No.

Q.—But from the look of the place that had been used as piling ground you would say it was approximately four acres?

A.—Approximately.

Q.—You are only speaking of above elevation 318?

A.—Yes.

30 Mr. Scott: Mr. MacRostie's evidence was between 318 and 321—that the piling ground used by Mr. Cross between elevation 318 and elevation 321, prior to the flooding, was approximately three acres.

BY MR. KER (continuing):

Q.—If Mr. MacRostie states there are four acres between elevations 318 and 321, is he correct?

A.—I have not anything like that.

40 Q.—I think the suggestion was made that, since the raising of the waters, locomotives have not been able to go in on that siding?

A.—Yes.

Q.—Have freight cars been able to go in?

A.—I do not think I have seen any personally.

Q.—You do not know?

A.—No.

Q.—In other words, it is the same as your statement in regard to the locomotives?

A.—Yes.

*In the
Superior Court*

No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
Re-examination
Oct. 21st, 1932.
(continued)

Mr. Scott: He said locomotives had not been in.

Witness: To my knowledge.

Mr. Scott: He said they had not been in, to his knowledge, and that there was a sign up warning them from going in.

Mr. Ker: And I am asking him now about freight cars, and he says he does not know.

10

*In the
Superior Court*

No. 111.
Defendant's
Evidence.
(Supp. Hearing)
John S. Parker,
(Recalled)
Cross-examination
Oct. 21st, 1932.

And at 2.30 p.m. Court reassembled and the witness

JOHN S. PARKER,

was recalled for further cross-examination by Mr. Scott, K.C., of Counsel for Plaintiff.

20 BY MR. SCOTT:

Q.—Mr. Parker, I did not close my cross-examination of you the other day, because I wanted you to give me some further information with regard to the purchase made by the Gatineau Electric Company. You are the manager of the sales branch of the Gatineau Electric Company?

A.—I am the general manager of the Gatineau Electric Company, and general manager of distribution of the Gatineau Power Company.

30 Q.—Will you produce and file as Plaintiff's Exhibit P-125 a notarial copy of a Deed of Sale by La Compagnie D'Eclairage de Napierville, Limitée, to the Gatineau Electric Light Company, executed on the 10th January, 1928, before G. C. Marler, Notary Public?

A.—I do.

Q.—This Deed of Sale is signed on behalf of the Company Vendor by my friend Mr. Montgomery and Mr. W. H. Howard?

A.—Yes.

Q.—And the price is stated to be one dollar and other good and valuable considerations?

40 A.—Yes.

Q.—And if you will look at the Deed you will see that under the possession clause, it is stated, "The present sale shall be considered to have taken place as at midnight on the 31st day of October last 1927," when the purchaser took possession of the said property.

A.—Yes.

Q.—Will you tell me what the real consideration was to that transaction?

*In the
Superior Court*
No. 111.
Defendant's
Evidence.
(Supp. Hearing)
John S. Parker,
(Recalled)
Cross-examination
Oct. 21st, 1932.
(continued)

A.—I cannot tell you.

Q.—Why did you not obtain that information when I asked your counsel yesterday to obtain it for me?

A.—My instructions, when I was here, was to produce the Deeds. That is what I have done.

Q.—Before we adjourned Court yesterday, Mr. Parker, I told my learned friend, in the presence of his Lordship, that I wanted you to inform yourself of the real conditions pertaining to these purchases. You have not got that here?

10 A.—I have not got it.

Q.—Can you give us any idea of it?

A.—No, I cannot give you any idea.

Q.—Well, Mr. Parker, it should not take you very long, because I see that Mr. Montgomery signs it on behalf of the Company vendor. Can you obtain it for me before you leave this afternoon?

Mr. Montgomery: What inference do you draw from that, Mr. Scott?

20 Witness: My Lord, I have had nothing to do with the organization of companies, the financial structure of companies. I am surely not the man to put in information of that kind. I have been in all my experience dealing with the personal organization of companies, and there are considerations in connection with a deal like that where Deed states, one dollar and other consideration, which I could hardly understand.

BY MR. SCOTT:

30 Q.—Perhaps his Lordship will understand. Will you ascertain what the real consideration for this purchase was?

His Lordship: Who signed the Deed.

Mr. Scott: Mr. Montgomery, my Lord.

40 Mr. Montgomery: I am surprised to find that I did so. I am sure it must have been some office reorganization or something intermediary, because I do not even remember having been an officer of the Napierville Electric Company.

His Lordship: And it is also signed by another member of Mr. Montgomery's firm.

Mr. Montgomery: What happened was, they took over the stock and put in a new board temporarily, or something of the sort

*In the
Superior Court*

No. 111.
Defendant's
Evidence.
(Supp. Hearing)
John S. Parker,
(Recalled)
Cross-examination
Oct. 21st, 1932.
(continued)

and that probably was done in the office routine. I have no recollection of the circumstances and am surprised even to find my name there.

BY MR. SCOTT:

Q.—If you, Mr. Parker, as general manager cannot obtain the information as to what the real consideration was, who is there in the organization who could furnish it to us?

10 A.—One of the directors or officers of the Company I presume.

Q.—You are an officer of the company?

A.—I am not a director.

Q.—I say, you are an officer of the Company?

A.—I am an officer of the company.

Mr. Scott: I think, my Lord, where Article 334 of the Code of Civil Procedure applies.

20 His Lordship: The witness can file the document. Of course, you will have someone who knows about it.

BY MR. SCOTT:

Q.—Let me put the question this way: from whom did you obtain the information on which you gave your evidence two or three days ago, that is, the information with reference to the purchases of Vankleek Hill, Ste. Jovite, Hudson Heights and these other tracts?

30 A.—The information on those deeds was all on the face of the document.

Q.—Excuse me, Mr. Parker, the deeds do not state the number of customers. From whom did you find the number of customers?

A.—I got the number of customers from the records under my direct control.

Q.—Those records were under your direct control?

A.—Yes.

Q.—For the sales you put in?

A.—Yes.

40

BY THE COURT:

Q.—Everything concerning the personnel?

A.—I have direct control of all those systems, the operation of them, but not of the financial structure.

BY MR. SCOTT:

*In the
Superior Court*

No. 111.
Defendant's
Evidence.
(Supp. Hearing)
John S. Parker,
(Recalled)
Cross-examination
Oct. 21st, 1932.
(continued)

Q.—Who gave you that information of the number of customers that those systems had in 1927?

A.—I took it out of the record.

Q.—Will you consult the same record with reference to Napierville?

10 A.—I cannot get it in the same way for Napierville, for this reason, that that company was not keeping records as the Southern Canada Power Company were keeping them for the Ottawa-Montreal Electric, and they were not turned over to us in a way that I can be sure of how many customers there were.

Q.—Have you looked up to make sure?

A.—No, I have not in the case of Napierville. I was busy.

Q.—Will you look up your records in the case of Napierville and bring us everything you have showing the number of customers on the length of lines of the system in 1927 when it was taken over by the Gatineau Electric Light Company Limited?

20 A.—If the Court insists. I would like to state in the case of the Napierville Company just my reasons why I cannot give the information, when you have gone to all the trouble to get it out—mind you, that means a lot of work. We have to go back to the original records down in the vault and pick them out for each municipality. Naturally, it is going to take a week or more of work to do what we are asked to do, and, when you have it, this is what you are trying to compare, a Power Distribution System such as you have in Farm Point and Wakefield, etc., with a system which has transmission lines, 25,000 volts on the main highway between Montreal and New York. It had several substations, high voltage substations, and to compare a small Distribution System with a
30 System

BY THE COURT:

Q.—Make it short?

A.—It had valuable rights all along the Napierville Railway and on other private property. It had an export license for shipping power to the United States of 500 horsepower. It had an actual contract

40 BY THE COURT:

Q.—There is no use reciting all that?

A.—I am just trying to point out

BY THE COURT:

Q.—What is your conclusion? Of course, I will take your conclusion as being true?

*In the
Superior Court*

No. 111.
Defendant's
Evidence.
(Supp. Hearing)
John S. Parker,
(Recalled)
Cross-examination
Oct. 21st, 1932.
(continued)

A.—My conclusion is, that it is impossible to pick out of a wholesale of that kind a comparison with a distribution system of 4,000 volts, which would be like comparing the Wakefield system with that of Chelsea or Paugan Falls.

BY MR. SCOTT:

Q.—You apparently know a good deal about this Napierville system?

10 A.—Physically, yes.

His Lordship: What is it you want? I thought you wanted to know the consideration?

Mr. Scott: The first thing I want to know is the consideration, and then I want to ask this witness—he knows perfectly well what I want, whether the four to one ratio which he kept referring to the other day applies in this case. I want to know the number of customers, and to find out whether this is a ten to one ratio which this
20 Company applied in their own case and it certainly tests the value of the opinion expressed by this witness in valuing Mr. Cross' plant. Surely it is not for the witness to tell your Lordship that it is no use bringing this information.

Mr. Montgomery: I think perhaps Mr. Scott misunderstands what the witness is saying. What he is trying to point out to you is, that the number of customers would tell you nothing as to the price, because it is a lump sum price which includes so many things other than the distribution system which you are trying to compare. You
30 will find it amounts to segregating the thing which you are trying to compare, the distribution system, from one hundred other things mentioned in any of these other deeds.

Mr. Scott: I am anxious to finish my examination as quickly as I can, but it seems to me this Company should assist us in obtaining information which, under the Code, is available and which will assist your Lordship in arriving at a valuation.

His Lordship: If the witness says he does not know anything
40 about the consideration, he cannot tell you. It appears the document was signed by a solicitor, Mr. Montgomery, and another member of his firm. Whether they know what the consideration is, is another question. Perhaps Mr. Montgomery can help us on that. Have you any idea, Mr. Montgomery, what the consideration was?

Mr. Montgomery: I have not, my Lord. I was quite surprised to find my name was there. I have no recollection even of the transaction.

*In the
Superior Court*

No. 111.
Defendant's
Evidence.
(Supp. Hearing)
John S. Parker,
(Recalled)
Cross-examination
Oct. 21st, 1932.
(continued)

His Lordship: From whom could you get the information?

10 Mr. Montgomery: I could not tell you, my Lord. I gather from the facts that my name and that of Mr. Howard is on the deed. I would gather there must have been somebody of the Gatineau Power Company, or somebody must have bought the stock of this Napierville Company and changed the Board and while it was passing through our office for convenience, as sometimes is done, they used our office for a very temporary and convenient Board. That is a pure surmise on my part. I was as much surprised as anyone to find my name there. I have no recollection at all about it. I may say that I did not handle the matter myself as solicitor. If I had done so, I would, of course, have known about the matter.

His Lordship: Do you say you were a temporary director?

20 Mr. Montgomery: I would imagine in view of the facts, that my name was put on the Board by the office. I am only surmising that. I am quite surprised to find my name there at all. I do not recollect having had anything to do with it, and I know I did not have anything to do with it as solicitor.

BY MR. SCOTT:

Q.—Mr. Parker, my instructions are that in 1926 the Napier-ville system owned no water power and had only 299 customers. Have you any idea whether that is correct or not?

A.—No, I have not.

30 Q.—You have no idea at all?

A.—I have no idea. I might be able to find that out, but I am not sure. I could give you our first record which would be considerably after that, if that would be satisfactory.

Q.—How are you able to find the first record then for the Hudson system?

Mr. Montgomery: He says he can give you their first record.

40 Witness: We can give it for Ottawa-Montreal. The records there were kept in very good shape.

BY MR. SCOTT:

Q.—Do you mean to say seriously that you cannot obtain the real purchase price of that system, and give it to his Lordship?

A.—I presume someone can tell you what that purchase price was?

*In the
Superior Court*

No. 111.
Defendant's
Evidence.
(Supp. Hearing)
John S. Parker,
(Recalled)
Cross-examination
Oct. 21st, 1932.
(continued)

Q.—Will you do that?

A.—If you consider that sufficient, I can do that.

BY THE COURT:

Q.—You might try and give us an idea what this consideration was?

A.—I can only swear that that was what was told to me by someone else. I cannot give it as my knowledge.

10

BY MR. SCOTT:

Q.—It must appear in the books?

A.—I presume it appears in the books.

Q.—A cheque must have been issued?

Q.—When you come back with that information, will you also ascertain the length of the line and give that to us?

A.—As it was?

20

Q.—That was included in that transaction?

A.—I think the Deed shows that.

Q.—All right, will you do that?

Mr. Montgomery: The witness says the Deed shows it.

Witness: I have no Deed now. You have it.

Mr. Ker: It shows from place to place.

30 Mr. Scott: The Deed does not show the length of line.

Witness: I would really need the Deed. There has been a considerable extension to that line since, and I will have to be very careful if I have not the Deed.

BY THE COURT:

Q.—You may have the Deed.

40 Witness: May I have the Deed to work that out?

BY THE COURT:

Q.—Yes, but you will bring it back.

A.—I will bring it back.

BY MR. SCOTT:

*In the
Superior Court*
No. 111.
Defendant's
Evidence.
(Supp. Hearing)
John S. Parker,
(Recalled)
Cross-examination
Oct. 21st, 1932.
(continued)

Q.—Speaking from memory, you have no idea of the purchase price?

A.—No.

Q.—You could not guess at it?

A.—No. I was not here.

Q.—You apparently know something about the system?

A.—I was not concerned about the purchase price at any time.

10 BY THE COURT:

Q.—Who was the manager then?

A.—The local manager was the present district manager of Napierville, Mr. A. P. Beaulieu.

BY THE COURT:

Q.—He would have nothing to do with fixing the purchase price?

20 A.—No.

BY MR. KER:

Q.—Are you referring to the manager of the Gatineau Power Company? Mr. Gordon Gale, I think, was then, and still is?

His Lordship: Could he not give us the information?

30 Mr. Ker: I have no doubt he could. He is the general manager and president of the Gatineau Power Company.

His Lordship: The Gatineau Electric Light Company is

Mr. Scott: It is a subsidiary of the Gatineau Power Company.

Witness: It is a sister company.

40 BY MR. SCOTT:

Q.—Mr. Gale will be able to give that information?

A.—Yes.

Mr. Ker: The information can be obtained. There is no difficulty about it.

BY MR. SCOTT:

*In the
Superior Court*

No. 111.
Defendant's
Evidence.
(Supp. Hearing)
John S. Parker,
(Recalled)
Cross-examination
Oct. 21st, 1932.
(continued)

Q.—Will you file as Plaintiff's Exhibit P-126

Mr. Ker: I object to this as irrelevant. This Deed has nothing to do with this case, and will not assist your Lordship in any way in determining what should be paid to Mr. Cross for the level of 321.5 at Farm Point.

His Lordship: What have you to say, Mr. Scott, in answer to the objection that this document should not be filed?

10

Mr. Scott: In the first place, I say, with regard to this Deed, it is not a purchase of stock, it is a purchase of property. Fortunately for us, the consideration appears in this Deed. It is a purchase by the Defendant Company, made on the 2nd June, 1927.

Mr. Ker: Are you referring to the Bonhomme System? That is not a small system.

20 BY MR. SCOTT:

Q.—Will you file as Exhibit P-126 a notarial copy of Deed of Sale from Theotime Bonhomme, of the Village of Papineauville, to the Gatineau Power Company; this Deed was passed before Marler, N.P., on the 22nd June, 1927?

His Lordship: Do you object to the filing of this Deed, Mr. Ker?

30 Mr. Ker: I object to the filing of it, inasmuch as it is irrelevant to the whole case. It has nothing whatsoever to do with this case.

40 Mr. Scott: I submit it is most relevant and most pertinent to this case as being evidence showing what the Defendant Company itself was paying in the year 1927 for electrical distribution system. If your Lordship thinks that subsequently the properties covered by this purchase are not similar to this of Mr. Cross, then, of course, your Lordship will disregard that proof. This witness has already, your Lordship will remember, come with six, I may term it, hand-picked notarial Deeds of Sale of various systems acquired by the Defendant Company.

His Lordship: To show the value?

Mr. Scott: To show the value placed on Mr. Cross' property, a value of \$22,100, which this witness states is a fair price for Mr. Cross to receive.

*In the
Superior Court*

No. 111.
Defendant's
Evidence.
(Supp. Hearing)
John S. Parker,
(Recalled)
Cross-examination
Oct. 21st, 1932.
(continued)

His Lordship: I will allow the filing of the Deed under reserve.

A.—I do.

BY MR. SCOTT:

Q.—Will you state what the consideration mentioned in this Deed is?

10 A.—The Deed speaks for itself—\$100,000.

Q.—Did you have anything to do with this purchase?

A.—No. You can see for yourself.

Q.—It is part of your system now, so I suppose you must know about it in a general way?

A.—Yes.

Q.—Did Mr. Bonhomme have any distribution system at the time his properties were taken over?

A.—In that locality?

Q.—No, covered by this Deed?

20 A.—Yes.

Q.—Does it include a distribution system?

A.—He had a small distribution system.

Q.—Do you know how many customers he had?

A.—No.

Q.—Can you give us some idea?

A.—I may be able to find out.

Q.—Do you think he had as many customers as Mr. Cross, one hundred or two hundred customers?

A.—That would be guessing.

30 Q.—How many customers have you now on the territory that is covered by this Deed?

A.—That is a part of our Hull Division. I have not the number of customers. I do not think I was asked to get that.

Q.—Is it a fact that Mr. Bonhomme, just shortly prior to this time, built his distribution system, and had few or no customers at all?

40 A.—He had, as I found out on my first visit through villages being served, and the lines partly constructed to two more, his power plant was completed, and I cannot say whether it was actually in operation.

Q.—His power plant was on the Blanche River?

A.—On the Petite Blanche.

Q.—Do you know how much horsepower he was developing?

A.—No, but I presume the Deed will show that. I cannot recollect.

Q.—I do not think the Deed tells us anything about how much horsepower he was developing?

*In the
Superior Court*

No. 111.
Defendant's
Evidence.
(Supp. Hearing)
John S. Parker,
(Recalled)
Cross-examination
Oct. 21st, 1932.
(continued)

A.—There is a description of the power house here and also a valuable mill site as you can see—saw mill. That mill is in operation yet.

Q.—Is your Company operating it?

A.—We rent it. I notice there are several buildings, as well as a power house on the property, a tract of land.

Q.—Does the Deed say what horsepower he was developing?

A.—Evidently not. Would you like me to get that, too?

10 Q.—Yes, I would like to know how much horsepower Mr. Bonhomme was developing on that property and how many customers he had?

A.—I may not be able to get that exactly.

Q.—As near as you can.

A.—I will do my best.

Q.—Were there any water power rights included in this Deed?

A.—I am quite sure they are described.

Q.—Still on the Petite Blanche River?

A.—Still on the Petite Blanche River.

20 Q.—I see a couple of plans are annexed to the Deed?

Mr. Ker: There are more than a couple. There are half a dozen, are there not?

BY MR. SCOTT:

Q.—I see four plans of Mr. S. E. Farley attached to this notarial copy?

A.—Yes. You wanted to know the power site.

30 Q.—Perhaps the power sites are referred to specifically in the Deed? Are they on the River Blanche?

A.—They are on the Blanche River.

Q.—Are you still operating that power plant that Mr. Bonhomme had?

A.—Yes. It is not in operation all the time, but it is kept in operating condition. That is one of the conditions of the Deed.

Q.—It is kept in operating condition?

A.—Yes.

Q.—Why?

40 A.—That was one of the conditions of the deed that it should be kept in operating condition, as I remember it. I have not read it lately.

Q.—How much are you generating, that is, when you do operate it?

A.—It is tied into the system. I don't know. I don't run a power plant. I can find out, of course, if you want to know.

*In the
Superior Court*

No. 111.
Defendant's
Evidence.
(Supp. Hearing)
John S. Parker,
(Recalled)
Cross-examination
Oct. 21st, 1932.
(continued)

His Lordship: Have you taken a note of what you want, Mr. Scott?

Mr. Ker: You want the amount of horsepower?

Witness: Developed by Bonhomme.

BY MR. SCOTT:

10 Q.—I want the amount of horsepower developed by Bonhomme at the time that property was purchased, and the number of customers he had, and the length of his distribution system?

A.—I might just say that new town site for our big mill property at Gatineau was included in this area and a new town site was built immediately after the purchase.

Q.—Entirely on property bought by Bonhomme?

A.—On property served by Bonhomme, and franchises covered by him.

20 Q.—There was no town site there at the time of that deed?

A.—They have been started. I am not sure. I think it was being started at that time.

Q.—I know you are not a power generator, as you have told us, but where Mr. Bonhomme was developing his power, the Falls was called Perkin's Falls?

A.—No, High Falls. Perkin's Mills is where the saw mill is.

Q.—The High Falls is on the Rivière Blanche?

A.—Yes.

Q.—Do you know the head at the High Falls?

30 A.—No, I do not.

Q.—Do you know the average stream flow?

A.—No. Do you want that information?

Q.—If you can get it for me. I don't want to give you any extra trouble.

His Lordship: Where is the Blanche River situated?

Mr. Ker: The Blanche River runs into the Ottawa, below.

40 BY MR. SCOTT:

Q.—You have brought with you another Deed of Sale, being a sale from the Quebec Southern Power Corporation to the Gatineau Power Company, dated 7th July, 1927, the Deed being passed before G. C. Marler, notary public. This sale is the one you and I were talking about in Court the other day, in connection with St. Jerome and around there?

*In the
Superior Court*

No. 111.
Defendant's
Evidence.
(Supp. Hearing)
John S. Parker,
(Recalled)
Cross-examination
Oct. 21st, 1932.
(continued)

A.—We were talking of a part of this sale, that is the Laurentian Hydro Electric part of this Quebec Southern property.

Q.—The Quebec Southern Power Corporation was a subsidiary?

A.—It was the parent company, and I believe we had purchased from the Laurentian Hydro Electric Company. We bought both properties.

Q.—The Quebec Southern Power were represented by Peter L. Browne, and Allan G. Urquhart?

A.—Yes.

10 Q.—And the consideration of this deed is stated to be as follows:

“The present sale and transfer is also made for and in consideration of the purchaser assuming and agreeing to pay to the complete exoneration and discharge to the vendor all the debts and obligations of the vendor as of the 31st day of May, 1927 (plus and excepting only its issued capital stock or other obligations to its shareholders as such)”.

20 As a further consideration the sale was made for a price of \$1,227,628.

A.—If that is what it says.

Q.—The Deed speaks for itself?

A.—Yes.

Q.—Would you leave this copy of the Deed with me so that I may have an opportunity of looking at it and see if there is anything further I want?

A.—Yes.

30 Q.—Will you look at the Deed of Sale from the Ottawa-Montreal Power Company Limited to the Gatineau Power Company, dated 27th December, 1927, the Deed being passed before Marler, notary, and you will notice it is made for the price and sum of one dollar and other good and valuable consideration. Do you know what the real consideration was?

A.—No.

Q.—Could you find out for me?

A.—Yes.

40 Mr. Ker: That is obviously not applicable to this case, because it appears on the face of the statement that there is absolutely no distribution included in this sale.

Mr. Scott: There is reference to another deed.

BY MR. SCOTT:

Q.—I notice that the deed states that it is the intention of the

*In the
Superior Court*

No. 111.
Defendant's
Evidence.
(Supp. Hearing)
John S. Parker,
(Recalled)
Cross-examination
Oct. 21st, 1932.
(continued)

vendor to convey, and of the purchaser to acquire the whole property and assets of the above moveable and immoveable, real and personal, excepting only such part thereof as is specifically identified with that portion of the undertaking of the vendor having to do with the distribution and transmission of the electric energy, which are to be specifically described in the Deed of Sale from the vendor to the Gatineau Electric Light Company (and I see a marginal note, "Limited") to be executed forthwith.

10 Mr. Ker: You should leave out all reference to that. The Distribution Deed is clear.

BY MR. SCOTT:

Q.—The first deed we have been looking at refers to another deed, which has to do with the Distribution System, and it says it has to be executed forthwith?

A.—Yes.

20 Q.—Will you look at this deed of the 10th January, 1928, between the Ottawa-Montreal Power Company Limited and the Gatineau Electric Light Company Limited, passed before Marler, notary, and will you tell me if this second deed of the 10th January, 1928, is the deed referred to in the one I have just shown you, that is the one of the 27th December, 1927?

A.—I presume it is, but I have no knowledge.

Q.—Looking at this sale of the 10th January, 1928, from the Ottawa-Montreal Power Company to the Gatineau Electric Company, you will notice the consideration is stated to be one dollar. Do you know what the real consideration was?

30 A.—No.

Q.—Will you make enquiries and find out what you can as to what the real consideration is under the 1927 Deed, and under the Deed of the 10th January, 1928?

A.—Yes.

Q.—How soon can you have that information, Mr. Parker?

A.—You are asking

Q.—I want the Napierville produced first?

A.—Napierville, Bonhomme, Ottawa-Montreal—you want the customers, lengths of line, what else?

40 Q.—And consideration, of course.

A.—What about large blocks of power?

Q.—What do you mean by large blocks of power?

A.—For instance the Canadian International Paper Mills at Hawkesbury, does that not mean anything, or is it just a customer?

Q.—I was not discussing the Canadian International Paper Company. You have given the number of purchases for the Hawkesbury mill in your examination in chief.

*In the
Superior Court*

No. 111.
Defendant's
Evidence.
(Supp. Hearing)
John S. Parker,
(Recalled)
Cross-examination
Oct. 21st, 1932.
(continued)

A.—I have not given anything about Hawkesbury.

Q.—I did not ask you about Hawkesbury.

A.—You are asking about Ottawa-Montreal customers. The Canadian International Paper Mills at Hawkesbury, taking 4,500 horsepower, is a customer. Am I to count it as one customer and compare it with customers taking 20 horsepower?

Q.—As a matter of fact, that contract was just expiring, was it not?

10 A.—No, it had about two years to run, and was automatically renewed, and is going on yet, running full time.

Q.—Can you be here on Monday?

A.—I am on call in two other Courts. If you get the first call in perhaps I could be here first.

BY MR. KER:

Q.—Could you get that information by Monday?

20 A.—I am not so sure about Napierville. I think I can get Ottawa-Montreal.

BY MR. SCOTT:

Q.—It is the Napierville that I want?

A.—It is a long hunt. There are a lot of power contracts from 500 horsepower or more. What am I going to do with them?

Q.—Can you get Napierville?

A.—It is Napierville I am talking of.

Q.—Napierville, as of the date of the purchase?

30 Mr. Montgomery: The witness is asking you whether he is to count them as one customer.

Witness: Your average is knocked into a cocked hat, if you will excuse the expression. I cannot submit those figures as comparable at all.

BY MR. KER:

40 Q.—Well, it is in respect of customers, no matter what the quantity of horsepower is, from 100 horsepower to 4,000 horsepower, would be taken as one customer.

Witness: What am I going to do.

BY MR. SCOTT:

*In the
Superior Court*

No. 111.
Defendant's
Evidence.
(Supp. Hearing)
John S. Parker,
(Recalled)
Cross-examination
Oct. 21st, 1932.
(continued)

Q.—If you have any more customers mention them. You are a business man. These purchases were only made after a report was made on the system, particularly speaking about Napierville. There must have been in your files a report made by one of your officers showing Napierville had so many customers, that the revenue was so much, that the length of line was so much?

A.—I do not think any inventory was taken of any of those properties. I have never seen them.

10 Q.—Will you ascertain?

A.—Yes.

Mr. Ker: I will reserve any further re-examination of Mr. Parker until Mr. Scott has concluded his examination.

(And further for the present deponent saith not.)

*In the
Superior Court*

No. 118.
Defendant's
Evidence.
(Supp. Hearing)
Claude E. Ralph,
Examination
Oct. 21st, 1932.

20 DEPOSITION OF CLAUDE E. RALPH, A WITNESS
PRODUCED ON BEHALF OF THE DEFENDANT.

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

CLAUDE E. RALPH,

30 of the City of Ottawa, Ontario, Civil Engineer, aged 49 years, a witness produced on behalf of the Defendant, who, being duly sworn, doth depose and say as follows:

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

Q.—Mr. Ralph, I understand you were examined previously in this case when it was before the Court on another occasion?

A.—Yes, I was.

40 Q.—You are a Civil Engineer by profession?

A.—Yes.

Q.—You are at present employed by the Company Defendant?

A.—Yes.

Q.—What particular kind of engineering work have you been doing for the Company Defendant, and before you came to the Company Defendant?

A.—I have been what is generally called a construction engi-

*In the
Superior Court*

No. 118.
Defendant's
Evidence.
(Supp. Hearing)
Claude E. Ralph,
Examination
Oct. 21st, 1932.
(continued)

neer for about twenty-five years, and resident engineer, division engineer of railroad work, that is, in actual charge. I was resident engineer from 1907 to 1911.

Before that I was doing structural engineering work in that same kind of work for over three years. I was contracting from about 1911 to 1914, and from 1914 until 1918 I was assistant engineer on the Hudson Bay terminals. When I was assistant engineer, I was assistant to the chief engineer, and I acted as superintendent of construction, and general supervisor most of the time.

10

BY THE COURT:

Q.—As civil engineer?

A.—Civil engineering work.

BY MR. KER:

20 Q.—Has your experience been devoted to any considerable extent to the matter of construction work as applied to railways and other enterprises of that kind?

A.—Yes, it has.

Railway work, of course, is practically all cut and fill, so far as the grading itself is concerned, filling work, which would make it analogous to what we are interested in here.

Q.—Have you therefore had considerable experience, extending over a period of your professional career, in the matter of filling?

A.—A great deal.

30 Q.—Will you give me one or two instances of work of importance which, in their nature, were filling jobs on which you have been engaged?

A.—The four years on the Hudson Bay Terminals was practically all filling, trying to make harbour works in the Nelson River with very poor material. It was all fill. Railroad work, of course, is, as I say, in grading practically all cut and fill.

Q.—In connection with your Hudson Bay Railway Terminal work?

A.—The Hudson Bay Railway, the Terminal is at the Bay.

40 Q.—Can you give me one particular piece of work having to do with filling under water or reclaiming of land?

A.—Yes, I can.

Q.—And under what conditions you were working and what results did you obtain?

A.—One of the first jobs we had in that Terminal place was to try and make some protection for our scows and floating equipment.

There is no rock at Port Nelson, within sixty miles, the only material being clay, and we constructed a jetty out into the river

*In the
Superior Court*
No. 118.
Defendant's
Evidence.
(Supp. Hearing)
Claude E. Ralph,
Examination
Oct. 21st, 1932.
(continued)

for at least a thousand feet of clay from the shore, and the only material we had was clay. We constructed a trestle and ran our dinky engines right across out and kept dumping and raising. The current, of course, was working both ways all the time. It is a tidal river.

Q.—And you had to work under conditions of tide up and down?

A.—It was a terrible job.

Q.—And you had to work under water?

A.—In the river.

10 Q.—Did you say a thousand feet?

A.—A quarter of a mile—at least, about a thousand feet.

Q.—What were you on that work?

A.—I was superintendent of construction.

Q.—And you have had other similar experiences in the matter of reclaiming or filling in of that kind, under conditions of that sort?

A.—I had a lot. I was in railroad work and it would be more analogous with what we are interested in here.

20 Q.—Are you familiar with the property of Mr. Cross at Farm Point?

A.—Yes, I am very familiar with it.

Q.—You are very familiar with it, and have been for how long?

A.—I have known the property since January, 1926, that is when I first went on it.

I might say here that I think I am repeating my evidence of before, but I was resident engineer representing the Gatineau Power Company on the railroad construction.

Q.—Of the Canadian Pacific Railway reconstruction due to the flooding?

30 A.—That is what I mean. I do not know whether that is the way it is in the record.

I did the actual relocating myself. Mr. Dibblee was engineer in charge, but the preliminary work, on the ground, I did it myself, and I did the senior instrument work; that meant the level work and the topography work.

Of course, we tried several schemes there, one of which was to go behind Farm Point; I mean to say, raising the railroad, and in that way I became very familiar with the topography of the country up there.

40 Q.—And with Mr. Cross' property?

A.—In fact, I did not know where the boundaries were then. I found that out later, not that winter.

Q.—Have you applied yourself to the study of the possibilities of reclaiming Mr. Cross' piling ground?

A.—Yes.

Q.—Such portion as would be affected by a controlled elevation of the water at 321.5 on the Gatineau River, and, if so, will you state,

*In the
Superior Court*

No. 118.
Defendant's
Evidence.
(Supp. Hearing)
Claude E. Ralph,
Examination
Oct. 21st, 1932.
(continued)

just as clearly and as briefly as possible, your ideas as to how that situation should be handled?

A.—I looked into at first, quite a while ago, and made an estimate, and then, when I heard Mr. Langford's evidence, I gave it a great deal more thought within the last four or five days, and despite his evidence, I am of the opinion that that piling ground can be filled, and that it would not be a very difficult operation.

Q.—You have made borings on the ground?

10 A.—I made quite a number of borings about ten or twelve days ago along the railroad spur. I used a wash boring machine, a light one, that is, a wash boring outfit consists of a tiling hammer and frame. The one I used weighed 260 pounds, and by means of which you drive a 2½-inch casing into the ground.

Q.—That means a hollow pipe?

A.—A casing pipe. Then you connect a jet of water with the pump and insert a smaller three-quarter-inch pipe on which a steel chisel bit is attached, and as the jet of water is forced into the material, you drill the material, keep turning it.

Q.—Drilling down?

20 A.—Drilling down.

Q.—How many of those drills did you make?

A.—I made eight altogether.

Q.—In the vicinity of the piling ground?

A.—Yes, they are marked on the plan filed by Mr. Farley, Exhibit D-160.

Q.—Would you just show us where you made those drillings? Will you see if these are marked on the original plan which is filed? You are marking on this original the borings to correspond with those which are on the Judge's copy, afterwards?

30 A.—Yes.

Q.—What I want to know, in a general way, is the results you got from those borings?

A.—I found a fairly stiff crust of clay averaging, I would say, from six to ten feet, what I considered very good clay from a bearing standpoint, particularly to sustain the travel and load we intended to put on to that ground.

40 Underneath it I found various depths of from two, and I think, in one case, ten feet, of what I call river sand, but what Mr. Langford as a geologist calls sand and silty sand.

Q.—Mixed with vegetable matter?

A.—I don't think he said vegetable matter. However, I call it river sand.

Q.—Was this a sandy sort of soil?

A.—Well, below all this I struck rock.

Q.—At what distance did you strike rock?

A.—In all of them but No. 1, in which I had trouble with stone.

*In the
Superior Court*
No. 118.
Defendant's
Evidence.
(Supp. Hearing)
Claude E. Ralph,
Examination
Oct. 21st, 1932.
(continued)

When you strike stone with a hand-boring outfit, unless it is a small rock which you can break or drill by hand, you have to move. That is one reason, I might add, why I did not take samples. I did not have time. I had a sampler with me, however. I used the sense of touch and my eyes and my hands, as it come out of the pipe, to note the material, and form my own ideas. I had no thought of analyzing the material.

Q.—I see you have a blue print. Would that assist us in knowing what you found in each hole as you went down?

10 A.—It gives you a pretty good idea.

Q.—Will you produce that blue print as Exhibit D-166?

A.—Yes.

Q.—How can we find the distance down? Is there a scale on that?

A.—The ground elevation is given on all of them and the different deposits of material.

Q.—This investigation having been made, what is the result as shown on Exhibit D-166 in regard to each hole? Are they all there? I see there are seven holes there?

20 A.—The eighth was a test hole I put down.

Q.—They are the results of seven holes?

A.—For the information of several other engineers who had come there, No. 8 hole was close to No. 2 and would be practically the same.

Q.—With that before you, and as a result of your investigations, would you proceed to say what would be your opinion with respect to this reclaiming or rendering useful the land above the level of 318 to such part of it as is submerged?

30 A.—Of course, the idea of the borings was to find the nature of the underlying material, and to see, and form in my own mind an opinion, whether it was strong enough to bear a load. I was satisfied, and I am satisfied, that from this information received here, plus the information I have gleaned from Mr. Langford's evidence, plus information which is much better from the softness standard, that is, the information I gleaned at C.P.R. bridge during construction, that there would be no trouble in filling this piling ground.

40 I might say here, that after we had drilled the No. 8 hole, we went along the track with the pipe and again dropped it into the four other holes, that is, the walls were still standing. The top part of the hole was quite firm. We struck no obstruction, but the sand at the bottom, which I believe to be below the water table as Mr. Langford calls it, and we had to use some pressure, I think, in three of the holes, but the second time I put the pipe into the holes, that is, numbers 2, 5, 6 and 7, we had no difficulty. The walls were still standing. They had not collapsed, except possibly a little at the

In the
Superior Court

No. 118.
Defendant's
Evidence.
(Supp. Hearing)
Claude E. Ralph,
Examination
Oct. 21st, 1932.
(continued)

bottom, and this was from six to twenty-four hours after the borings had been made.

Q.—And after the casings had been removed?

A.—And after the casings had been removed.

Q.—And you were still able to get down to some distance without any cave in?

A.—We went down to rock.

Q.—You went down to rock, and apparently no cave in had taken place at any level down below?

10 A.—Except possibly on the bottom, in the sand. The other three holes had been filled in by people walking. All these borings were on the track, and everybody walked back and forward. I could not get started on them.

Q.—You encountered rock at different levels?

A.—I encountered rock at different levels. They are marked here.

20 Q.—You say twenty-four hours after these holes had been bored and the casings had been taken out, they still appeared to be clean from the point of view of caving in, except for some trifling cave in at the bottom. What significance do you attach to that fact?

A.—That the clay was a good stiff clay crust. However, that is not the only reason I have.

Q.—That its consistency was such as to allow it to stand by itself without the casing?

A.—Yes.

Q.—Twenty-four hours after the hole had been bored?

A.—In one case.

30 Q.—Was that the only reason you had for believing that the bearing capacity would be sufficient?

A.—No, not at all.

40 Naturally when I heard the geological evidence, I had some food for thought. At the same time I was then, and I am still, of the opinion that it will not be a difficult operation to put a fill on that piling ground, basing it on my past experience, having been in charge of engineering work in filling, in water, and, what is much worse, across Muskeg Lake in Western Ontario. Muskeg Lake is filled almost to the surface in some cases twenty or thirty feet with decayed vegetable matter. You cannot walk on it, and I have put fills across it. The compacting of that heavier fill of soupy material, in my experience, was always to drive it up ahead. It would always compact and come up ahead, but not very far. It was a matter of displacement.

Q.—Of course, that muskeg is about the worst condition you can possibly conceive of?

A.—That material was infinitely worse than anything we have here.

*In the
Superior Court*

No. 118.
Defendant's
Evidence.
(Supp. Hearing)
Claude E. Ralph,
Examination
Oct. 21st, 1932.
(continued)

Q.—You did not have to cross at all on the muskeg? I understand there is a definite crust here?

A.—Of course, as an engineer, if I was sent there apart from this case and were asked whether that could be filled, I would look around, and, of course, under that C.P.R. embankment, and it was on the fact that this C.P.R. embankment is standing there I base my opinion, and I think, if I may be allowed, I will try to convince the Court that I am correct.

10 Q.—You are speaking of the C.P.R. embankment through the delta portion?

A.—The C.P.R. embankment which crosses the delta and abuts on Meach Creek itself on both sides, and which is the softest place in the delta, undoubtedly.

If I may point out to the Court on the photograph Exhibit 162

Q.—Is that an aerial photograph?

A.—Yes. The C.P.R. photograph, which, I think, is Exhibit D-108.

20 Q.—That was filed in the first case?

A.—Yes.

I would like to use this C.P.R. bridge plan which shows all the piling.

Q.—If that is necessary to enable you to illustrate, produce it as an exhibit, if it is going to be of assistance?

A.—I will produce it as an exhibit if you wish. I want to use it anyway.

Q.—What is this a plan of?

A.—This is a plan of the C.P.R. bridge.

30 Q.—Built on the delta?

A.—Built on the delta.

Q.—In order to illustrate what you are about to say, you desire to produce as Exhibit D-167 a certain plan, indicating the construction of the Canadian Pacific Railway across this delta?

A.—I have to use this. At least, I do not have to, but it will help me to show why I am sure that this fill up on the piling ground will stay up.

Q.—Well, just go ahead and explain it in your own way?

40 A.—This Exhibit D-162 is an aerial photograph showing the C.P.R. embankment crossing the Meach Creek delta; the C.P.R. bridge plan which I have filed as D-167 is at this point which I mark B. The highway, and the mouth of the creek, is two or three hundred feet closer to the river.

I mark "H.B.", signifying highway bridge.

Now, I wish to show the Court that the embankment over the northerly one hundred feet, and the southerly one hundred feet, which is the heaviest part of the embankment, was superimposed on

In the
Superior Court

No. 118.
Defendant's
Evidence.
(Supp. Hearing)
Claude E. Ralph,
Examination
Oct. 21st, 1932.
(continued)

very, very soft material relative to the rest of the delta, and that despite what Mr. Langford says, the material, while soft, is sufficient to carry that heavy embankment, and there should be no difficulty in much harder material, being considerably further away from the creek bed, in sustaining a comparatively light load over the piling ground in question.

10 This Exhibit D-108 shows a profile of the C.P.R. The profile shows the original ground, the creek itself, with an indefinite sounding, showing the bottom was uncertain when we ran our first preliminary survey.

The red line shows the old embankment at the subgrade 328.0 and grade about 329.5. This scale is twenty feet vertical and 400 feet horizontal.

I put a pencil circle around the portion of the plan to which I am referring.

329 and a half is the present grade. The subgrade is the top of the embankment and the grade is the foot of the rail.

17 I am sorry that this is going to be a little drawn out, but I have to go a little bit further and get two more exhibits.

20 I hope I have made it clear that this bridge is corresponding to this profile, and this Exhibit D-167 are one and the same thing.

Exhibit D-75 is a record of water level taken at point A, that is, just above Cascade Rapids, one mile below the Meach Creek, and I find from these elevations that the water level from April 30th to November 12th, 1926, was 311.8.

The minimum water level on October 15th was 309.47.

30 These are weekly readings and will have to be verified for fluctuations in between by the daily readings at Wakefield, which is about four miles further up the river to show that there was no serious change up or down in the river.

I take from observation that the water level at the mouth of Meach Creek, there is a slight rapid observable here in which there will be a slight rise. I have added three-tenths on account of this little ripple shown on the photograph Exhibit D-162, to get an average elevation of about 312.1 at the mouth of the creek, and a minimum of between nine and nine point eight, which is the same elevation at the elevation at the railway bridge in question.

40 This shows me that during that six and a half month period the soil underlying these sections of embankment was exposed to water continuously from the Gatineau River itself, and if we take the Exhibit D-167, which I am going to use more fully, the water under the bridge is about 312 and a half.

If the Court will bear with me, I wish to call the Court's attention to the fact that on Exhibit D-108 the original ground level adjacent to the C.P.R. Crossing of Meach Creek is shown about eleva-

In the
Superior Court

No. 118.
Defendant's
Evidence.
(Supp. Hearing)
Claude E. Ralph,
Examination
Oct. 21st, 1932.
(continued)

tion 314 for one hundred feet on each side of the creek. Each of these sections are almost one hundred feet horizontal.

I verify this elevation by the photograph Exhibit D-162 again, where we see the water on the embankment, and we know that this water is approximately 315, and that verifies these figures fairly closely. The heaviest piece of embankment there is from the bridge corresponds with this one hundred feet on both sides of the bridge.

10 I am trying to show you that the average water elevation for the six and a half months of 1926 was, at least, 312, and if I use the creek bed itself, about 313, which is just about a foot less than the original ground elevation, and that any infiltration which Mr. Langford speaks of, and which I have no doubt is going on in geological times, as I think he mentioned—I think he said anywhere from a year and a half to one hundred, and I think he could just as well have said a thousand—I will quote some of Mr. Langford's evidence:

Mr. Langford states at page 54, beginning at line 11:

20 "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".

The water table, I take it, at the Meach Creek bridge as shown on D-167 and verified by the evidence I have given from water elevations at point A and Wakefield, would be normally about 312 and a half, say 312 or 315.

30 I do not say that any of these elevations are exactly correct, because Mr. Langford said that extreme high water would have no bearing. Then, I presume it is logical to say that extreme low would have no bearing.

Now, I quote further: Mr. Langford states at page 434, line 7: "We find again dry yellow clay becoming water soaked from the adjacent wet layers underneath". That is from this 312 or 313.

40 Then, steady infiltration has proceeded across, adjacent one hundred adjoining feet of original railway ground, and at the same time worked upward, and that not only since the water was raised in the Gatineau, but for the last ten thousand years, that is, the softening processes, the seepage effect; in fact, we are using it in this case, we are using three feet and say it would affect it up to 316, and would have been affected long before any of this embankment were to be affected.

BY THE COURT:

Q.—I am waiting for your conclusion?

A.—My conclusion is that the original ground under this heavy,

*In the
Superior Court*

No. 118.
Defendant's
Evidence.
(Supp. Hearing)
Claude E. Ralph,
Examination
Oct. 21st, 1932.
(continued)

approximately fifteen feet fill adjoining the bridge, has been constantly infiltrated for a thousand years, taking Mr. Langford's own evidence, and that was the heaviest part of the embankment.

BY MR. SCOTT:

Q.—Do you also mean under water?

A.—Absolutely.

10 Q.—It has been under water?

A.—Under water, or affected by water.

BY MR. KER:

Q.—As a natural condition?

A.—Yes.

Q.—And that the embankment has still been built up on top of that?

A.—And that the embankment has still been built up on that.

20 BY THE COURT:

Q.—And it is bearing the heavy weight of the bridge?

A.—Yes, and of the embankment.

BY THE COURT:

Q.—And of the trains?

30 A.—Yes, and of the trains. I am going into that further, my Lord, presently.

I am not saying this to question any of Mr. Langford's statements, I think they are geologically all correct. In fact, his evidence was quite an education to me, but what I am questioning is, his ideas of the bearing strength of material. Clay or sand, or any material will sustain a very heavy load if confined. In fact, I think Mr. Langford also stated that.

I have attempted to show that the softening of the material by the water has been going on for a thousand years, and is still bearing pressure.

40 BY THE COURT:

Q.—And is still good?

A.—Is good. I will try and prove it from plan D-167, and from my knowledge, that if the softest place in the delta, which, as I gather from Mr. Langford's evidence, is the centre of Meach Creek, is capable of sustaining a much heavier load than is required on the

*In the
Superior Court*

No. 118.
Defendant's
Evidence.
(Supp. Hearing)
Claude E. Ralph,
Examination
Oct. 21st, 1932.
(continued)

lumber yard, then there can be no possible doubt but that the lumber yard can be filled.

I know from actual experience when we rebuilt the railroad, on which I was resident engineer representing the Company, and on the highway which I built myself, which was under my direct charge, that the material directly underlying the centre of the bridge, that is, in the bed of the creek itself, was very, very soft.

10 BY THE COURT:

Q.—Between those posts?

A.—Those are piles.

BY THE COURT:

Q.—Between piles two and three?

20 A.—Of course, we had to sound the whole of it, and as I pointed out on the profile itself, that it was indefinite and it was not determined until those piles were driven, those had to be put in when the piling was put in. Four panels were driven similar to the pile bents 1, 2, 3 and 4 on D-167. These are shown in the plan and I will mark them 1, 2, 3 and 4.

30 The lower figure is what we call elevation. The top is the plan, looking sideways and looking down, and the figures to the right are detail. These piles are forty-five feet long, and did not strike any rock. That is the part of the structure which bears the load. On each bank we had to build retaining abutments, but the abutment was built to hold back the heavy fill. Those abutments were built so that the filling would not fall down into the water, but not to sustain the load itself. When you are filling along you cannot stop vertically. The material will fall into the river.

BY THE COURT:

Q.—You will have to shore it off into an angle or hole?

A.—Yes, exactly.

40 Now I wish to point out on the plans that in the front of the abutment no close piling was driven. Close piling was driven at either side, and driven only twenty-five feet, but not to refusal as the long bridge-bearing piles were. It shows here twenty-four average long piles, forty-five feet, that is, four times bents 1, 2, 3 and 4, 41 average length of pile, 25 feet, that is, they were driven into the side material and a crib built up on top of that to hold up the embankment.

BY MR. KER:

*In the
Superior Court*

No. 118.
Defendant's
Evidence.
(Supp. Hearing)
Claude E. Ralph,
Examination
Oct. 21st, 1932.
(continued)

Q.—That is where the bridge takes off?

A.—Yes, but directly in the centre of the railway embankment at the end of the bridge, no piles were driven for any other purpose but to sustain the bridge, that is, these piles shown here and marked pile bents 1, 2, 3 and 4.

If the material in that embankment in the ground below the embankment had reached this soft consistency, which I say has been going on in this case for ten thousand years, then the crust would have come out through those piles, because I know that the material
10 for thirty feet in the creek is as soft as any in the delta.

BY THE COURT:

Q.—I am waiting for your conclusion. From what you have stated, your conclusion is that this ground is strong enough

A.—To hold the much lighter embankment. It will bear a much lighter load than this very soft material will a heavier load.

20 BY MR. KER:

Q.—In other words, the C.P.R. Railway is asking a much worse piece of foundation to bear a much heavier load than you are asking the piling ground?

A.—If you can imagine, my Lord, one of these pile bents 1, 2, 3 and 4 placed against this abutment, you can see that all the material it would hold back would be negligible.

BY MR. KER:

30

Q.—Having arrived at the conclusion that the bearing capacity at the piling ground is better, in your opinion, than that upon which the Canadian Pacific Railway right-of-way is built—and I take it from your explanation that you are convinced that it has a bearing capacity sufficient to pile upon and raise the ground upon, will you be good enough to indicate what your plan of raising would include, and how it would be carried out, and what the cost would be?

A.—It would be quite a simple operation as I see it. It would be just a matter of teams of horses. It could be done in the winter
40 time quite easily. We did the same thing under very adverse conditions along the road shown in the photographic Exhibit D-162. We hauled about thirty-five thousand yards and built up that road as shown on the photograph, for 65 cents a yard, and under traffic, kept traffic going.

Q.—Is it possible, therefore, in your opinion, to so restore a building area of piling ground which existed before the water was raised from the elevation 318?

*In the
Superior Court*
No. 118.
Defendant's
Evidence.
(Supp. Hearing)
Claude E. Ralph,
Examination
Oct. 21st, 1932.
(continued)

A.—I am sure of it. I am as sure of it as any engineer could be. I am on my oath, and I cannot take my oath that it is perfect, but I am reasonably—no, I won't use the word reasonably—I am sure that a good piling ground can be built up there.

Q.—Quite as good as it was before?

A.—Well, I will say it would be better. It would be more level.

Q.—It would be perfectly level?

A.—Yes.

10 Q.—And the spur line of the C.P.R. would be restored the same way as any spur line of railway would be filled?

A.—In this particular case it would be merely laid on top of the gravel fill.

Q.—It could be restored?

A.—Oh, undoubtedly.

Q.—That would include all of the portion of piling ground affected above the level 318 up to level 324.5?

A.—Well, 324 and a half is what I use, three feet seepage.

Q.—324.5 from 321.5?

20 BY THE COURT:

Q.—From 318?

A.—To 324.5.

Mr. Ker: That is the portion coloured in red on the plan.

BY MR. KER:

30 Q.—That is what you are speaking of, the portion coloured red on the plan?

A.—Yes, the portion edged in red on the D-160.

Q.—Have you prepared any detailed estimate of the cost of that?

A.—Yes, I have.

Q.—Would you give the Court the figures item by item of your estimate?

A.—Piling ground estimate, 9,200 yards of filling material at 70 cents, \$6,440.

40 Raising 700 lineal feet of spur line to elevation 324.5. That is merely the act of raising. The filling material is included already.

Dismantling of the rails, \$400.

Raising end of piling tramway and moving timber poles temporarily while work is going on, \$500.

Raising loading platforms, \$200.

Rip rap, 300 yards at \$3.

Q.—What is rip rap?

*In the
Superior Court*

No. 118.
Defendant's
Evidence.
(Supp. Hearing)
Claude E. Ralph,
Examination
Oct. 21st, 1932.
(continued)

A.—That is rock broken along the edge.

Q.—The water's edge?

A.—Yes.

BY THE COURT:

Q.—Rip rap is also called rubble?

A.—It is of the same nature. Rubble will do. Rip rap is any kind of broken rock protection.

10

BY THE COURT:

Q.—How much is that?

A.—\$900; a total of \$8,440.

There are also two items apart from the piling ground itself which would have to be slightly adjusted to meet the elevation 324.5.

BY THE COURT:

20

Q.—Just show it on the plan?

A.—There is a small section of the road which is not very high near the power house, where I would put 150 yards of material at 70 cents, \$105.

BY THE COURT:

Q.—And that is to be added to the \$8,440?

A.—Yes, and there is another small section on parcel D. There is a little raising to be done there of about a foot. I add here \$100, making a total of \$8,645.

30

BY MR. KER:

Q.—That is at the little bridge that crosses over the creek?

A.—Yes.

BY THE COURT:

Q.—Crossing over parcel D?

40

A.—Yes.

BY THE COURT:

Q.—What is the width of the C.P.R. road?

A.—The embankment?

BY THE COURT:

*In the
Superior Court*

No. 118.
Defendant's
Evidence.
(Supp. Hearing)
Claude E. Ralph,
Examination
Oct. 21st, 1932.
(continued)

Q.—The top on which the rails are placed, and the whole track?

A.—The embankment, all but a couple of feet adjoining that delta is unusually wide. It is about 26 feet. Adjoining the bridge I think it is only about 18, which is more correct.

10 I heard Mr. Langford wondering what it was. I knew what it was. The rip rap, that is, the rock protection which we placed all the way along the C.P.R. embankment where it was exposed to water came from a rock borrow pit below Cascades, and something went wrong with the shovel and pit, and when they reached a point about
200 feet north of the Meach Creek bridge they could not get any more, and the season was getting very short and, of course, earth work in frost is rather expensive, particularly clay, and the kind of work used in railroading, and they decided to put the five feet of extra embankment on both sides of that fill to protect it against wave action, which would take the place of the rock rip rap.

BY THE COURT:

20 Q.—That would be the top of that road you say was 26 feet?
A.—26 feet.

BY THE COURT:

Q.—At the bridge it was about 18 feet?

A.—Yes, because they widened it. Normally it was 16 feet wide, five feet extra on each side. It is ten feet today.

BY THE COURT:

30 Q.—And how high is that embankment on the whole road, from the ordinary level in this delta?

A.—The average height is shown on this profile. The first hundred feet north of the bridge is fifteen feet high. The average as shown on the exhibit, if I understand your question correctly, I would say would average possibly ten or twelve feet. The actual figures are on this profile.

BY THE COURT:

40 Q.—What would be the width of the same road, but at the bottom of the embankment?

A.—The slope of the earth embankment on railway work is one and a half to one, that is, three out and two up.

BY THE COURT:

*In the
Superior Court*

No. 118.
Defendant's
Evidence.
(Supp. Hearing)
Claude E. Ralph,
Examination
Oct. 21st, 1932.
(continued)

Q.—Would the delta be eighteen feet wide at the top?

A.—At the bridge?

BY THE COURT:

Q.—From the bridge, in the delta?

A.—The first hundred feet is about eighteen feet and then it widens to 20, to 21, merely being put on to protect it against wave action. About ten feet, I think, would be the average bottom width,
10 of 56 feet wide.

BY THE COURT:

Q.—I am not referring to the piling ground; would not that also be required to keep the proper height?

A.—No. My experience in that kind of material was that the toe was shoved ahead, and I have allowed extra yardage for the slope at the front of it. There would be no slope at the back.

BY THE COURT:
20

Q.—On the southern side?

A.—Yes.

BY THE COURT:

Q.—On the creek side?

A.—Yes.

BY THE COURT:
30

Q.—You have allowed a slope there?

A.—I have allowed a slope in that yardage.

BY MR. KER:

Q.—What would your average depth of fill be on that land as compared with twelve or fifteen feet on the other?

A.—The average depth would be about three and a quarter. At the eighteen-foot contour there would be six and a half feet running up to nothing.

40 Q.—It would be six and a half feet running up to nothing at 324.5?

A.—Yes.

Q.—That would give you an average of about how much?

A.—I would take three and a half off six and a half—three and a quarter.

(And further for the present deponent saith not.)

In the
Superior Court

No. 118.
Defendant's
Evidence.
(Supp. Hearing)
Claude E. Ralph,
Examination
Oct. 24th, 1932.
(continued)

BY MR KER:

Q.—At the adjournment on Friday, we were discussing the question of practicability and cost of filling in the acreage of piling ground, something in the nature of two acres affected by the water at the elevation of 321.5, and further affected up to 324.5. I think in the last portion of your evidence you gave a verbal estimate of the various items of cost of doing that work. Would you be able to furnish us with a written statement of those costs giving the particulars. What was the total cost?

A.—\$8,645, plus ten per cent for contingencies of \$864.50.

Q.—You have added ten per cent on the total charge, \$864.50 for contingencies?

A.—Yes. I am not sure whether we put that in.

Q.—Will you file this as Exhibit D-168?

A.—Yes.

Q.—That estimate calls for filling with gravel, is that correct?

A.—Yes.

Q.—In your opinion, gravel is a proper material to make that fill with?

A.—I think it is the best possible material and it happens to be available there.

Q.—In order to have the matter clearly in my mind, I would just like if you would briefly summarize the evidence you gave with respect to the conditions existing on the C.P.R. at the creek, and in that portion of the delta adjoining the creek for one hundred feet north and south, that is, a bridge goes over the creek, and the north and south right-of-way is laid upon the bed or delta portion immediately adjacent to the creek: would you be good enough, as briefly as possible, to summarize and give us the conclusions you arrived at with respect to that?

A.—You mean a summation of my evidence?

Q.—Yes.

A.—The C.P.R. embankment crosses the whole delta including the creek itself, and I took for my purpose the one hundred feet of embankment directly north of the creek, and adjoining the creek. I took this because the original ground underneath it is shown on the C.P.R. profile Exhibit D-108 to be about elevation 313.7 to 314, which is the lowest original ground, that is, the ground under this one hundred feet section, over which the C.P.R. embankment passes, and on this one hundred feet section the heaviest part of the embankment stands, that is, this ground is carrying the heaviest dead load.

On this original ground a seven foot embankment has stood for forty years, that is, when the original railroad was built, your Lordship, in the early nineties, and superimposed on this since the raising

*In the
Superior Court*

No. 118.
Defendant's
Evidence.
(Supp. Hearing)
Claude E. Ralph,
Examination
Oct. 24th, 1932.
(continued)

of the railroad, and including the seven feet, a fifteen foot embankment approximately has stood for five and a half years.

The water table at this point, and as defined by Mr. Langford on page 454 starting with line 11, I have shown from records already on file to be approximately between elevation 312 and 313. This water table extends into the ground, according to Mr. Langford's definition, at the same elevation, therefore, I maintain that this ground of elevation 313.7 to 314 has been infiltrated for thousands of years.

10 On top of this we have the three feet seepage affected on the land, and which is claimed by the plaintiff in this case for his piling ground, which would soften the affected ground to the added three feet above this water table, which would bring it to the elevation of 315 to 316, which is above the elevation of the original ground. Therefore I maintain that this ground though softened for thousands of years, is proved by fact to be strong enough to bear this heavy embankment which is more than twice as heavy as the weight that would be imposed on the piling ground in question, and of which I
20 have satisfied myself by actual borings across the center, and have supplemented this by the deposition of Mr. Langford, as to the nature of the material which he got along the outside edge of the piling ground.

My conclusion is, that the large stronger ground underlying the piling ground, will sustain this lighter load, than the ground underlying a 100 foot of C.P.R. embankment will sustain the heavier load.

I also note from actual experience in 1926 when the railroad work was being done, on which I was resident engineer, representing the Gatineau Power Company, that the material in the creek bed
30 directly adjoining the one hundred feet of embankment in question was extremely soft, and I also note that this is borne out by the long piles that had to be driven to support the bridge, and I conclude by stating I am positively of the opinion that the ground underneath this one hundred feet of C.P.R. embankment is much weaker than the ground underneath the piling ground.

I might state further, that from my knowledge of the crossing, and the material adjacent to the crossing of the delta at the creek, that even if the C.P.R. embankment did settle, I would still be of the
40 opinion that that material in the piling ground would hold that load.

Q.—You know of no settling in the C.P.R. right-of-way?

A.—No.

Q.—Before we leave that, there is one other point I would like you to explain: what would be the downward bearing load per square foot of the C.P.R. right-of-way?

I understood you to say it was approximately sixteen feet high, built on the delta?

*In the
Superior Court*
No. 118.
Defendant's
Evidence.
(Supp. Hearing)
Claude E. Ralph,
Examination
Oct. 24th, 1932.
(continued)

A.—Built on the delta.

Q.—What weight therefore, is that section of the delta under the C.P.R. supporting, per square foot approximately?

Mr. Scott: You mean on the creek?

Witness: You mean under the one hundred foot section which I have taken as an example?

10 Mr. Ker: Yes.

BY THE COURT:

Q.—That would be near the bridge?

A.—Adjoining the bridge, the section in question.

20 Sand or gravel weighs from 90 to 110 lbs. per cubic foot. Average this at one hundred pounds per cubic foot, there would be in the center where the foot and a half of ballast is superimposed on the embankment, 1,500 pounds to the square foot dead load.

On top of this we have the severe vibration set up whenever a train passes. Anybody who has ever stood beside a railway track when a train goes by, will know what I mean, which adds to the strain put upon this load.

Q.—So that you would consider the load without the trains, but with the fill alone approximately 1,500 pounds to the square foot at the base?

A.—Yes.

30 Q.—Would you say, what, in your opinion, it would be necessary for the piling ground to carry per foot after it was filled in the way you speak of?

A.—Well, the absolute maximum would be at the extreme outside edge, that is, from 318 to 324 and a half, is six and a half feet, at the same ratio that the weight would be 650 pounds to the square foot.

Q.—Is that carrying it out from six feet to nothing?

A.—No, that is not the average. That is the extreme. The average would be something over 300 pounds to the foot.

40 Q.—You are speaking of that as being the very outward edge nearest the water?

A.—That is the extreme.

Q.—The square foot edging the water, and they would have to carry about 600 pounds because there would be six feet of gravel?

A.—650 would be the extreme. The average would be from three to zero. There would, of course, be the added load of lumber, which, of course, is not a concentrated load. It is a distributed load.

*In the
Superior Court*

No. 118.
Defendant's
Evidence.
(Supp. Hearing)
Claude E. Ralph,
Examination
Oct. 24th, 1932.
(continued)

I have not used the weight of the locomotives or trains on the embankment, but that one cancels the other.

Q.—In the Plaintiff's evidence some suggestion is made that practically the entire piling ground would be rendered useless at the 321.5 level: what, from your personal knowledge would you say as to that?

A.—The entire piling ground is certainly not destroyed by a water elevation of 321.5.

10 Q.—Have you any photographs which would indicate where the piling is being done?

A.—Yes, I have.

Q.—Would you produce it as Exhibit D-169, and state what it is?

A.—Yes.

Q.—Will you refer to the plan D-160 and relate the photograph which you produce as D-169 to the plan D-160?

20 A.—This photograph D-169 is taken from the corner of the Power House looking northwesterly. I shall mark an arrow on the plan towards the piling ground. I set the rod in the creek bed with the bottom at elevation 321.5, the rod in the man's hand as shown in the photograph. The bottom is adjusted to elevation 321.5 in the natural bed of Meach Creek; therefore, it is obvious that maximum elevation to which the company can raise the water would be to the base of the rod. It is also obvious that from the base of the rod up the creek no more damage can be done than has been done already by the natural waters of the creek itself.

Q.—In other words, this 321.5 level has been there as long as the creek has been there?

30 A.—This 321.5 level has been there as long as the creek has been there.

All that can happen, your Lordship, is that the water shown in the foreground of the photograph will level out to the bottom of the rod, and that nothing more than has happened can happen to the ground above it.

Q.—Does that indicate that by this 321.5 level, with the water always having been at that level, it will flow down.

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

40 BY MR. KER:

Q.—What does that photograph indicate?

BY MR. SCOTT:

Q.—When was the photograph taken?

*In the
Superior Court*
No. 118.
Defendant's
Evidence.
(Supp. Hearing)
Claude E. Ralph,
Examination
Oct. 24th, 1932.
(continued)

A.—On the 8th October, 1932. I stood at the corner of the power house with my instrument set, looking at this load. I am looking at the piling ground, and the photograph was taken at the same time. As far as the piling ground was concerned, I was certainly looking at it.

BY MR. KER:

10 Q.—Have you another photograph which would indicate perhaps a larger view, and if so, would you produce it as Exhibit D-170, indicating the power house and all in relation to this photograph.

BY MR. SCOTT:

Q.—Taken on the same day?

A.—No, this photograph D-170 was taken a year ago. This was taken on September 19th, 1931.

20 BY MR. KER:

Q.—Would you point out on that photograph where the power house is, and where the spur line is, where the trestle is, where the piling is being done?

A.—Yes, I will. I think I had better mention first that this photograph is not produced to show that we did not flood this lower ground.

Q.—It is not produced for that purpose?

30 A.—It is not produced for that purpose. The water happened to be low that day.

BY MR. SCOTT:

Q.—The lower ground to the elevation of the track?

A.—Yes. As a matter of fact, the water has been over this track on several occasions. These points mark some of my borings, which is 320.0 at 2, is the ground elevation at that point. 321.1 under 3 which means my boring No. 3 was the ground elevation at that point, and 320.2 is the ground elevation at boring 4.

40 BY MR. KER:

Q.—What was the level at that date?

A.—It was about 317 and three-quarters.

Q.—Nearly 318?

A.—Yes.

Q.—Where is the power house located here?

*In the
Superior Court*
No. 118.
Defendant's
Evidence.
(Supp. Hearing)
Claude E. Ralph,
Examination
Oct. 24th, 1932.
(continued)

A.—That white building shown on the left side of the photograph is the power house. The photograph was taken from the corner of the power house looking across the creek towards the lumber pile.

BY MR. SCOTT:

Q.—I think you are wrong, Mr. Ralph?

10 A.—If I am wrong I will correct myself. I have nothing to conceal.

BY MR. KER:

Q.—Exhibit D-169 was taken at the power house?

A.—Well, I wish to show where this photograph D-169 is taken from. I want to show D-169 and D-170 were taken from the corner of the power house towards the lumber piles in the north west and correspond with the arrow I have marked on Exhibit D-160?

20 Q.—You can see this trestle, and how far it ends out. Am I right in assuming the trestle is for the purpose of making piles of lumber?

A.—The trestle is a tramway on which to carry the lumber.

Q.—Where does this trestle that we spoke of in the evidence end?

A.—The trestle at the point marked T on this photograph D-170.

Q.—Mark it "Trestle ends".

A.—Yes, I do so.

30 Q.—The siding coming from the far part of the picture goes upward and runs to the left of this trestle. Up to the mill, is that correct?

A.—Well, as shown on Exhibit D-160.

Q.—What would the end of the trestle indicate insofar as the question of piling lumber was concerned?

A.—I do not think I understand your question, Mr. Ker.

Q.—Would the normal end of the trestle to any extent indicate in that photograph where the end of the piling ground would be?

A.—It means they could not use the trestle for piling lumber any further than the end.

40 Q.—Where was this road, which we speak of, which runs across D-160, from the Mulvihill Road cross in front of the power house?

A.—The opening is shown in the photograph D-170 by an arrow marked "Road", and continues behind the cord-wood pile shown in the photograph to the bridge near the power house, which is clearly visible on the photograph.

Q.—I just wanted to get the relation of the lumber piles to the road. To your knowledge, what has been the piling situation in so

*In the
Superior Court*
No. 118.
Defendant's
Evidence.
(Supp. Hearing)
Claude E. Ralph,
Examination
Oct. 24th, 1932.
(continued)

far as any relation to this road and the piling up done on both sides of this road, or above it, or below it, or where is the greatest extent of the piling up done?

A.—To my knowledge, the piling of lumber in Mr. Cross' lumber yard is just what the photograph shows. That lumber was piled on both sides of the tramway and cord-wood on the other section, on the lower section.

Q.—What is this platform?

10 A.—That is a platform to use in loading. The cars which stand along here.

BY THE COURT:

Q.—He would draw the lumber up to the railway on this platform, to the west of the railway?

A.—Yes.

BY MR. KER:

20 Q.—Do those photographs which you have produced indicate that a considerable amount of piling

Mr. Scott: Ask him what they indicate.

BY MR. KER:

Q.—What do those photographs indicate insofar as the question of piling at about the 321.5 level?

30 A.—To me they show entirely that there is certainly a considerable portion of the piling ground that cannot possibly be more affected than it is affected.

Q.—And under natural conditions?

A.—And under natural conditions.

Q.—Have you another photograph which you would like to produce?

A.—Yes. Here is a photograph taken at the same time from a different angle looking up the creek.

Q.—Would you produce that as Exhibit D-171?

40 A.—Yes.

Q.—Would you just explain Exhibit D-171 and where it would be taken from?

A.—This Exhibit D-171 is taken from the same point as D-169 looking straight up.

BY THE COURT:

*In the
Superior Court*

No. 118.
Defendant's
Evidence.
(Supp. Hearing)
Claude E. Ralph,
Examination
Oct. 24th, 1932.
(continued)

Q.—It shows the mill?

A.—It shows the mill.

BY MR. KER:

Q.—And it also shows the man with the rod?

A.—In the same position at a different angle.

Q.—At the 321.5 level?

A.—At exactly the same spot.

10

BY THE COURT:

Q.—What is that (indicating)?

A.—That is Mr. Cross' penstock. The penstock is the pipe through which the water runs to the power house.

BY MR. KER:

Q.—Would you point that out on the plan?

20

A.—The penstock runs towards the mill, into the power house, shown by the blue line.

Q.—That is the pipe we see on D-171?

A.—It is a part of the penstock shown as the blue line on the plan D-160. I will draw an arrow and mark it " Penstock " on D-160.

BY THE COURT:

30 Q.—This lumber you show on the different photographs that have been filed, D-169, D-170 and D-171, was not piled any where near the piling ground marked here by this red line?

A.—No, it is all southwest of the piling ground marked in red.

BY THE COURT:

Q.—Would it be where it is marked " Piling ground lumber " ?

40 A.—Yes. I will draw an approximate circle around what I think the photograph indicates in D-169. I will draw a circle on plan D-160 indicating where I think the lumber is approximately shown in the photograph D-169.

BY THE COURT:

Q.—It goes about as far as the saw mill?

A.—It does not show the saw mill.

BY THE COURT:

*In the
Superior Court*
No. 118.
Defendant's
Evidence.
(Supp. Hearing)
Claude E. Ralph,
Examination
Oct. 24th, 1932.
(continued)

Q.—The saw mill is somewhere about that arrow indicates?
A.—Yes.

BY THE COURT:

Q.—The arrow indicates the saw mill?
A.—Yes.

10 BY THE COURT:

Q.—It is a square indicated by an arrow?
A.—Yes.

BY THE COURT:

Q.—So the part where the lumber is now piled would be north of that?

20 A.—I shall have to correct the circle I have drawn. I know the limits of the photograph go through lumber piles on each end, and should be marked by a straight line.

BY THE COURT:

Q.—The square that you now indicate on the plan would be where the lumber stands?

30 A.—Where the lumber stands as shown on D-169. I eliminate that circle. The big photograph is more to show my borings. The photograph D-170 is a photograph of practically the whole lumber yard as far as lumber is concerned.

BY MR. CHISHOLM:

Q.—On that particular day?

A.—More than that particular day.

Q.—The photograph only shows that particular day?

A.—The photograph only shows that particular day.

40 BY THE COURT:

Q.—Is there any lumber between that square that you have drawn on plan D-160 and the piling ground marked in red?

A.—There is lumber down to the end of the tramway, which is the point I mark with an arrow, "End of tramway". That is the small section from the end of the trestle to where the red markings cross it, would include a section where lumber was actually piled and is actually piled on the day this photograph D-170 was taken.

*In the
Superior Court*

No. 118.
Defendant's
Evidence.
(Supp. Hearing)
Claude E. Ralph,
Examination
Oct. 24th, 1932.
(continued)

BY THE COURT:

Q.—So you think the arrow should be a little higher?

A.—The arrow shows the end of the tramway, which shows the end where lumber was actually piled when the photograph D-170 was taken.

BY THE COURT:

10 Q.—Now, you are sure of that? You are sure of what you have stated? You swear to what you have just stated?

A.—Absolutely, my Lord, to the best of my knowledge.

BY MR. KER:

Q.—I understand the C.P.R. does not take locomotives in on to this siding now, is that correct?

A.—That is correct.

20 Q.—That the locomotives do not go in?

A.—There is a sign prohibiting locomotives from going over the commercial spur on Mr. Cross' property.

Q.—What about cars?

A.—I have seen cars on the spur certainly up until last fall. I am not quite sure about last spring.

Q.—You have seen C.P.R. cars without the locomotives on that siding; what dates would you say?

A.—If you will give me the photograph D-170 which was taken in September, 1931

30

BY THE COURT:

Q.—What are the actual words that are on that sign?

A.—“Locomotives stop here”.

BY THE COURT:

Q.—Is that all?

40 A.—“Locomotives stop here”. The gist of the sign, your Lordship, is that locomotives must not go on this spur.

BY MR. KER:

Q.—How about cars? Have you seen cars on it?

A.—Yes, I have seen cars, certainly within the year—I have seen it loaded with cars.

*In the
Superior Court*

No. 118.
Defendant's
Evidence.
(Supp. Hearing)
Claude E. Ralph,
Examination
Oct. 24th, 1932.
(continued)

BY THE COURT:

Q.—When you say “ spur ” do you mean the spur starts from the main line of the Canadian Pacific Railway to the mill?

A.—Yes, my Lord, to the mill.

BY MR. KER:

10 Q.—Leaving this piling ground for the moment, I would ask you to look at the building known as the hotel, that is just opposite, on parcel D, on the plan D-160, and to say whether you have examined that hotel, and if so, what conclusion you have arrived at with respect to any possible effect which the water at 321.5 might have upon it?

A.—The hotel is marked “ Group 31 ” on plan D-160.

20 I examined the building, including the cellar, on several occasions, once last April and once within the last month, and once before that; I don't remember just when. I was with Mr. Farley in April, and he took levels. He did the actual levelling to ascertain the elevation of the cellar which he found to be in the lowest spot, 324.9.

This elevation is approximately five feet or between four and a half and five feet above the highest elevation that the water has been in the Gatineau, owing to the company's operations. We found that the cellar

BY THE COURT:

Q.—That is, the cellar of the hotel?

30 A.—The cellar of the hotel—at least, not only softening, there were six inches of water in April and six inches of water last month, which is evidently not due to seepage. Seepage means a dampening, a softening, not actual flowing; therefore, it could not have been from seepage. I asked the proprietor, Mr. Rawson

BY MR. KER:

Q.—The tenant?

40 A.—Well, he may have been the tenant, but he was also proprietor of that hotel at that time. I asked him if he knew where there was any outlet pipe, and he said no.

Mr. Scott: I object to this evidence as hearsay.

Witness: I will leave it out. I endeavoured to find if there was any outlet pipe draining the cellar, both in the cellar and along the banks of the river, and could find none.

*In the
Superior Court*

No. 118.
Defendant's
Evidence.
(Supp. Hearing)
Claude E. Ralph,
Examination
Oct. 24th, 1932.
(continued)

BY THE COURT:

Q.—You could not find any?

A.—I could not find any, and I could not find anyone who could tell me where it was, or who could tell me if one existed.

BY MR. KER:

10 Q.—And there was six inches of water or six inches of ice, or ice and water in the cellar at that time?

A.—There was ice in the spring, and water in the fall.

Q.—How do you account for that?

A.—Surface water. That is the only way it can be accounted for.

Q.—Presuming for the moment that there is not a drain, is it possible to construct one and put it in and drain that off so the water would not lodge in the cellar?

20 A.—Of course, it is quite simple. You have a five-foot drop between the bottom of the cellar and the river. It is a very simple operation. The elevation of the cellar is 324.9, almost 325. The elevation of the river is at a maximum 320.5. You have a four and a half foot drop in a distance from the building to the river in about fifty feet.

BY THE COURT:

Q.—What is the height?

A.—320.5. That is the maximum.

30 BY MR. KER:

Q.—And with the right to put the water, if possible, at 321.5 there would still be how much clearance under the lowest part of the cellar?

A.—You would still have a four and a half foot drop, which is a nine per cent grade, which is a very steep grade. It would be very simple to drain that, a very simple matter.

Q.—Have you made any estimate of the cost of putting that matter right from a drainage point of view?

40 A.—The actual drain itself with a tile pipe would not cost more than

BY THE COURT:

Q.—Did you go in the cellar and search for the outlet?

A.—Yes, twice.

*In the
Superior Court*

No. 118.
Defendant's
Evidence.
(Supp. Hearing)
Claude E. Ralph,
Examination
Oct. 24th, 1932.
(continued)

BY MR. KER:

Q.—With Mr. Farley also?

A.—On one occasion with Mr. Farley, and on one occasion myself, alone.

Q.—There was this water in the cellar?

A.—There was this water in the cellar, a very unpleasant job the second time.

10 BY THE COURT:

Q.—In what material was the foundation?

A.—Clay.

BY THE COURT:

Q.—The foundation?

A.—The foundation itself was stone, stone foundation.

20 BY THE COURT:

Q.—Did it go down deep in the clay?

A.—I could not tell, my Lord, how deep it went. The average foundation would be possibly a foot in the subsoil.

BY MR. KER:

30 Q.—You do not mean from the surface elevation, you mean down below the cellar level?

A.—Yes. I think that is what his Lordship means. The actual drain would not cost more than \$100. It should not cost more than \$100.

Q.—With a drain put in, or drainage made for that cellar, is there any reason why it should be otherwise affected with the water elevation at 321.5?

A.—No.

40 Q.—The plaintiff has, in his declaration (I think it is Exhibit P-65) made a claim against the Company, as part of the whole lumber business which he asks the Company to pay for; he has made claims for a couple of storage dams in lakes above the Meach Creek pond, and in his declaration he places a value on those of \$8,000. In his Particulars he reduces the cost of those to \$2,300. Would you state whether you have personally made any inspection of the Carmen Lake and Spring Lake Dams, and will you indicate from your experience what the replacement cost of those two dams would be?

A.—I inspected both of those dams.

*In the
Superior Court*
No. 118.
Defendant's
Evidence.
(Supp. Hearing)
Claude E. Ralph,
Examination
Oct. 24th, 1932.
(continued)

Q.—This is under reserve of our pleadings to the effect that these are too remote to have any concern with us, but I merely wanted to ask you the question under that reserve?

A.—I inspected both of these dams, and measured them for quantities, and made an estimate of costs. I can show the Court where they are.

10 Mr. Ker: That item I speak of, my Lord, will be taken into consideration in the plaintiff's declaration. It is taken into consideration in this question of the lumber business of \$265,000 and the accounts making that up are produced, one as Exhibit D-166, which your Lordship may remember is for a lot of houses and D-165 showed these storage dams.

His Lordship: Under what allegation of your Supplementary Declaration?

Mr. Ker: Paragraph 27 of the Supplementary Declaration.

20 Mr. Scott: As supplemented by the Particulars which were filed.

Witness: I measured up both of the dams, and made an estimate of replacement costs.

BY THE COURT:

Q.—What is the amount?

A.—Carmen Lake Dam—it has two names.

30 BY MR. KER:

Q.—It is called the Carmen Lake Dam?

A.—Carmen Lake, \$812.57, and the Spring Lake Dam, which is a log crib dam on a very small pond, \$390.04.

BY THE COURT:

Q.—It is \$1,202.61 altogether?

40 A.—Yes, my Lord. Those dams are located at least one hundred feet above the Gatineau River.

BY MR. KER:

Q.—There has been some question of the possibility of dampness on the piling ground under natural conditions coming from high levels. Can you say anything as to what you have personally seen with regard to water coming off the piling ground?

In the
Superior Court

No. 118.
Defendant's
Evidence.
(Supp. Hearing)
Claude E. Ralph,
Examination
Oct. 24th, 1932.
(continued)

Witness: You mean the upper part of the piling ground?

Counsel: Yes.

A.—Oh yes. While we were there on the 8th, 9th and 10th of October, there was water running down the railroad from the higher levels quite plainly visible.

Q.—From what point? That is the spur line

10 A.—Down the spur line. There was a distinct water course running from the upper dam apparently.

Q.—Will you indicate on the plan where, in a general way, that was running?

A.—The water was running down the spur across the road at the point marked X on Plan D-160, quite a definite flow of water. It was not confined to the spur. It was also flowing on both sides of the spur, a thick stream of water evidently coming from the bottom.

20 BY MR. CHISHOLM:

Q.—How wide?

A.—I do not wish to give the impression it was a creek or river. It was water flowing.

BY THE COURT:

Q.—It was trickle?

30 A.—It was much more than a trickle, water flowing, possibly an inch deep and two or three feet wide.

BY MR. KER:

Q.—From the upper level?

A.—From the upper level to the lower.

Q.—Directly on to the piling ground?

A.—Directly through the piling ground.

Q.—Finding its level again in the creek below?

A.—Water seeks its lowest level.

40

Cross-examination

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

Q.—With respect to this water which you said was flowing on the 8th, 9th and 10th of October, that is, this month of October, 1932?

A.—Yes.

Q.—Will you show us where that flow began and where it ended?

*In the
Superior Court*

No. 118.
Defendant's
Evidence.
(Supp. Hearing)
Claude E. Ralph,
Cross-examination
Oct. 24th, 1932.
(continued)

A.—I can only show you where I saw it flowing.

I shall draw a line through the X. I will show approximately where I have drawn a continuous line through the point where I have marked X.

Q.—I am just asking you what you saw personally?

A.—That is what I saw personally.

Q.—You saw water between the yellow X which you have marked on Exhibit D-160 proceeding upward?

A.—It was coming

10 Q.—Proceeding upward towards the dam?

A.—I saw water coming from the upper end of the line I have marked on the Plan D-160, and flowing along across the road to the lower end of the line I have marked.

Q.—And where did it find its way out?

A.—It disappeared, I presume. It was not evident further down.

Q.—It was not evident at boring No. 3?

A.—It was not evident at boring No. 3.

20 BY THE COURT:

Q.—How far was this water from the spur?

A.—It was along the spur.

BY THE COURT:

Q.—How far?

A.—On the spur and outside the spur.

30 BY MR. SCOTT:

Q.—The line you have just shown us does not show it was going on the spur at all.

BY THE COURT:

Q.—You follow the spur from where it starts. It follows here, from the cross marks on the spur?

40 A.—The water was on the spur and some outside the spur on both sides.

BY THE COURT:

Q.—You are not indicating there just on the spur?

A.—I shall have to correct this. I have used the railroad on top of the tramway for the spur. The markings I have made will have

*In the
Superior Court*

No. 118.
Defendant's
Evidence
(Supp. Hearing)
Claude E. Ralph,
Cross-examination
Oct. 24th, 1932.
(continued)

to be struck out and moved to the same markings which denote the spur line.

BY THE COURT:

Q.—Right on the spur line?

A.—Right on the spur line.

BY THE COURT:

10

Q.—The spur line of the C.P.R.?

A.—Yes.

BY MR. SCOTT:

Q.—You do not know where it found its way out?

A.—No, I do not.

20 Q.—I suggest to you, Mr. Ralph, that on that particular occasion that water which you have just been referring to, was water flowing down from the leaking of the dam. Do you think that would be the explanation?

A.—That is exactly what I think it was.

Q.—It was water flowing from a leak in the dam?

A.—That is exactly what I think it was.

BY THE COURT:

Q.—But you did not follow that stream up to the dam?

A.—No, I did not.

30

BY THE COURT:

Q.—You did not actually see it starting from there?

A.—No. It could not have come there from the creek. The track is much higher than the creek, and it had to come from higher ground. I was under the impression that it came from the dam.

BY MR. SCOTT:

40 Q.—You are not attempting to say that that was a permanent condition?

A.—Not at all, at least, not a condition that could not be eliminated.

BY THE COURT:

Q.—You saw this water only once?

*In the
Superior Court*
No. 118.
Defendant's
Evidence
(Supp. Hearing)
Claude E. Ralph,
Cross-examination
Oct. 24th, 1932.
(continued)

A.—Well, on the three days in question, October 8th, 9th and 10th.

BY THE COURT:

Q.—Of this month?

A.—Yes.

BY MR. SCOTT:

10

Q.—When did you join the Gatineau Power Company? It was when they started their work at Chelsea, was it not?

A.—Before that.

Q.—Had you been with the International Power Company?

A.—We started the storage dam before the work was started at Chelsea. That was several months before, in September, 1925.

Q.—That is at the upper reaches of the Gatineau?

A.—At the upper reaches of the Gatineau.

20

Q.—And when were you moved down to the Chelsea area?

A.—About Christmas 1925.

Q.—And you were employed down there?

A.—I was employed there on most of the outside work, emergency work, road construction, railroad construction.

Q.—And you told us you were resident engineer, I suppose, checking up on the work which the C.P.R. did when they relocated their right-of-way, you were the Gatineau Power Company's engineer?

30

A.—I was the Gatineau Power Company's representative. I was more than that on the railway work. I did the actual relocating, the actual fill work under Mr. Dibblee.

Q.—I understand the C.P.R. relocated the railroad themselves, and that the Gatineau Power Company had to pay for the cost of the relocation?

A.—That is correct.

Q.—And at the same time you were also supervising, or, did you tell us on Friday last, that you were in charge of the work of relocating the highway?

A.—Yes.

40

Q.—You were relocating the highway?

A.—I relocated and reconstructed the highway.

Q.—That kept your hands pretty full?

A.—Seven days a week. I worked seven days a week.

Q.—I am now showing you Exhibit D-108, that profile plan, and for the purpose of convenience, would you be good enough to mark out for me in ink one hundred feet on each side of the centre of the C.P.R. bridge that goes over Meach Creek?

*In the
Superior Court*
No. 118.
Defendant's
Evidence.
(Supp. Hearing)
Claude E. Ralph,
Cross-examination
Oct. 24th, 1932.
(continued)

A.—You ask me, from the centre of the creek?

Q.—From the centre of the bridge which goes over Meach
Creek?

A.—I am marking it approximately. I have no scale.

Q.—This profile is to scale?

A.—Yes, it is to scale.

Q.—Four hundred feet horizontal and twenty feet vertical?

10 BY MR. KER:

Q.—How long is the bridge?

A.—It is about forty-two feet.

Mr. Scott: Let us get one thing at a time?

Witness: I am marking it in ink on the Exhibit D-108, one hundred feet on each side of the centre of the C.P.R. bridge which crosses Meach Creek.

20 Mr. Montgomery: Why from the centre. The witness testifies it is one hundred feet from the side of the bridge itself.

Mr. Scott: I am asking the witness to mark one hundred feet on each side of the centre.

His Lordship: You mean from the centre of the eastern side or the western side?

30 Mr. Scott: Both ways.

Witness: As I say, I mark it approximately.

BY MR. SCOTT:

Q.—You say you think the bridge is forty-two feet in length?

A.—We have the exact length.

40 Q.—Would you be good enough to look at the Exhibit filed as as D-167 and see whether that will assist us in getting the length of this bridge?

A.—It is forty-three point seven between extreme pile lengths.

Q.—You are now looking at the left hand elevation shown on D-167, and you might indicate between what points you get this distance of 43.7?

A.—It is between the centre of the end bent.

Q.—I think you told us the other day a bent is a series of four or five or six piles?

*In the
Superior Court*
No. 118.
Defendant's
Evidence.
(Supp. Hearing)
Claude E. Ralph,
Cross-examination
Oct. 24th, 1932.
(continued)

A.—A panel of piles.

Q.—A panel of piles?

A.—A panel, in this case of six piles.

Q.—From the centre of the left hand panel running down the figure 4, to the centre of the panel of piles running down to figure 1, is that right?

A.—That is correct.

Q.—The distance is 43.7 feet?

A.—43.7 feet.

10

BY THE COURT:

Q.—That is the length of the bridge?

A.—That is the length between the end panels.

BY THE COURT:

Q.—What is the width of the bridge?

20 A.—The width of the bridge is approximately of the caps, about 14 feet on top.

BY MR. SCOTT:

Q.—While we are looking at this lower left hand elevation on D-167—how would you describe them?

A.—Wing piles.

Q.—What do these white lines to the left, and to the right of these panels indicate or represent?

30 A.—They indicate wing piles, piles under the retaining wall which was constructed to hold back the embankment from falling into the creek.

Q.—Do you know how far they go down?

A.—Yes, I do. They are given on the Exhibit D-167 as 41 piles, average length 25 feet.

Q.—But some of them are considerably longer than 25 feet?

A.—This does not of necessity mean the actual length. The bill of material tells what length of pile was bought, and paid for and used. The regular line at the end of these piles, you can see it is more or less arbitrary.

40 Q.—They shorten the bridge? You get away from the bridge?

A.—It is quite evident from this that they did not need as long piles as they get further from the creek.

Q.—But the piles that were closer to the panels were approximately the same length. Does that indicate anything on that plan?

A.—No, not necessarily. It would appear so from this plan, but it does not of necessity follow they are the same length.

Q.—Do you know?

*In the
Superior Court*

No. 118.
Defendant's
Evidence.
(Supp. Hearing)
Claude E. Ralph,
Cross-examination
Oct. 24th, 1932.
(continued)

A.—Personally?

Q.—Yes.

A.—No, I don't know that they were exactly the same length.
I do not think anybody knows.

Q.—In fact, it was the C.P.R. who built the bridge?

A.—Yes, the C.P.R. built the bridge under my inspection at all times.

Q.—Subject to your inspection?

A.—Subject to my inspection.

10 Q.—You told us the other day that these bents or panels did not reach rock?

A.—They did not reach rock.

Q.—Do you know whether they reached what I might term hard pan, or a point of refusal below which they would not go?

A.—I am absolutely certain they reached the foundation which satisfied the engineers.

Q.—So they could efficiently be driven down any further?

A.—The point of refusal we used on the C.P.R., and I think
20 they use it yet, is a consistency of material where a pile will not go more than one inch in the last ten blows given by a 2,000-pound hammer to a 20-foot drop.

Q.—And no doubt they are still applying that standard on construction work?

A.—Yes, and probably a few more whacks naturally to make sure.

Q.—These piles would carry the weight of that bridge?

A.—That is what they were doing.

Q.—They were carrying the weight of that bridge?

A.—Yes.

30 Q.—Do you know how far down they went, or is that shown on Exhibit D-167?

A.—We can figure the average distance about thirty feet—yes, about thirty feet.

BY THE COURT:

Q.—When was the railway built?

A.—The original railway?

40 BY THE COURT:

Q.—Yes.

A.—In the early nineties. I am not quite sure of the year. I have the original plan and profile. The profile is dated 1889 and the plan 1890. I would say it was built about 1891 or 1890.

BY THE COURT:

In the
Superior Court

No. 118.
Defendant's
Evidence.
(Supp. Hearing)
Claude E. Ralph,
Cross-examination
Oct. 24th, 1932.
(continued)

Q.—Do you know the width of Meach Creek at the bridge?

A.—I would say about thirty feet, as shown on this plan D-167.

BY MR. SCOTT:

Q.—Is that under normal conditions? The bridge would take care of contingencies?

A.—Oh, absolutely.

10 Q.—It would have to take care of spring water and everything else?

A.—Yes, absolutely.

Q.—Can you tell us the length of these sheet piles? Is that the word for them?

A.—That describes them fairly well.

Q.—We will use the same term all through, so we won't get mixed up—the length of these sheet piles on each side of this bridge? First of all, look at the left hand side as you face D-167, will you tell us what the length is?

20 A.—All I can tell you is what is stated here, 41 piles, average length 25 feet.

Q.—That is, the difference from this panel to the left hand side of this is 25 feet?

A.—No, that is the length of the piles.

Q.—But I am talking about the distance horizontally?

A.—This elevation denotes on the plan part of the front wall and part of the rear wall. The projection does not show true.

30 Q.—Looking at this lower left hand sheet pile drawing, which is to the left of the lower elevation on D-167, can you tell us what that sheet piling is in length going horizontally? Perhaps I have not expressed myself clearly?

A.—I think if I had a scale I could do it. I would say about 18 feet.

Q.—18 feet in length from the panel to the line drawn down at the left hand side of D-167 where we see the figure "8" after "3 inches", with the arrow above and an arrow below, is a distance of how many feet?

A.—About 18 feet.

40 Q.—Will you treat this elevation in the same way with respect to the sheet piles on the right hand side, and give us the length?

A.—About twelve feet, approximately.

Q.—Did you tell his Lordship a few minutes ago that you had had the original profiles for the original bridge?

A.—No.

Q.—Perhaps I misunderstood you. What did you say you had?

A.—The profile of the original railroad.

Q.—You had the profile of the original railroad?

*In the
Superior Court*

No. 118.
Defendant's
Evidence.
(Supp. Hearing)
Claude E. Ralph,
Cross-examination
Oct. 24th, 1932.
(continued)

A.—Yes.

Q.—Is that available?

A.—Yes. It corresponds to this profile.

Q.—It corresponds to profile D-108?

A.—Yes.

Q.—And I suppose the ground level on D-108 was taken from that original profile that we have just been speaking of?

A.—Yes.

10 Q.—I am not an engineer, Mr. Ralph (but I may be before I get through with this case)—you gave us some elevations, or was it definitions with regard to the words “grade” and “sub-grade”? I was not quite clear exactly what you understood by sub-grade. Will you tell me what you understood by sub-grade?

A.—Sub-grade is the top of the embankment.

Q.—That is, after it has been graded before the rails are laid.

A.—And before the ballast is put on. When the ballast is put on there is a foot and a half of ballast in which the ties are embedded.

Q.—That is the grade?

20 A.—The base of the rail is called the grade, a foot and a half above the sub-grade.

Q.—How would you define water table in the sense in which we have been using it in this case? I see you are reading from some notes in your hand?

A.—My own notes. I don't know that I can give you a definition as to water table. I used part of Mr. Langford's description.

Q.—But in your own mind what do you mean?

30 A.—A water table is the elevation to which the water from a stream affects the ground adjoining it—well, pretty much as Mr. Langford has described it, and which I have already quoted: “The water table follows along underneath the general surface of the ground, and it comes out to the surface on a lake or river. They are both the same elevation.” Does that not answer your question?

Q.—No, it does not.

A.—All right, turn that around.

Q.—Without looking at your notes, are you able to give us your idea of what a water table is?

BY MR. MONTGOMERY:

40 Q.—You used that word in this case?

A.—I can leave the word out altogether. The elevation I have used is what I believe to be the affected elevation of land due to the average height of water in the streams. It corresponds with what Mr. Langford has stated it was.

BY MR. SCOTT:

In the
Superior Court

No. 118.
Defendant's
Evidence.
(Supp. Hearing)
Claude E. Ralph,
Cross-examination
Oct. 24th, 1932.
(continued)

Q.—Is it horizontal?

A.—The actual water table is horizontal, but the effect is not horizontal. The effect is three feet above the horizontal line equal to the elevation.

Q.—Would you say it is the upper limit of the portion of ground which is wholly saturated with water?

A.—No, not the water table itself. The effect is three feet to three and a half feet above the water table.

10 Q.—Now, we are referring to that portion of your evidence which concerned piling ground and the photographs which were filed by you as D-169 and D-170; I think you told us that the square or rectangle marked in yellow pencil by you over the words "Piling ground lumber" represented the area of the lumber shown piled in D-169?

A.—Approximately. That is approximately.

20 Q.—To your knowledge, did Mr. Cross ever pile any lumber there prior to the flooding by the Gatineau Power Company? To your personal knowledge do you know whether Mr. Cross prior to the flooding ever piled any lumber inside that square?

A.—Yes, as far as I know he did.

Q.—Are you sure of it?

A.—No, I am not sure of it. I never saw that piling ground before.

Q.—Before the flooding?

A.—I never paid any particular attention to it. I am not prepared to swear what he piled there.

Q.—The photograph D-169 we have just been speaking of was only taken on the 8th October, 1932?

30 A.—That is the date.

Q.—Do you know when the trestle was built there?

A.—No, I do not.

Q.—Will you tell us how far away this square area marked in yellow pencil we have just been speaking about, and that you say, on the 8th October was being used for piling lumber, is from the sawmill? Take the corner of the sawmill as shown here and give us the distance?

A.—About fifty feet from the sawmill.

40 Q.—And the nearest point from the sawmill to the furthest side of this area is how far from the sawmill, approximately?

A.—About 200 feet.

Q.—With respect to this photograph D-170 which shows the spur line and some lumber piled, I think you told us that these figures enclosed in circles, the figures being 4, 2 and 3, have underneath them in turn certain figures given respectively as 320.2, 320 flat and 321.1?

*In the
Superior Court*
No. 118.
Defendant's
Evidence.
(Supp. Hearing)
Claude E. Ralph,
Cross-examination
Oct. 24th, 1932.
(continued)

Q.—And those three places labelled 4, 2 and 3 respectively are places at which you took borings?

A.—The places at which I took borings.

Q.—This month?

A.—2, 3 and 4.

Q.—They represent the three borings?

A.—They represent the three borings and the elevation of the ground.

10 Q.—Verified by yourself?

A.—Verified by myself.

Q.—And the water that day you say was around 317 and a half or thereabouts?

A.—You are co-relating

Q.—I mean the water of the Gatineau as flooded back?

A.—The water was between 317 and a half and 318, but these borings have no relation to the water on that day. They are just superimposed. They are figures placed a year afterwards.

20 Q.—There is nothing on this photograph showing where elevation 321.5 would come to, have you?

A.—No, my point 3 shows 321.1.

Q.—That is the nearest?

A.—I would have to go up a little higher.

Q.—This lumber as shown on Exhibit D-170, I think you told us, is really between the yellow arrow which leads towards the letter Z for boring 3 on this Exhibit D-160 and proceeded upwards towards the road?

A.—That is correct.

30 Q.—To your knowledge can you swear that Mr. Cross used to use that for piling lumber prior to the flooding by the company, prior to 1926?

A.—No.

Q.—You don't know?

A.—No.

Q.—You never ran a sawmill yourself?

A.—I have worked around one when I was going to college. I know a lumber yard pretty well.

Q.—You have never been proprietor of one and had it flooded?

A.—No.

40 Q.—While we are still looking at this plan (and this question I am asking you under reserve of Plaintiff's legal rights under the Act), you were talking about an estimate of the cost of refilling this piling ground, and you said you started from elevation 318. Am I right in saying that is the elevation which runs along the southerly boundary of this area edged in red?

A.—Approximately.

Q.—You started at the point A on the southerly side of this

*In the
Superior Court*

No. 118.
Defendant's
Evidence.
(Supp. Hearing)
Claude E. Ralph,
Cross-examination
Oct. 24th, 1932.
(continued)

piling ground area edged in red; the elevation is 318 approximately right up to the point marked " Bridge " or somewhere around there?

A.—Somewhere around there.

Q.—You personally have not taken any elevations of 321.5 to the northerly side of that spur line?

A.—Yes, I took some. I had to take some for my borings.

10 Q.—You took some for the borings? You took the elevations you gave us on Friday with respect to the borings, but apart from that, have you taken any elevations on this, what you call edged in red, piling ground area above the C.P.R. spur?

A.—Not apart from the borings.

Q.—You spoke just now about a sign on the property, prohibiting engines from using the spur line. My learned friend asked you whether you had seen cars going on, on the spur line, that is, since the flooding, and I think you said you had?

A.—Yes, I have seen cars.

20 Q.—Do you know how those cars were handled or manhandled by Mr. Cross?

A.—When the engines cannot go in, there are only two ways, one way is by horse and the other is pinched by hand.

Q.—That is the only way they can be got in or out?

A.—That is the only way I know of.

BY THE COURT:

Q.—Do you know the distance they had to run?

A.—I could give you that.

30 BY MR. SCOTT:

Q.—You might give it from the entrance right to the mill?

A.—About a thousand or twelve hundred feet. The locomotives go to about where the sign is.

Q.—Mark it " sign " ?

A.—I don't think I will mark it. I just know that it is down to the slope.

Q.—That leaves the record very indefinite.

A.—I won't mark it. I don't know exactly where it is.

40 Q.—Where what is?

A.—The sign which you are speaking of.

Q.—The sign is a general prohibition to enter the spur at all?

A.—For locomotives.

BY THE COURT:

Q.—Is the slope considerable from the southwest to the eastern side of the delta?

*In the
Superior Court*
—
No. 118.
**Defendant's
Evidence.**
(Supp. Hearing)
Claude E. Ralph,
Cross-examination
Oct. 24th, 1932.
(continued)

A.—The grade is 329.5. I have shown on one of the exhibits, D-170, that the elevation of the grade about half-way down is 320.

BY THE COURT:

Q.—Just give an idea?

A.—I would say about between a one and two per cent grade. It is not a prohibitive grade at all.

10 BY THE COURT:

Q.—It is not a very difficult job to draw those cars up to the mill?

A.—Oh, no.

BY MR. SCOTT:

Q.—What is the elevation at the mill on the spur line?

A.—I have not it marked.

20 Q.—Can you give it to us?

A.—It is not shown. I would say that there is not much difference.

Q.—Is it not marked here ground 333?

A.—That is down underneath the mill. That is three and a half feet higher than the grade of the railroad. It is 329 and a half, and this spur line, as I remember it, is not very much different from the ground. It may be up a little.

30 Q.—With respect to these seven test borings that you made in establishing the elevation for boring No. 3, was that using the top of that debris as being the elevation of the ground?

A.—The general surface of the ground. My log showed usually the top two or three feet, I think, nearly in every case gravel and saw dust, a mixed material. It is the general surface of the ground.

Q.—And you took it from the general surface of the ground as it was in October, 1932?

A.—Yes.

BY THE COURT:

40 Q.—I presume a locomotive could push some of those cars up a certain distance?

A.—Undoubtedly.

BY THE COURT:

Q.—It could give them a push and then a shunt?

A.—They do.

*In the
Superior Court*

No. 118.
Defendant's
Evidence.
(Supp. Hearing)
Claude E. Ralph,
Cross-examination
Oct. 24th, 1932.
(continued)

BY THE COURT:

Q.—And the locomotive would stop right there?

A.—Yes.

BY MR. KER:

10 Q.—Your filling would provide for locomotives going in, and your filling and everything else?

A.—Yes, the reclamation would reclaim everything.

Q.—Naturally, the locomotives, trains and everything else would go right on to that siding?

A.—It would be filled up to 324 and a half.

BY MR. SCOTT:

20 Q.—Under reserve of Plaintiff's legal right, how much higher than 321.5 were you planning to carry this filling?

A.—Three feet higher.

Q.—Three feet higher than the waters of the Gatineau at 321.5?

A.—Yes.

Q.—Is it not a fact that during recent months the Gatineau Power Company have been holding the waters at a higher elevation than they used to hold them two or three years ago?

A.—I do not think so, not to my knowledge. I do not think they have.

Q.—Say, during the last month or six weeks, have they not been holding them to 320 quite frequently?

30 A.—It is not through the operations of the power house. During the last month or so there was an unprecedented flow.

Q.—There is a big flow just now?

A.—Unprecedented high water. The storage dams are all full. It is a most unusual thing for this time of the year.

BY THE COURT:

40 Q.—What is the height of the spur from the ground as it now exists?

A.—It is practically the same elevation. There is very little ballast on it. From about two hundred feet here they could rise up from nothing. The spur shows 3, 4 or 5 feet getting on to the main line, but in the centre, as shown on photograph D-170, the spur is the same elevation as the ground. There was never enough ballast on it, in my private opinion.

BY THE COURT:

*In the
Superior Court*

No. 118:
Defendant's
Evidence.
(Supp. Hearing)
Claude E. Ralph,
Cross-examination
Oct. 24th, 1932.
(continued)

Q.—How many feet of area do you require?

A.—Averaging?

BY THE COURT:

Q.—Yes, how many feet of area would be required to put the piling ground there completely above water, from any water of any kind?

10 A.—You mean on the spur?

BY THE COURT:

Q.—Yes, on the piling ground?

20 A.—Well, at the edge of the right-of-way there would probably be no raising at all, and over on the saw mill end of the spur the raising would also run to zero, and in the centre there would be a fill of four and a half feet above twenty, which would mean probably an average over the whole thing of two and a quarter feet, that is, from the four and a half foot centre, and zero at both ends.

BY THE COURT:

Q.—It would be four and a half feet higher than the level of the spur in the centre?

A.—Yes. That was your question?

BY THE COURT:

30 Q.—Yes.

A.—Four and a half feet. I know this elevation 320 about the centre as shown in this photograph D-170, therefore, that is the maximum at that point, but at both ends the filling runs out to nothing, which would make the average two and a quarter feet.

BY THE COURT:

40 Q.—If you raised the land on the piling ground to about four and a half feet at the highest point, would that keep the piling ground dry?

A.—Yes, I am sure it would. You have three feet of gravel above your maximum water elevation.

BY MR. SCOTT:

Q.—You do not think that would cause dampness to the wood?

A.—No, I do not.

*In the
Superior Court*

No. 118.
Defendant's
Evidence.
(Supp. Hearing)
Claude E. Ralph,
Cross-examination
Oct. 24th, 1932.
(continued)

Q.—Are you sure?

A.—I am as sure as I can be.

BY MR. KER:

Q.—That is, taking the piling ground at 324.5, three feet above the water?

A.—Yes. That is giving three feet protection.

10 BY THE COURT:

Q.—Would that not make the travelling on this spur more difficult?

A.—It would make it very much easier.

BY THE COURT:

20 Q.—If you have to raise the ground on the piling ground four and a half feet, would not the cars have to go up a steeper hill?

A.—No, they are coming down now. It is 329 down to 320. You would cut this grade in half.

BY MR. KER:

Q.—It would be 324.5 instead of 320?

A.—You come down hill.

BY THE COURT:

30 Q.—The level of the Canadian Pacific Railway track is higher at present?

A.—Than the commercial spur. It is nine and a half feet higher, and you would cut that in two and make it easier.

BY MR. SCOTT:

Q.—With respect to this area edged in red, you did not make any estimate based on driving piles, did you?

40 A.—No, I did not. I made mental calculations while I was listening to the evidence.

Q.—You made mental reservations?

A.—Mental estimates.

Q.—I think you heard it stated that it would not be possible to pile this area edged in red. Do you agree with that?

A.—What do you mean profitable?

*In the
Superior Court*

No. 118.
Defendant's
Evidence.
(Supp. Hearing)
Claude E. Ralph,
Cross-examination
Oct. 24th, 1932.
(continued)

Q.—I mean the cost would be prohibitive when he was running a saw mill business?

A.—The cost would certainly not be prohibitive compared to this damage action.

Q.—It is for the Court to determine what the damages caused are: you have said you made mental notes. Can you give us any idea how much it would cost to pile this area edged in red?

A.—I could not give you that now.

10 Q.—Can you give us any figures as to the weight of lumber in piles?

A.—Surely. Do you mean the whole lumber pile or column of lumber.

Q.—The weight of a lumber pile?

A.—Yes.

BY MR. KER:

20 Q.—Green lumber or dry lumber? The weight of an ordinary pile of green lumber, and how it is distributed?

BY MR. SCOTT:

Q.—You told us you worked around lumber piles? What is the average height?

A.—I would say the average height, I don't suppose is more than twenty-five feet.

Q.—Take twenty-five feet then?

A.—Do you mean average dry lumber, or average wet lumber?

30 BY MR. CHISHOLM:

Q.—Lumber as coming out of the mill?

A.—There is a great variation in the weight of lumber?

Q.—Take the average.

BY MR. KER:

40 Q.—Take it as green lumber?

BY THE COURT:

Q.—And I suppose you have to consider the kind of lumber, whether it is hard wood or pine?

A.—The heaviest available on the Gatineau, the heaviest wood.

BY MR. CHISHOLM:

*In the
Superior Court*
No. 118.
Defendant's
Evidence.
(Supp. Hearing)
Claude E. Ralph,
Cross-examination
Oct. 24th, 1932.
(continued)

Q.—Maple.

A.—The heaviest wood comes from South America or Africa.

BY THE COURT:

Q.—If you would like to take some little time to answer this question, you can answer it after the adjournment?

A.—All right, my Lord.

10 BY MR. SCOTT, K.C.:

Q.—Before the adjournment you were telling us that the Canadian Pacific Railway did not allow their engine to go in on this spur line?

A.—Yes, sir.

Q.—Why? Because they are afraid the ground will not bear its weight?

20 A.—No, I would not say that. Of course, it was not I who put up the notice.

Q.—You are not responsible for the directions given by the C.P.R.?

A.—No, but I think I know why the sign is there. Mr. Hughes has spoken to me about it often. He wanted us to dump some gravel in there, and we told him this matter was in litigation and we could not have any work done on Mr. Cross' property.

The top is soft, and they are afraid of going off the track. They are not afraid of falling through the earth, or anything like that.

30 Q.—The ground will not support the weight of the engine, plus the filling underneath the track?

A.—The track is softened. The roadbed is softened, and they are afraid the engine will go off the track. That is the reason.

Q.—You were to make some calculations as to the weight of a lumber pile 25 feet high?

A.—You asked me to give you the weight of a lumber pile 16 x 16, 25 feet high.

Q.—Are you going to give it to me as the weight of green lumber—hardwood?

A.—I have taken the heaviest possible lumber.

40 Q.—What have you taken?

A.—I have taken 60 pounds to the cubic foot.

Q.—What kind of lumber?

A.—That would be the heaviest green hardwood I know of—maple. The heaviest hardwood in Canada, that I know of.

Q.—Maple?

A.—60 pounds in weight. Maple, I think, is about the heaviest.

*In the
Superior Court*
—
No. 118.
Defendant's
Evidence.
(Supp. Hearing)
Claude E. Ralph,
Cross-examination
Oct. 24th, 1932.
(continued)

60 pounds per cubic foot is about 50 per cent higher than the average lumber in a lumber yard.

Q.—Why do you say it is 50 per cent higher?

A.—Because the average lumber in a lumber yard would dry out.

Pine weighs about 25 pounds to the cubic foot.

Q.—Dried out?

A.—More or less dried out. 25 or 30 pounds.

10 Q.—Did you estimate this pile of lumber as resting on skids or sills?

A.—You asked me the weight, and I figured the weight.

Q.—Of this lumber pile resting on two sills?

A.—You just asked me the weight, so far.

Q.—What is your figure as to the weight?

A.—192,000 pounds.

BY THE COURT:

20 Q.—To a pile?

A.—To this very heavy pile of green hardwood.

BY MR. SCOTT (continuing):

Q.—Applying arithmetic to that, how much would it be per square foot?

Witness: On the ground where it is?

30 Counsel: Yes.

Witness: You mean the actual ground surface underneath it?

Counsel: Yes.

A.—About 75 pounds.

Q.—It is customary practice to have sills underneath those lumber piles?

A.—Yes.

40 Q.—One on each side?

A.—Not for 16 foot lumber, or you would have a sag in the center. I should say there would be three, or possibly, four skids.

Q.—The idea is that the air may circulate underneath the pile?

A.—Yes.

Q.—And, it does?

A.—Usually.

In the
Superior Court

No. 118.
Defendant's
Evidence.
(Supp. Hearing)
Claude E. Ralph,
Cross-examination
Oct. 24th, 1932.
(continued)

- Q.—They never put the pile flat on the ground? It is piled on those skids?
A.—I would think so, yes.
Q.—What is the width of those sills?
A.—It would depend on how many there were.
Q.—Supposing there were three?
A.—They would be spaced roughly about 8 foot centers. Say seven foot centers, taking the width of the sill itself.
10 Q.—They would be 7 to 8 inches wide?
A.—Yes.
Q.—And those three sills are to carry the load, are they not?
A.—They would carry the load above them. They support the load above them.
Q.—What is the total area of those three sills, taking them at 7 or 8 inch centers—say 16 feet long, and 7 and 8 inches wide.
A.—I presume you mean the superficial area?

Counsel: Yes.

- 20 A.—If they were 12 inches wide, the area would be 48 square feet. If they were 8 inches wide, the area would be 32 square feet.
Q.—Applying this weight of 192,000 pounds to the 48 square feet, how many pounds pressure or weight would it represent per square foot?
A.—That would be about two tons to the foot.

BY MR. CHISHOLM:

- 30 Q.—4,000 pounds per square foot?
A.—4,000 pounds per square foot. That is the weight superimposed from above on those three sills.

BY MR. SCOTT (continuing):

- Q.—And if you add the weight of the sills to that—and I think you told us the weight of the fill at the deepest point would be about 650 pounds to the square foot—what would the result be?
A.—I said 650 pounds per square foot, using the unit I used.
40 But, it is not quite the same. That weight is below it. You are asking me the weight above those sills, and I have given it to you. I cannot add the 650 pounds below it.
Q.—You worked out the weight of the fill at about 650 pounds to the square foot?
A.—Yes, at a maximum. That, however, cannot be added to the 4,000 pounds.

*In the
Superior Court*

No. 118.
Defendant's
Evidence.
(Supp. Hearing)
Claude E. Ralph,
Cross-examination
Oct. 24th, 1932.
(continued)

Q.—Can you give us any figures with regard to the cost of using piles?

A.—No, I have not those figures.

Q.—You cannot give us any idea of the cost?

A.—I would have to take the time to make an estimate.

Q.—I mean, for reclaiming that area edged in red by the use of piles?

A.—I would have to make a proper estimate before giving any figures to the Court.

10 Q.—And you cannot do it now?

A.—No, I would not care to attempt to do it now.

Q.—Can you give us any idea how far apart those piles would have to be?

A.—I would have to study it. I could tell you at the next session, if you wished me to do so.

Q.—Can you tell me approximately now?

A.—I would not attempt to do it.

20 Q.—Assuming that the area edged in red on the plan Exhibit D-160 had to be reclaimed or made serviceable by the use of piles driven into the ground. Can you give us an idea of how many piles would be required?

A.—No, I could not. I would not be prepared to give you any figures here and now without being sure of them.

Q.—In giving this figure of \$8,000 or \$9,000 for the cost of filling in this area with gravel, did you make any estimate of any filling in below elevation 318?

A.—I allowed a slope to go over.

30 316? Q.—But you did not make any estimate of filling to elevation

A.—No.

Q.—Nothing below the red and yellow line on the plan Exhibit D-160, on the southerly side of this area?

A.—No, I did not make any calculation of that.

Q.—And, of course, the same answer would hold true as regards any estimates in connection with piling on the southerly portion of that red-edged area?

A.—The same answer would hold true, yes.

40 Q.—When the C.P.R. line was raised up and rebuilt it was placed on the old right of way at this point?

A.—Yes, across the delta.

Q.—They used the old right of way?

A.—They used the old right of way.

Q.—You spoke about the hotel, and you mentioned the fact that you had examined the cellar on two occasions?

A.—Yes.

Q.—Would you mind giving me the dates again?

*In the
Superior Court*

No. 118.
Defendant's
Evidence.
(Supp. Hearing)
Claude E. Ralph,
Cross-examination
Oct. 24th, 1932.
(continued)

A.—I cannot give you the exact dates. I think I said April, and about a month ago. The first time was last April.

Q.—April, 1932?

A.—Yes. And the last time was about a month ago.

Q.—Some time in September, 1932?

A.—Some time in September, 1932, yes.

Q.—Were you in Court when Mrs. Howell gave her testimony?

A.—Yes, I heard her evidence.

10 Q.—How do you account for her evidence? Do you think she is mistaken?

A.—It is hardly my office or function to express an opinion on the veracity of any witness.

Q.—As I recall her testimony, she said she had a lease of the hotel from Mr. Cross prior to the flooding, and was living there after the flooding. She said she was a tenant there some time after the flooding?

A.—Yes.

20 Q.—And as I recall it, she said she found conditions satisfactory before, but that they had not been satisfactory since. Would you say she was mistaken?

A.—She gave her evidence under oath, and who am I to impugn it?

Q.—You have no comment to make on her evidence?

A.—No, I have no comment to make on it.

Q.—Looking at your blue print, headed "Details of boring made on ground at Farm Point" (Exhibit D-166), will you tell us which is the hole where you said the walls of the boring were still existing after twenty-four hours?

30 A.—No. 4, I think.

Q.—The time was different for some of them?

A.—The 24 hours was hole No. 6—No. 5, or No. 6; I am not quite certain. We dropped a pipe into both. I am not sure which of the two was twenty-four hours old. One was about twelve hours, and one was twenty-four.

Q.—Those distances are all shown, so that they can be added up?

A.—Yes.

Q.—And I think you gave us the dates they were made. They were not all done the same day?

40 A.—No. The 8th, 9th and 10th of October, 1932.

Q.—Looking at Exhibit P-112, which was the exhibit Mr. Langford gave evidence upon, you see those two red pencil lines on the plan. I presume the same answer you have given with respect to estimate applies to this plan also? You have made no estimate of the cost of filling in the area between those red lines shown on the plan Exhibit P-112.

*In the
Superior Court*

No. 118.
Defendant's
Evidence.
(Supp. Hearing)
Claude E. Ralph,
Cross-examination
Oct. 24th, 1932.
(continued)

Witness: According to this plan?

Counsel: Assuming that the piling ground previously used by Mr. Cross is contained within the limits of those red lines shown on the plan Exhibit P-112, you have made no estimate of the cost of filling in that area, have you? You see it is different in dimensions from the area indicated on Exhibit D-160.

A.—If that red line

10 Q.—(interrupting) The two red lines.

A.—If the outside red line represents the 318 contour

Q.—(interrupting) It is not supposed to represent the 318 contour.

Witness: What is it supposed to represent?

Counsel: If the long red line on the southerly side of this plan represented the lower side of the piling ground as previously used by Mr. Cross, have you made any estimate of the cost of reclaiming or filling in that area?

20 A.—I have certainly made no estimate from this plan; if that is the answer you want.

Q.—You have made no estimate of area, basing yourself on the red lines on that plan?

A.—I have made no estimate on this plan.

Q.—Or on the lines shown on this plan?

Witness: Which contours do those lines denote?

30 Counsel: Suppose they denote the side lines of the piling ground as formerly used by Mr. Cross?

A.—The red lines do not denote the piling ground as formerly used by Mr. Cross, because the red lines include the toy factory.

Q.—If you want to be so precise, let us assume that the northerly red line stopped at the toy factory?

A.—I did not make any estimate for a line running through the toy factory.

40 Q.—Let us forget the toy factory for the moment, and take the southerly side line. Did you make any estimate on a southerly side line running more or less where this red line appears on Exhibit P-112?

Mr. Ker: I would not like to interrupt or limit my friend in his cross-examination, but this is an unfair question to ask the witness. Mr. Ralph has said he made an estimate of reclaiming piling ground above the 318 contour. My friend is now putting a question

*In the
Superior Court*
No. 118.
Defendant's
Evidence.
(Supp. Hearing)
Claude E. Ralph,
Cross-examination
Oct. 24th, 1932.
(continued)

to him based on a hypothetical line, and asks if he has made an estimate on that line. If my friend will mention the elevation, Mr. Ralph will answer as to whether he made an estimate or not.

BY MR. SCOTT (continuing):

Q.—Assuming the southerly side line is below elevation 318, have you made any estimate?

10 A.—No, I have not.

Mr. Ker: The Plaintiff claims in his Declaration, and in his evidence on Discovery, that the piling ground began at elevation 318.

BY MR. SCOTT (continuing):

20 Q.—My friend, Mr. Chisholm, calls my attention to something which I thought was clear, but which may not be as clear as it seemed to me. When you were giving your estimate of 192,000 pounds as the weight of a pile of lumber 16 x 16 x 25 feet, and you arrived at a figure of pressure or weight of 75 pounds per square foot

A. (interrupting)—That should be 750 pounds.

Q.—You make the correction; it should be 750 pounds?

A.—Yes.

Q.—And that is based on the assumption that the whole of the pile was resting flat on the ground?

A.—That is not assuming anything. That is the load superimposed upon the three stringers or sills about which I was asked.

30 Q.—I was not dealing with sills particularly; I was speaking as if the lumber was resting flat on the ground. You would arrive at an average pressure of 750 pounds?

A.—Without the sills, yes; 750 pounds..

Q.—Have you told us what weight per cubic foot you were taking?

A.—I used the absolute maximum, 60 pounds per cubic foot. 62½ pounds is the weight of water, and when you get close to that the material will sink.

I am taking almost double the average weight of lumber.

40 Q.—You were taking 60 pounds per cubic foot?

A.—Yes.

BY THE COURT:

Q.—Did you fix the weight of the sills?

A.—No, sir. I was not asked that question.

BY MR. SCOTT (continuing):

*In the
Superior Court*

No. 118.
Defendant's
Evidence.
(Supp. Hearing)
Claude E. Ralph,
Cross-examination
Oct. 24th, 1932.
(continued)

Q.—In taking that weight of 192,000 pounds, it is a real weight of 192,000 pounds; not estimating anything for voids?

A.—50 per cent voids.

Q.—You are taking 192,000 pounds, and in making your calculations you deduct 50 per cent for voids?

A.—The voids have been taken out.

Q.—Leaving 192,000 pounds net?

A.—Those are my calculations on a pile of the heaviest hard-wood I know of—green—of those dimensions, superimposed upon
10 three sills.

BY THE COURT:

Q.—I think you said maple is about the heaviest wood?

A.—Green or wet maple is about the heaviest wood in this country.

Q.—Have you an idea of the weight of red birch?

A.—Red birch, green, would be about 55 or 56 pounds, I think. It is slightly lighter than maple.

20

Re-examination

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

Q.—You have taken the heaviest wood that you could think of?

A.—Absolutely.

This is much heavier than the average lumber pile.

Q.—About the same weight as a cubic foot of water?

A.—About the same.

30 Q.—Water weighs about 62½ pounds per cubic foot?

A.—62½ pounds per cubic foot.

Q.—Would the wood you are speaking of float in water?

A.—It would be just submerged. It would go down in about twenty-four hours.

Q.—As soon as it became saturated?

A.—Yes.

Q.—In order that there may be no misunderstanding about this matter of the bearing down weight of the pile you speak of; in making a pile of lumber, ordinarily it is not laid down flat on the ground—there are sills under it?

40

A.—Yes.

Q.—And those sills are blocks of wood?

A.—Sometimes.

Q.—How large would they be? Perhaps 12 x 12?

A.—The sills might be 12 x 12, or 10 x 10. They run the complete length of the pile.

Q.—In any event, they are not down in the ground? They are right on top of the ground, and the lumber is laid on top of them?

In the
Superior Court

No. 118.
Defendant's
Evidence.
(Supp. Hearing)
Claude E. Ralph,
Re-examination
Oct. 24th, 1932.
(continued)

A.—Yes.

Q.—When you are considering this matter of fixing the bearing weight of this proposed filled piling ground, you say you take the weight of the very heaviest wood, and it comes to 192,000 pounds for the whole pile?

A.—Yes.

Q.—And that weight is spread over a certain number of those sills?

A.—That weight is spread over a certain number of sills, yes.

10 Q.—The sills are lying on gravel?

A.—Yes.

Q.—How does it work out per square foot reduced to the weight on the clay beneath the gravel?

A.—That is on the sustaining material below, with which we are dealing?

Q.—Yes.

A.—With a four-foot gravel fill—which would be towards the centre of the piling ground—the weight per square foot would be 844 pounds.

20 Q.—On the clay?

A.—On the clay sustaining the material. 444 pounds for the lumber, plus four feet of fill, 400 pounds—a total of 844 pounds per square foot on the sustaining material below.

Q.—That is on the surface below the gravel you have a total weight of 844 pounds per square foot?

A.—Yes, that is my calculation.

30 Q.—What is the reason that bearing weight on the lower surface below the gravel is less per square foot than it is where the sills actually are?

A.—Because the load is distributed through the gravel at an angle of 45 degrees.

Q.—Because the gravel distributes the weight over the under-bearing surface?

A.—Yes.

Q.—And that is the surface to which you relate the C.P.R. right-of-way?

A.—Yes. The sustaining surface under the C.P.R. right-of-way is compared with the sustaining surface under this piling ground.

40 Q.—There is, of course, a very great distinction to be drawn between the weight that is placed upon the gravel and the weight per square foot that comes on the bearing surface underneath the gravel?

A.—There is.

Q.—You have produced photographs showing piles of lumber; Exhibits D-169, D-170, and D-171. One of those was taken in 1931, and one was taken recently, I think?

*In the
Superior Court*

No. 118.
Defendant's
Evidence.
(Supp. Hearing)
Claude E. Ralph,
Re-examination
Oct. 24th, 1932.
(continued)

A.—Exhibit D-170 was taken in 1931. Exhibits D-169 and D-171 were taken in October, 1932.

Q.—And, on the plan before His Lordship (Exhibit D-160) you endeavoured to show by brown lines where the piling ground was?

A.—That is as correctly as I could draw it.

Q.—You were asked whether you knew anything at all about where that lumber was piled before the water was raised—that would be in 1926—and I think you said you had not occasion to notice it?

10 A.—That was my answer.

Q.—Will you look at Exhibit P-29, which is a panoramic view showing the mill, the power house, and the lumber piles; and will you say whether that picture (which was taken in 1926) bears out your statement in respect to the area which you have coloured brown on His Lordship's plan (Exhibit D-160)? In a general way, does it indicate that in 1926 there were lumber piles in those places you speak of, as shown by Exhibit P-29?

20 A.—This photograph shows lumber in the area I have marked on the plan.

Q.—Does it show lumber piled in the same area as you have marked on the plan Exhibit D-160?

A.—This photograph was taken from the corner of the power house, which I see on the Exhibit. There is lumber shown on this photograph which corresponds to this square marked out by me.

Q.—I see this photograph was taken on September 21st, 1926. Does it show considerable areas of lumber piled above the road past the power house from the Mulvihill Road?

30 A.—Yes, they are continuous piles as they appear to me from this photograph.

Q.—Can you point out where the road would run on the plan?

A.—Along in front of the power house.

Q.—And above that, in the background of the picture, you see piles of lumber right along?

A.—I see continuous piles of lumber extending towards the west.

Q.—Will you be good enough to identify as well as you can from the photograph Exhibit P-29 the location of the lumber, and locate it on the plan Exhibit D-160 by hatched crosses?

40 A.—I will try to indicate the corresponding square as in the photograph taken from the power house.

I have blocked it out on the plan Exhibit D-160.

Q.—As a matter of fact does the plan Exhibit P-29 indicate there is any piling of lumber below that road?

A.—No, I do not see any lumber below the road. Nothing but cordwood.

*In the
Superior Court*

No. 118.
Defendant's
Evidence.
(Supp. Hearing)
Claude E. Ralph,
Re-examination
Oct. 24th, 1932.
(continued)

Q.—You do not see anything but cordwood piled below the road past the power house?

A.—I would say no.

Q.—As a matter of fact, does it show the trestle as below the road?

A.—No, the trestle is not shown as far down in the picture as it actually is today.

Q.—It has been lengthened since 1926?

A.—Probably it has.

10 Q.—Will you indicate the square on the plan?

A.—Your Lordship will understand I am doing the best I can, but I cannot swear it is absolutely correct.

The two brown lines on Exhibit P-29 will show very roughly the same ground I have tried to indicate on Exhibit D-160.

BY THE COURT:

Q.—The ground corresponds more or less to the ground you have marked in brown on Exhibit D-160?

20 A.—That is correct.

As I said before, it is more or less of an approximation.

I now change the brown lines on Exhibit P-29 to black ink lines, because I am afraid the brown lines on the exhibit would not be permanent.

BY MR. KER (continuing):

Q.—I think you said there are no locomotives running into the siding at the present time?

30 A.—Yes.

Q.—And that was because of the danger there might be of their toppling over?

A.—Going off the track.

Q.—To what would that be due? Unevenness of the right-of-way?

A.—Due to the softening of the ballast. The grade of the spur is below extreme high water. Those are facts.

Q.—The grade of the spur is below extreme high water?

A.—Not the whole spur: the low parts of the spur.

40 Q.—I think you referred to a portion of that spur line as being at elevation 320?

A.—The low part, 320; rising, towards the C.P.R., to 329½; and rising, towards the mill, to about 330. The low part, in the centre, is 320.

Q.—What would be the result so far as the betterment of the condition and level of that spur line after the filling operations, in relation to the C.P.R. spur line?

*In the
Superior Court*
No. 118.
Defendant's
Evidence.
(Supp. Hearing)
Claude E. Ralph,
Re-examination
Oct. 24th, 1932.
(continued)

A.—The grades would be easier.

Q.—Would locomotives be able to go in?

A.—Undoubtedly.

Q.—As I understand it, the grade from the C.P.R. would be reduced by about 4½ feet at the lowest point?

A.—About that. 4 to 4½ feet.

BY MR. SCOTT:

10 Q.—You said you worked a good deal around lumber yards. Will you look at Exhibit P-29 and tell us approximately how many thousand feet of lumber you see shown on this photograph?

A.—It could only be an approximation.

Q.—That will be satisfactory to me. Give me your idea of it.

A.—I can only estimate the piles I see, of course. There appear to be tops of piles, the whole of which I cannot see.

Q.—Can you give us a rough idea of the number of thousand feet?

A.—I should say about 250,000 feet.

20 Q.—You think about 250,000 feet?

A.—About that.

Q.—That is not including the cordwood in the foreground?

A.—No.

Q.—Do you see anywhere in the photograph Exhibit P-29 where there is a place for piling four million feet of lumber?

Mr. Ker: Why choose that figure?

30 Witness: That is a rather hard question to answer. Of course, this is a photograph, and it is very difficult to base figures on a photograph.

BY MR. SCOTT (continuing):

Q.—But I would like your idea?

A.—This is a photograph going away up the hill.

Q.—I am speaking only of the foreground. Do you see any place for four million feet of lumber?

A.—No, I do not.

40 Q.—You know that usually the lumber is shipped out in the month of September?

A.—I think shipping goes on all the time.

Q.—You would not think the month of September would be the month when there would be very little left there?

A.—Not necessarily.

Q.—You would not think the store or stock of lumber would be depleted during September?

*In the
Superior Court*

No. 118.
Defendant's
Evidence.
(Supp. Hearing)
Claude E. Ralph,
Re-examination
Oct. 24th, 1932.
(continued)

A.—I do not think I could answer that. I think shipping goes on all the time.

Q.—You would not expect to find a small stock of lumber on hand in September?

A.—Not necessarily.

Q.—Will you look at your photograph Exhibit D-170, which was taken in September, 1931, and will you say if you can give us an estimate of how much lumber you see in that photograph?

10 A.—If I gave you an estimate on the quantity of lumber shown on the other photograph I should be able to give you an estimate on the quantity shown in this.

Q.—I noticed when you answered me before you made some calculations. Take your time, now, and give me your answer.

Mr. Ker: You are speaking of visible lumber?

Witness: That is all I could estimate on, of course. I should say there would be about 350,000 feet.

20 BY MR. SCOTT (continuing):

Q.—That is leaving out the cordwood?

A.—Yes. Cordwood is measured by the cord.

I must say here that those are more or less guesses, because I can only see parts of certain piles, and tops of certain piles. My answers do not really mean anything so far as actual facts are concerned. I am just doing my best to answer Mr. Scott's questions.

30 Q.—Your estimate of the quantity of lumber shown on the photograph Exhibit D-170 is approximately 350,000 feet?

A.—I do not estimate that. I guess that from the photograph.

Q.—After making certain calculations with pencil and paper, you would approximate it at 350,000 feet?

A.—It is only a guess. As close a guess as I can make.

Q.—And that occupies the area which you showed us this morning, which commences with the yellow arrow at one end, facing the letter "Z", and extending upwards towards the hill, on Exhibit D-160—to within some fifty feet of the mill?

A.—I think I identified those two points this morning.

40 Q.—It extends on its easterly boundary from the yellow arrow upwards to the westerly side of the square near the lumber mill?

A.—That is correct.

Q.—You had nothing to do with giving the orders for the raising of the waters and the flooding of Mr. Cross' property?

A.—I had not, but at times one would almost think I had.

BY THE COURT:

*In the
Superior Court*

No. 118.
Defendant's
Evidence.
(Supp. Hearing)
Claude E. Ralph,
Re-examination
Oct. 24th, 1932.
(continued)

Q.—What I am specially concerned with is to arrive at the damages the Plaintiff has suffered, and I would like you to tell me at what figure you estimate the damages he suffered by reason of the raising of the water over his piling ground. Could you do that? If you can, I think it will be of great help to me in one of the principal things I have to deal with.

A.—Your Lordship would include his total damages?

10 His Lordship: Yes, the total damages on that account—on account of the flooding of his piling ground.

A.—Your Lordship will understand I do not care how good a man's intentions are, I think it is absolutely impossible for a witness in a case of this kind to get rid of all his prejudices. I could answer the question for you at the next session of the Court possibly, to the best of my ability, telling your Lordship what I have already stated. A law suit is like a game between the Plaintiff and the Defendant, and between the lawyers and the witnesses. I cannot very well describe it, but there is a prejudice.

20 His Lordship: There is a prejudice, and the Plaintiff is trying to establish that prejudice, and to establish his damages. He has tried to prove all his damages, and a part of those damages would be the damages suffered by the flooding of his piling ground.

Mr. Ker: I think, your Lordship, the witness was referring to the fact that he could not perhaps entirely eliminate some prejudice in favour of his client.

30 Witness: Not exactly that, no.

His Lordship: I think the witness is in perfectly good faith in giving his evidence, and I liked the way he gave it. I would like to have the information from him, because it would be one element to enable me to fix the damage. Everybody appreciates the fact that my greatest difficulty will be to arrive at the amount, and if I can be helped by some of the witnesses it would relieve me of a great deal of work, and some thinking.

40 Witness: Would your Lordship allow me to answer the question at the next session of the Court?

His Lordship: Certainly. You understand what I want from you. What I would like you to tell me is your idea of the damages as far as this element is concerned—restricting it to that part of Mr. Cross' property edged in red, and farther up towards the dam (where he also has a part of his piling ground). There is also, I under-

*In the
Superior Court*

No. 118.
Defendant's
Evidence.
(Supp. Hearing)
Claude E. Ralph,
Re-examination
Oct. 24th, 1932.
(continued)

stand, some of the ground west of this part edged in red, which is also piling ground. I understand it is covered by an item in the Declaration entitled "Lumber Business".

Mr. Ker: It is the whole business he is trying to make us pay for.

10 His Lordship: But I am restricting my question to the piling ground. Will you, Mr. Ralph, try to tell me what your idea is of the damage he has suffered?

Witness: I will do the best I can, your Lordship.

His Lordship: I would want to leave Mr. Cross in the same position as he was before the flooding, and if he has suffered any damages I want to give him the equivalent of what he has suffered. Do you understand my idea?

20 Witness: I think I understand your Lordship's point.

BY MR. KER:

Q.—Will you get together such evidence as you can within reason, and let his Lordship have the information when we sit again?

A.—Yes, I will.

(And further for the present deponent saith not.)

30

40

*In the
Superior Court*

No. 119.
Defendant's
Evidence.
(Supp. Hearing)
Huet Massue,
Examination
Oct. 24th, 1932.

DEPOSITION OF HUET MASSUE, A WITNESS EXAMINED
ON BEHALF OF THE DEFENDANT.

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

HUET MASSUE,

10

of the City and District of Montreal, engineer, aged 41 years, a witness produced and examined on behalf of the Defendant, who, being duly sworn, deposes as follows:

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

Q.—What is your profession?

20

A.—Civil engineer.

Q.—How long have you been engaged in that work?

A.—Since 1914. Eighteen years.

Q.—You were practicing your profession in 1926?

A.—Yes.

Q.—With whom were you connected then?

A.—The Quebec Streams Commission.

Q.—You have no connection of any kind with the Company Defendant?

A.—No, not at all.

30

Q.—Dr. Lefebvre, who is chief engineer of the Quebec Streams Commission, told us he had made a report to the Quebec Government, at the request of the Government, as to the effect of the water of the Gatineau on Mr. Cross' power property at Meach Creek, and he stated that his report was based upon certain levels which you had taken. Would you be good enough to tell his Lordship when you took those levels? I think Dr. Lefebvre said it was November 10th, 1926. Will you please tell us what elevation you found at the tail-race—the point from which one would build the head up to the pond above?

40

A.—The report was made when I came back from that trip. It is dated November 11th, 1926.

The benchmark from which the elevation was obtained was No. 468 of the Geodetic Service, and it was located about a mile and a quarter above Farm Point.

BY MR. SCOTT:

In the
Superior Court

No. 119.
Defendant's
Evidence.
(Supp. Hearing)
Huet Massue,
Examination
Oct. 24th, 1932.
(continued)

Q.—On the United Church?

A.—I will read the description:

“ In east face directly above southeast retaining wall on concrete arch culvert under Canadian Pacific Railway one and a quarter miles north of Farm Point and at mileage 172.27 from Maniwaki Junction.”

10 BY MR. KER (continuing):

Q.—That was your datum?

A.—Yes.

Q.—Is that an official Geodetic benchmark?

A.—Yes.

The elevation of the tailrace was found to be 313.81.

Q.—Was that taken by you?

A.—Yes, it was taken by me.

20 Q.—At what point, approximately, in relation to the power house?

A.—That was the tailrace elevation.

Q.—Was it in the culvert, below the draft tube?

A.—Well, it is six years ago now, and I had been taking levels for twelve years. I suppose it would be the elevation determined by the flowing water below the power house. I do not know exactly how it was.

Q.—You estimated it as the lowest point from which the head should be calculated?

A.—Yes. Where the water would flow.

30 Q.—And you found it to be 313.81?

A.—Yes.

Q.—Did you measure the total head?

A.—Yes.

Q.—What was the total head?

A.—The total head on that date was 72.70 feet. The tailrace was 313.81, and the headrace was 386.51. The elevation of the dam was 389.66.

Q.—The tailrace was 313.81?

A.—Yes.

40 The total head on that day was 72.70 feet.

Cross-examination

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

Q.—Do you happen to remember whether there was any débris or silt around the tailwaters that would have an effect of raising the tailwaters?

*In the
Superior Court*

No. 119.
Defendant's
Evidence.
(Supp. Hearing)
Huet Massue,
Cross-examination
Oct. 24th, 1932.
(continued)

- A.—I could not tell you. I do not remember.
Q.—I suppose you do not remember how far you were from the mouth of the draft tube when you took the elevation?
A.—No.
Q.—It is a long time ago?
A.—It is six years ago. I was just asked the question yesterday, without any photograph or anything; and I really do not remember.
Q.—You are no longer with the Quebec Streams Commission?
A.—No.
10 Q.—Is Dr. Lefebvre Secretary, as well as Chief Engineer, of the Quebec Streams Commission?
A.—Yes, Secretary and Chief Engineer.
Q.—I understand you are now with the Shawinigan Company?
A.—Yes.
Q.—There is nothing else that comes to your mind about this visit to which you have referred?
A.—No, nothing.
Q.—And, as you said, it is some time ago?
A.—Yes.
20

(And further deponent saith not.)

*In the
Superior Court*

No. 120.
Defendant's
Evidence.
(Supp. Hearing)
R. E. C. Chadwick, 30
Examination
Oct. 24th, 1932.

DEPOSITION OF RICHARD ELLARD CARDEN CHADWICK,
A WITNESS EXAMINED ON BEHALF OF THE
DEFENDANT

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

RICHARD ELLARD CARDEN CHADWICK,

of the City of Westmount, in the District of Montreal, President of the Foundation Company of Canada, Limited, aged 47 years, a witness produced and examined on behalf of the Defendant, who, 40 being duly sworn, deposes as follows:—

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

Q.—What is your profession?

A.—I graduated in 1906, from the Ontario School of Practical Science, which has since become the Faculty of Engineering of

*In the
Superior Court*

No. 120.
Defendant's
Evidence.
(Supp. Hearing)
R. E. C. Chadwick,
Examination
Oct. 24th, 1932.
(continued)

Toronto University. I have since practiced as a structural and construction engineer. I may say also I am a member of the Engineering Institute of Canada.

Since graduation I was engaged in the bridge business for a time with the Bridge Department of the Canada Foundry Company.

I practiced structural engineering in Toronto, and during that period I was also on the staff of the University in the Engineering Faculty. I then became engineer of Bridges and Docks for the City of Toronto. I then joined the Foundation Company of New York, as engineer of construction for the foundations for the Woolworth Building. I subsequently became engineer for the Foundation Company, Limited, in Montreal; then Acting Chief Engineer of the Foundation Company of New York. I was Assistant Manager of the Montreal Company; General Manager; Vice-President; and President.

Q.—Of the Foundation Company of Canada?

A.—Of the Foundation Company of Canada. They succeeded the other company.

Q.—The Foundation Company of New York, of which you were Chief Engineer, is the parent company?

A.—It was. It is not now.

Q.—In addition to your executive duties as president do you interest yourself in the technical part of the Foundation Company's business in Canada?

A.—I came up through the engineering department; and have always looked after that end, even since becoming president.

Q.—In view of what you have told us I suppose I may take it you have had very considerable experience in the matter of excavation, and the stresses to be placed on land, and various other engineering problems of that nature?

A.—Yes. I have been engaged in that branch of engineering almost exclusively since perhaps 1908.

Q.—And, to some extent, specializing in foundation work?

A.—Yes, we specialize in foundation work.

Q.—Have you personally visited the property of Mr. Cross at Farm Point?

A.—Yes, I visited the Cross property on October 10th last.

Q.—Were you present when boring operations were being carried on by the engineers of the Company Defendant?

A.—Yes.

Q.—Will you please tell His Lordship what was the method they carried on, and will you say if in your opinion it was a proper method to proceed with the work in which they were engaged—boring to discover the lower strata and surface?

A.—They had a wash boring outfit, which I understand they had obtained from the Public Works Department of the Federal

*In the
Superior Court*

No. 120.
Defendant's
Evidence.
(Supp. Hearing)
R. E. C. Chadwick,
Examination
Oct. 24th, 1932.
(continued)

Government. It is the usual machine for making that kind of boring —test boring. It was a very good machine.

Q.—You saw the results of those boring tests while you were there?

A.—They made one boring while I was there.

Q.—Did you also have occasion to see other holes which had been drilled previously to the time you were there, and did you have occasion to see any instruments inserted into those holes?

10 A.—The engineer in charge, Mr. Ralph, showed me two other holes he had drilled. He told me one had been drilled that morning, and the other had been drilled the day before.

I might say the holes were not cased—that is, there was no pipe driven down into the holes to prevent them filling up.

I was anxious to determine the consistency of the clay, and for that reason we tested the holes with a piece of pipe. I wanted to see whether they were filling up, or whether they had squeezed in, or closed up.

Q.—And what did you find?

20 A.—I found both holes were open where they passed through the clay. Of course, at the bottom, where they passed through some sand, the sand had run in to a certain extent. The clay did not appear to have squeezed in at all.

Q.—I would like to ask you what might be called a hypothetical question. Supposing the Plaintiff in this case had come to the Foundation Company and said: "I have a saw mill industry and a piling ground here. The water in this river is to be raised to Elevation 321.5, and that is going to affect my piling ground to the extent of half its area. I would like you to give me your advice as to what I should claim from the Company in respect to that damage, and whether I can physically reclaim my piling ground and put myself back in just as good a condition as I was before; and at what cost". I would be glad if you would let me know how you think you would advise him in those circumstances.

30

A.—I may say the ground on the creek side of the piling ground is comparatively level, and I would say it would be a very simple matter to fill that in and raise it up a distance of two or three feet above the new water level, and that that would restore the piling ground.

40

Q.—How would it be done, and what material would you use? Would it be a gravel fill?

A.—If we wanted to make a first-class fill I would recommend a sand or gravel fill; but, I do not think you could recommend that to a lumber man—he would be satisfied with a sawdust fill or a slab fill.

Q.—If you gave him a gravel fill do you think you would really

*In the
Superior Court*

No. 120.

Defendant's
Evidence.

(Supp. Hearing)

R. E. C. Chadwick,

Examination

Oct. 24th, 1932.

(continued)

be giving him something more than was practically necessary?

A.—Yes, I think it would be more than was necessary.

BY THE COURT:

Q.—If that was your property and your mill, would you be content to settle the case and tell the Company Defendant to make a sawdust fill?

10 A.—I think if I were the owner of the property I would try to get them to pay for the best fill I could reasonably ask for. I think I would ask them to give me a gravel fill.

Q.—Or pay you a fair damage?

A.—Yes, or pay me the price of a gravel fill. That is what I would try to get.

BY MR. KER (continuing):

20 Q.—And I think that is what anyone would try to do—get the price of a gravel fill?

A.—And maybe fill with sawdust.

Q.—In any event, having in view what you saw up there, and in the light of the plan Exhibit D-160, would you believe the ground there would bear up properly under a fill, and would it be able to carry the load which would be imposed upon it by lumber piles such as Mr. Cross would have there? Have you figured out the stresses?

A.—As I understood at the time, the primary purpose of my visit was to give an opinion as to whether the ground would safely hold a fill six feet thick, and an ordinary pile of lumber on top of it.

30 Q.—And to what conclusion did you come?

A.—I came to the conclusion that the ground certainly would hold that load. There is no question of it.

BY MR. SCOTT:

Q.—That is, from elevation 318?

A.—Six feet of fill above the present level of the ground.

Q.—Taking the water as at what elevation?

40 A.—The day I was there the water was at elevation 318.7, and I was told they were going to raise the water to, I think, 321.5, which was roughly three feet above the level it was when I saw it.

Then I was asked the question whether to carry the fill three feet above that would, in my opinion, be satisfactory from the point of view of preventing percolation of water—that is, dryness. I was then asked the question whether the ground would hold, in round figures, six feet of gravel, with the lumber pile on top.

*In the
Superior Court*

No. 120.
Defendant's
Evidence.
(Supp. Hearing)
R. E. C. Chadwick,
Examination
Oct. 24th, 1932.
(continued)

BY MR. KER (continuing):

Q.—And will you tell his Lordship what was your conclusion, and why?

A.—My conclusion was that the ground could absolutely be depended upon to hold that load.

10 You ask me why. I looked at the boring to determine what the subsoil was, and, without going into exact figures (which are not important), I would say this: the boring was taken on the track, about half way between the point where it crosses the road and the northerly end of the piling ground. That boring showed a certain amount of slab and sawdust fill; then, a layer of clay; then, a layer of sand; and underneath that either a rock or boulder formation. That gave us the three kinds of ground we would have to consider; first, a layer of sawdust and slab fill; then the layer of clay; then the layer of sand; and the rock. The sawdust is naturally not a very good filling material, but, nevertheless, that is what had been used in the past.

20 BY MR. SCOTT:

Q.—You are not speaking from personal knowledge in that? You are simply repeating to us what someone told you had been used?

A.—I saw it myself.

Q.—But you do not know personally that it had been used?

30 A.—I am satisfied personally that that is what had been used. That was what I saw there, and it was what the lumber was piled on. I cannot say how thick the sawdust fill is all through the property, but on the surface it was sawdust fill, and out in the water it was sawdust fill.

BY THE COURT:

Q.—Was it wet?

A.—Yes, very wet.

40 Underneath the sawdust fill was this layer of clay; which was what I was particularly concerned with, because if they overloaded the clay there would always be a chance of it squeezing out from underneath. The sand that was under the clay was not important, because, in any event, it is a foundation that will carry many times the loads that are under consideration in this case.

More than anything else I based my opinion on the fact that it was proposed to make a fill six feet thick. I examined the railway right-of-way—that is, the C.P.R. Maniwaki branch—which is at least 12 to 14 feet thick, and it showed absolutely no signs of having

*In the
Superior Court*
No. 120.
Defendant's
Evidence.
(Supp. Hearing)
R. E. C. Chadwick,
Examination
Oct. 24th, 1932.
(continued)

settled or giving any trouble. I made figures which showed that it was subject to more severe conditions than would be the fill it was proposed to make at the piling ground.

Q.—Considerably more?

A.—Yes, much more severe conditions. The fill is more than twice as high. The railway embankment must carry a train traveling at a considerable rate of speed. It must be subjected to impact and vibration, which is a much more severe condition than a static load.

10 Q.—How did you proceed to establish the load the piling ground would have to carry when renewed? Did you hear the evidence of Mr. Ralph?

A.—Part of it.

Q.—Perhaps you might tell us in a general way how you would proceed to arrive at a conclusion as to the weight that would have to be sustained?

A.—I can estimate the carrying capacity of a soil only by comparing it with other similar soils. We must consider former precedents we have been connected with.

20 I might explain that. I can take a boring, and I can examine the samples from it, and I have to give an opinion on it based on some previous experience with similar material. In this case we have something better than a boring: we have an actual structure which has been built on this same material, and has obviously stood for a great many years, and has obviously not moved for a great many years. We have this subsoil carrying the railway fill, and the fill for the roadway, and the fill for the siding leading into Mr. Cross' property; and it is certain it will carry the shallower fill that is required to build up this piling ground.

30 Q.—What weight would you estimate would come upon that clay, per square foot, below the gravel which would be put on? What bearing capacity would it have to stand, with the gravel fill such as you suggest, and with the lumber on it?

A.—To answer that completely I would have to virtually go through all my calculations, starting with the pile of lumber.

I calculate, first, the weight of the pile of lumber. I assume it might be possible to make the pile 30 feet high—which I think would be a little on the safe side. I do not think they pile to quite as high
40 as that. The lumber must be piled so that it may air. That gives 50 per cent of vertical voids. I assume there must be 15 per cent of horizontal voids—that is, the planks forming a given layer cannot be piled in absolute contact; there must be some space between them.

Eighty-five per cent of 50 per cent would give 42.5 per cent.

I estimate that pile would be equivalent to about 12 to 13 feet of solid timber.

*In the
Superior Court*
No. 120.
Defendant's
Evidence.
(Supp. Hearing)
R. E. C. Chadwick,
Examination
Oct. 24th, 1932.
(continued)

I assume it might weigh as much as 60 pounds per cubic foot —which would be very heavy green lumber.

Therefore, I get the weight of the pile per square foot as 765 pounds.

I assume 16 feet would be about the longest lumber they would saw in that mill. They might get a pile of lumber 16 feet long, by 16 feet wide; which would give 256 square feet area for the base. Weighing 765 pounds per square foot, would make the total weight of the pile in the neighbourhood of two hundred thousand pounds.

10 I figured that might be distributed over an area 19 feet by 24 feet. I believe there is some regulation of the Insurance Companies requiring a certain minimum space between piles of lumber, which, I am told, is 3 feet—and which corresponds about with what I saw up there.

BY THE COURT:

Q.—That is, a 3-foot space between the piles?

A.—Yes.

20 That would give 19 feet, centre to centre, of the piles. My pile of lumber is 16 feet wide. If I have a gravel fill at that point which might average 4 feet in thickness, that will, in itself, spread the load at an angle of 45 degrees. So, in considering the weight that is coming on the clay, I have to take into account the spreading effect of the gravel. I add 8 feet to my 16 feet, and that makes 24 feet.

That gives an area on the clay fill of 456 square feet.

I take a total load of 200,000 pounds, divided by 456, and I get 429 pounds to the square foot.

30 I add to that 6 feet of gravel fill, which I estimate would be 750 pounds; and I get a total load of approximately 1,200 pounds per square foot on the clay.

That, however, is much more than would come on the clay in actual practice, because it is almost impossible that the whole area would be filled with absolutely green lumber.

I have neglected entirely the loss of weight in the gravel fill due to the flotation—that is, when the water comes up on the fill the gravel weighs less than it does in air.

40 I assume the pond is kept low, which would give a greater weight per square foot on the clay. In other words, the figures are conservative. In actual practice, I would say you would get from 800 to possibly 1,200 pounds per square foot.

Q.—In your opinion, will the clay stand that quite easily, or will it stand it without difficulty?

A.—Yes, that clay will stand that weight. It is standing more than that under the railway fill.

Q.—What effect will the question of sills or skids have in connection with the weight?

*In the
Superior Court*

No. 120.
Defendant's
Evidence.
(Supp. Hearing)
R. E. C. Chadwick,
Examination
Oct. 24th, 1932.
(continued)

A.—They have no effect at all so far as the load on the clay is concerned.

Q.—The load you have given is the load on the clay, with the pile distributed through the sills?

A.—The weight of the pile comes first on timber sills. From that it is distributed into the gravel fill. From the gravel fill it is distributed on to the clay. The only function of the sills so far as these calculations are concerned is to distribute the weight on to the gravel. The gravel, in turn, distributes it on to the clay. So, the arrangement of sills has no effect whatever on the unit pressure that comes on the clay.

10

Q.—It would be the same if the piles were lying flat on the gravel?

A.—Yes, just the same.

Q.—And, at that rate, it would work out at about from 800 to 1,200 pounds per square foot on the clay?

A.—According to my calculations it worked out at 1,200 pounds per square foot.

20 May I correct the figure of 800 pounds I have given? It should be about 1,000 pounds.

BY THE COURT:

Q.—1,000 and 1,200?

A.—I gave it as my opinion that under actual conditions it would be about 800 pounds. I should have said it would be about 1,000 pounds.

30 BY MR. KER (continuing):

Q.—Have you a diagram which indicates the distribution of weight through the gravel?

A.—I have not a diagram here, but I can make one if you wish.

Q.—I was just wondering whether it is quite clear in the Record as to why it is not a straight downward thrust, and why it is spread out by the gravel.

A.—Perhaps I could make a diagram.

40 His Lordship: You are referring now to the skids or sills?

Mr. Ker: Yes, your Lordship.

BY MR. KER (continuing):

Q.—Will you file the diagram you have just made, as Exhibit D-172?

*In the
Superior Court*

No. 120.
Defendant's
Evidence.
(Supp. Hearing)
R. E. C. Chadwick,
Examination
Oct. 24th, 1932.
(continued)

A.—Yes.

I show on this diagram, Exhibit D-172, a rectangular representation of a pile of lumber 16 feet wide and 30 feet high. I show skids or sills underneath it. I have shown five, but there might be more, or there might be less.

10 I show the skids resting on a four-foot layer of gravel. That gravel is, in turn, resting on either clay or sawdust fill. The function of that bed of gravel will be to spread the load out considerably, and, roughly speaking, the effective width of the pile will be increased by about 8 feet—the gravel tending to spread the load out at least equal to its thickness, and perhaps as much as one and a half times its thickness.

I might compare this diagram to a road, for example. We know a clay road is not very good. Wheels will sink into it, and it will soften up in rainy weather. We know if we put a comparatively thin layer of gravel over that clay we get a fairly good road. The wheels will not sink into the gravel, because the gravel will spread the load over the clay. The thicker the bed of gravel, the better the road.

20 The load is transferred from the pile to the skids, and from the underside of the skids to the surface of the gravel. The gravel then tends to spread it out, and by the time the load reaches the clay all the effect of the concentration due to the skids is lost, and the load becomes a uniform load.

Q.—Just as if the lumber were lying on the ground, without skids?

A.—Just the same.

30 BY THE COURT:

Q.—Then, the skids lose their weight, as far as the clay is concerned?

A.—No, your Lordship, I do not mean to infer that. The skids tend to concentrate the load on the top of the gravel, but that concentration is all lost by the time we reach the top of the clay. It is spread out by the gravel.

Q.—What would be the weight of the skids?

A.—The weight of the skids themselves is insignificant.

40 Q.—What would be the size of each of those skids?

A.—They would probably be made of flattened logs, and I would say they would hardly be less than 8 inches wide, and hardly more than 12 inches wide.

Q.—And how thick would they be?

A.—The thickness would probably be 8 or 10 inches.

Q.—How long would they be?

A.—The skids would be continuous.

*In the
Superior Court*

No. 120.
Defendant's
Evidence.
(Supp. Hearing)
R. E. C. Chadwick,
Examination
Oct. 24th, 1932.
(continued)

Q.—16 feet long?

A.—They would be more than 16 feet. They would probably be continuous over the yard.

BY MR. CHISHOLM:

Q.—That is, they would serve for piles other than the one you are using as an example?

10 A.—I would assume a lumberman would build three or more skids over the full length of his pile, and he would then build piles of lumber on those skids to suit the lengths he was cutting.

BY MR. KER (continuing):

Q.—He would build the skids as he required to use them?

A.—Yes.

Q.—And they would remain there?

A.—Yes.

20 BY THE COURT:

Q.—Those skids would certainly weigh something?

A.—Yes.

Q.—And by the way the skids are distributed, the weight is lost as far as the clay is concerned?

30 A.—The weight of the skids themselves, as compared with the weight of the pile of lumber, is insignificant. In my calculations I have neglected the weight of the skids. The weight of the skids would not make any difference whatever in the final result.

BY MR. KER (continuing):

Q.—And it would be carried down to the clay?

A.—Yes. Whatever weight there is it would be carried down to the clay.

Q.—If you laid the gravel on top of a sawdust and slab fill instead of on the clay, would the same spreading out principle exist before the weight was carried down to the clay?

40 A.—Yes. The gravel would spread it out on to the top of the slabs and sawdust, and they, in turn, would spread it still more.

Q.—So the final result would be a lesser weight per foot on the clay?

A.—Not exactly, because there is a limit to the amount you can spread a load, and that limit would be the width of the pile, plus, say, three times the depth of the gravel, plus, say, the depth of the slab fill.

*In the
Superior Court*

Q.—There is a limit to the spreading?

A.—Yes.

No. 120.
Defendant's
Evidence.
(Supp. Hearing)
R. E. C. Chadwick,
Examination
Oct. 24th, 1932.
(continued)

BY THE COURT:

Q.—How long would those skids last?

A.—I am not a lumberman, your Lordship, but I can tell you we use skids of the same character in storing our equipment, and they last about five or six years, I suppose.

10

BY MR. KER (continuing):

Q.—Those skids would have to be put in for any piling in the yard, and I suppose they would have been used by Mr. Cross long before we came on the river?

A.—All lumber must be piled out of contact with the ground. You must leave a space underneath.

Q.—The skids are not part of the filling operation, or part of the remedial work?

20

A.—No, the skids would be required irrespective of anything the Gatineau Power Company did in the way of flooding.

Q.—You told us that when you were there you found the piling ground wet or damp. Did you make any investigations to discover the source of that wetness or dampness?

A.—Yes, I did. I was very much interested to determine how wet the ground was—that is, the degree of saturation. The day I was there I found the piling ground was absolutely saturated, and I am quite satisfied in my own mind that it had been saturated for a long time—that that was its normal condition.

30

BY THE COURT:

Q.—Have you stated the date you were there?

A.—October 10th.

Q.—This year?

A.—Yes.

I investigated to ascertain the source of this water; because where it occurred in pools, in the back adjacent to the lumber piles, and, so far as I could see, under the lumber piles, it was running—it was not standing water.

40

BY MR. KER (continuing):

Q.—It was certainly not from the river?

A.—No. Those points I speak of, and this water I speak of, would be above the level of the water in the Gatineau River. That is, higher up than the Chelsea pond.

*In the
Superior Court*

No. 120.
Defendant's
Evidence.
(Supp. Hearing)
R. E. C. Chadwick,
Examination
Oct. 24th, 1932.
(continued)

BY MR. SCOTT:

Q.—At what elevation?

A.—Higher than 318.7.

BY MR. KER (continuing):

Q.—Higher than where the water was that day?

A.—Yes.

10 I found this saturation was unquestionably coming from the pond above the Cross dam.

Q.—Did you go up and make an inspection?

A.—Yes, I went up to the dam, and I examined the soil wherever I could see it. Generally speaking, the embankment forming the Cross dam was leaking, and the water was percolating through it. The concrete dam itself was leaking, and there was leakage around the stop logs.

Unquestionably that was the source of the water I saw in the piling ground.

20 Q.—Did you make an estimate of the cost of the work of filling the piling ground with gravel?

A.—Yes. I figured that to bring the surface to three feet above the proposed Chelsea pond

Q. (interrupting)—That is the 321.5 level?

A.—Yes. To bring it up to three feet above 321.5, including the northerly end of the siding, would require about 10,000 cubic yards of fill, which would probably cost in the neighbourhood of 75 cents a yard. That would make \$7,500. There would be some work to do on the track, and skids, etc., and that would bring the cost up
30 to about \$9,000 or \$10,000.

My estimate was that \$10,000 would cover that filling.

Q.—With that amount, spent in that way, what would be your opinion of the resultant piling ground as compared with the present piling ground?

A.—The piling ground would be much better than it was before.

BY THE COURT:

40 Q.—Better than it was even before the raising of the river?

A.—Yes, your Lordship.

Q.—Did you see the ground before the raising of the river?

A.—No, I never saw it before the river was raised. When I saw it the water was not over the piling ground. It may have been over a small portion of it.

BY MR. SCOTT:

*In the
Superior Court*

No. 120.
Defendant's
Evidence.
(Supp. Hearing)
R. E. C. Chadwick,
Examination
Oct. 24th, 1932.
(continued)

Q.—You mean what was pointed out to you by the engineers of the Company Defendant as having been a piling ground?

A.—What is shown on the plan.

BY MR. KER (continuing):

Q.—You saw what was out of water at the time you were there?

Q.—Yes.

10 Q.—And you saw the nature of the ground that was in this part which was piling ground, about the spur, and about the trestle?

A.—Yes.

Q.—In your opinion, what would be the condition of that ground if it was filled in with gravel in the way you speak of? What would its condition be as compared to its present condition, from the point of view of its use as a piling ground?

A.—The present condition is a slab and sawdust fill. If we cover that with a gravel fill, we obviously improve the whole condition. Gravel is obviously a better filling material than sawdust.

20 Q.—There would be no difficulty in making that fill as matters exist at the present time, would there?

A.—No.

Q.—Did the wetness or dampness you noticed have the appearance of being to some extent habitual from the source above, or did it seem to be merely a temporary condition?

A.—I was satisfied that that condition had existed for some considerable time. The dam was obviously leaking. One point I noted was that at the north end of this piling ground there is quite a considerable growth of bullrushes, and it seemed obvious to me that the
30 ground must have been wet and marshy to grow bullrushes.

Q.—What would be the effect of a gravel fill on that? Would it tend to improve the situation, or otherwise?

A.—It would improve that situation materially. Gravel is a comparatively porous material, and the surface water would soak into it and run away much quicker than it would through sawdust.

BY THE COURT:

40 Q.—As I understand your testimony, you fix the damages at \$10,000?

A.—That is my opinion, so far as the piling ground is concerned.

Q.—If you were the owner of that whole property would you accept \$10,000 as compensation? You are under oath now.

A.—I might claim I was entitled to a bigger area of piling ground. I presume I would try to make my piling ground as big as I could, and I would try to collect for as big a property as I could.

*In the
Superior Court*

No. 120.
Defendant's
Evidence.
(Supp. Hearing)
R. E. C. Chadwick,
Examination
Oct. 24th, 1932.
(continued)

Q.—Would you honestly claim more as being a fair and equitable compensation?

A.—I think \$10,000 will restore that piling ground and make it better than it was before.

As I say, if I were claiming damages from a Power Company I presume I would try to ask for just as much as I was really satisfied to get. I mean, putting this case frankly, as those claims are made up, I do not think the piling ground is damaged to a greater extent than \$10,000.

10

(And further for the present deponent saith not.)

Cross-examination
Nov. 7th, 1932.

Montreal, November 7th, 1932.

And on this seventh day of November, in the year of our Lord one thousand nine hundred and thirty-two, personally came and re-

20

RICHARD ELLARD CARDEN CHADWICK,

and his testimony was continued as follows:

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

Q.—Has your Company done any work for the Gatineau Power Company?

30

A.—We built the storage dams on the Gatineau River for the Quebec Streams Commission and the Gatineau Power Company.

Q.—What storage dams are they?

A.—They are the dams of the Mercier Reservoir and the Ca-bonga Reservoir.

Q.—They are the large storage dams used in the control of the flow of the Gatineau River?

A.—Yes.

Q.—When was that work done?

A.—I could not say exactly. Some years ago. I could get the

40

dates if you wish.

Q.—Was it before, or after, the erection of the Chelsea dam?

A.—We were working on the storage dams at the same time they were building the Chelsea dam.

Q.—So it was going on at about the same time as the Chelsea dam was built?

A.—Yes.

*In the
Superior Court*

No. 120.
Defendant's
Evidence.
(Supp. Hearing)
R. E. C. Chadwick,
Cross-examination
Nov. 7th, 1932.
(continued)

BY MR. KER:

Q.—In 1926 or 1927.

A.—About that.

BY MR. ST. LAURENT (continuing):

Q.—How long did the job last?

10 A.—I suppose all told we were working there between two and three years.

Q.—What was the magnitude of the undertaking? About what would it run into as a matter of dollars and cents?

A.—I do not recollect the exact figures, but it would run into several millions of dollars.

Q.—At that time were you the chief officer of the Foundation Company?

20 A.—I was either the General Manager and Vice-President, or probably towards the end of the work I was President of the Company.

A.—In fact you were the person, were you not, who was at the head of the executive branch of your Company?

A.—Yes, I was the chief operating official.

Q.—And during that period you must have spent considerable time in that locality?

A.—I used to visit the work quite frequently.

Q.—During that period you never had occasion to look over the properties of Mr. Cross?

A.—No.

30 Q.—You never gave them any personal attention until, I think it was, October 10th of this year?

A.—I had nothing at all to do with the Cross case until I was asked to go there and give an opinion on this fill.

Q.—And I think that was about October 10th?

A.—Yes, last Thanksgiving Day.

Q.—Prior to that time you had never given that property any attention whatever, and you could not speak from personal knowledge of what it was?

A.—No.

40 Q.—You said in your examination in chief that one hole had been put down in your presence. Will you indicate, please, on the plan Exhibit D-160 where that hole was? I think you said it was on the track?

A.—The hole that was put down while I was there was on the track, and it was about midway between the road and the northeast end of the piling ground.

Q.—Will you please put an indication on the plan Exhibit

In the
Superior Court

No. 120.
Defendant's
Evidence.
(Supp. Hearing)
R. E. C. Chadwick,
Cross-examination
Nov. 7th, 1932.
(continued)

D-160? I see there are already the letters "Z", "X" and "Y". Perhaps you might indicate it by some other letter.

A.—I should say the hole they drilled while I was there was at about the location marked "Z". I made no measurements to determine the exact position of this hole.

Q.—When you say it was on the track do you mean it was between the rails, or just outside the rails?

A.—My recollection is it was between the rails.

10 Q.—Is it your recollection that at that point there was a certain layer of slabs and sawdust under the rails?

A.—I do not think they brought up any slabs and sawdust. There was a layer of harder material that would be made up of mill waste, with presumably some gravel or ballast for the tracks, and underneath that was the clay.

Q.—What would be the thickness of this layer the composition of which you have just described?

A.—Perhaps I might refer to my notes, just as to what the measurements were.

20 What appeared to be this surface fill was about four feet thick.

Q.—And, is it your statement that for a depth of four feet there was mill refuse over the natural surface?

A.—Yes, I believe there was mill refuse for four feet.

Q.—So, your statement would be that the natural surface at that point was four feet lower than the bottom of the rails?

A.—I was of this opinion: that the surface of the ground had unquestionably been filled over.

Q.—To a depth of about four feet?

30 A.—I did not personally take the measurement of four feet.

That is approximate. I was not concerned with that.

Q.—It would be something over three feet?

A.—I did not measure it over three feet.

Q.—You saw what was coming up, did you not?

A.—Yes.

I was interested in the clay. I was not particularly interested in the fill.

Q.—To the best of your judgment how far down did they have to go before they got to the natural surface of the ground?

40 A.—As I say, I was not particularly interested in where the natural surface was. I was interested only in the consistency of the clay. I did not regard the surface fill as of any particular importance.

Q.—You have said it was about four feet. Is that your recollection of it?

A.—As far as I know, that is my recollection.

Q.—What depth of clay was found below that?

A.—The boring struck a rock or boulder formation at a depth of 15 feet, and there was perhaps a foot of sand overlying that rock

In the
Superior Court

No. 120.
Defendant's
Evidence.
(Supp. Hearing)
R. E. C. Chadwick,
Cross-examination
Nov. 7th, 1932.
(continued)

—may be a little more sand. That would make a clay bed of at least ten feet thick.

Q.—Did you examine that clay? Was it clay that would become very soft in water?

A.—Yes, I think that clay would become soft in water.

Q.—We have had evidence of clay found in other holes, which was described as material which when saturated would squeeze right through your fingers and leave nothing in your hand.

A.—The clay I am speaking of was not clay of that nature at all.

10 Q.—The clay you saw would not be affected in that way by water?

A.—I could put enough pressure on any clay to squeeze it through a hole, let us say.

This clay was not soupy—it was a stiff clay.

Q.—But, if it was allowed to remain under water would it soften to such an extent that it would squeeze through your fingers?

A.—Yes, I could make it into a complete solution if I wanted to do so. I could make it into a solution as thin as cream or milk.

20 Q.—That would be the result of the water coming into contact with the minute particles of the clay, would it not?

A.—I said I could make a mixture of clay and water that would be as thin as milk: but that would not occur in its natural state.

Q.—It is softened today as the result of the water coming in contact with the minute particles of the clay, is it not?

A.—I presume it was. The clay was saturated when I saw it. It was under water.

Q.—Would the putting of pressure on top of a clay bed have any effect in preventing the water from getting into it?

30 A.—Yes, I presume pressure on the clay might prevent water getting into it—might squeeze the water out of it.

Q.—You were not here when Mr. Langford gave his evidence?

A.—I do not believe I was.

Q.—You did not hear him give as an explanation of the state in which he found the railway right-of-way the fact that a considerable pressure had been put over the top before the saturation of the subsoil commenced?

A.—No, I did not. I was not here when he gave his evidence.

40 Q.—Would you agree with the statement that the imposition of a considerable load over the surface would retard the action of the water on the subsoil?

Witness: You mean after the fill was made?

Counsel: Prior to the raising of the water. That it might compress the clay to such an extent as to retard the action of the water upon it.

*In the
Superior Court*

No. 120.
Defendant's
Evidence.
(Supp. Hearing)
R. E. C. Chadwick,
Cross-examination
Nov. 7th, 1932.
(continued)

A.—I think if it did the water would then leak through the fill, and would have just the same effect as if the fill had been made after the water was on. The fill is porous. It does not protect the clay from water.

Q.—You think if the water leaked through the fill from the surface, the fact of the clay having been compressed into a more compact mass would not retard the effect of the water upon it?

A.—It is conceivable it might retard it a little, but it would have no practical effect.

10 Q.—In your opinion, it would have no practical effect?

A.—No, no practical effect.

Q.—With respect to the spreading of the load of those piles. I understood you to say you felt that the load of a pile sixteen feet wide would spread out about four feet on each side?

A.—Yes, if it was on a gravel fill.

Q.—So that your sixteen-foot load would actually bear on a base twenty-four feet wide?

A.—Yes, that is correct.

20 Q.—That spreading out would occur in all directions, would it not? It would radiate all around the pile?

A.—Yes.

Q.—You suggested that those piles might be within three feet of one another?

A.—Longitudinally, yes.

Q.—If you had two piles, with a three-foot space between them, you would get in that three-foot space the spread from the first pile for a distance of four feet would you not?

A.—No, because there are not four feet available for the spread.

30 Q.—Would it not spread just the same? Is it not a matter of the manner in which the stresses go down through the ground?

A.—It could only spread through the space that is available between it and another load.

Q.—What would prevent it from carrying on below the other load?

A.—Because it gets a load from the other side. The load on the bottom would be equalized.

40 Q.—Looking at the sketch you filed as Exhibit D-172, which shows under the pile of lumber certain diagonal lines. Would not those diagonal lines carry on all around the pile?

A.—Yes, they would carry on all around the pile; but not where you had another pile within less than the limit of spread.

Q.—Why not?

A.—When I load a slab of any material, whether it be concrete, or clay, or gravel, I impose certain loads on the top of it; I induce certain reactions which are equal and opposite on the underside of it. Those spread according to certain rules, and they will spread out

*In the
Superior Court*

No. 120.
Defendant's
Evidence.
(Supp. Hearing)
R. E. C. Chadwick,
Cross-examination
Nov. 7th, 1932.
(continued)

over an unloaded area, but they cannot spread under a loaded area.

Q.—Why not? If they start out vertically why are they going to stop just as they cross another vertical line coming from some other load?

A.—Because the slab of material acts as a beam between the two.

If the load from one pile of lumber spreads out under the load from another pile of lumber, you would get a greater reaction and a greater upward pressure than the total of your downward pressure; and that is a mathematical impossibility.

10 Q.—I still cannot understand why if you have, say, a cube, the face of which is sixteen feet, and you say you put it on a gravel slab, it is going to affect four feet on each side of it, the stresses are going to go down diagonally so that they will get out to an area of twenty-four feet, four or five feet down. I cannot understand why that will be prevented if you have another pile alongside the first pile.

A.—I am trying to think of an example.

20 This load spreads out according to certain definite mathematical rules, and it will spread out over an unloaded area, but it cannot spread out between two piles when the distance between the two piles is insufficient for it to spread. It cannot overlap.

Q.—I know you cannot take the space into account twice in making your calculation.

A.—Of course you cannot.

Q.—As a matter of practical result, you have this load on the surface, and it is transmitted down, say, four feet, in a certain way, because, I suppose, of the compressibility of the material that makes up the slab. Is that correct?

A.—Yes, that is correct.

30 Q.—And although when you have only three feet you cannot calculate four, still you have the physical effect there just the same, have you not?

A.—No, we have not. We have only three feet of supporting area, and we cannot twist our figures around and make it something different from what it is.

Q.—But the stresses are there just the same, are they not?

40 A.—The stresses are the stresses due to the load of a pile of lumber, and if I put two piles of lumber close together I cannot make those piles more than they had before by reason of putting them close together. I cannot build up a reaction. It would be purely theoretical, and it does not exist.

Q.—But in your calculation you are making it weigh a little less.

A.—No, I am not; not at all.

Q.—You are making one pile weigh less on 256 square feet of clay than it weighs on the surface of the gravel?

A.—I am not making it weigh less. I am spreading it over a larger area.

*In the
Superior Court*
No. 120.
Defendant's
Evidence.
(Supp. Hearing)
R. E. C. Chadwick,
Cross-examination
Nov. 7th, 1932.
(continued)

Q.—You are making the portion which bears on the 256 feet of clay less than the total which bears on the surface of the 256 feet of gravel.

A.—I am afraid I do not understand you.

Q.—You are carrying down to your 256 feet of clay a lesser weight than you have on the 256 square feet of gravel at the top?

10 A.—I am carrying the weight of the pile, whatever it may be, through the gravel into the clay. The fact that the gravel is there unquestionably spreads the load. I might cite an example: if you take a clay road, or a path, everyone knows if you put gravel or cinders on it you can make it so that you will not sink into it—in other words, you spread the load over a larger area.

Q.—I suppose it is the same thing with a snowshoe?

A.—Yes. If you spread the load you will not sink in.

Q.—Is it possible to verify this spreading experimentally, and to ascertain how far it extends?

Witness: Do you mean in this particular case, or generally?

Counsel: Generally.

20 A.—Yes, I think it would be possible.

Q.—Has it been verified experimentally, or is it just a well known fact that it does spread to a greater or lesser extent without there being any precise calculation in regard to it?

A.—I have never verified it experimentally, but it is a well known fact. I have no doubt we could find hundreds of text books, etc., that would at least show that some of our mathematical professors have verified the calculations experimentally.

We know it to be the fact, and we know it exists.

30 Q.—Your illustration of the cinder path shows it exists, but you cannot indicate any experimental verification of the exact degree to which it occurs, can you?

A.—We know that every railroad fill is usually designed with a slope of one and one-half to one—that is one and one-half horizontal to one vertical, which is the natural angle of repose of gravel, say—the material they try to make railway fills with. We know a railway fill spreads the load over the total width of the fill. We know if you are on very soft ground, and you want to spread the load more, it is common practice to make the fill with flatter slopes.

40 Q.—But, to your knowledge, there never has been any experiment to determine whether the pressure under the centre is just exactly the same as the pressure at the edge.

A.—The pressure under the centre would not be exactly the same as under the edge. The pressure would reduce from the centre outwards.

Q.—If that be so with this load, it is not fair to say that you divide your total weight by the number of square feet of base? In fact, the pressure is not evenly distributed?

*In the
Superior Court*

No. 120.
Defendant's
Evidence.
(Supp. Hearing)
R. E. C. Chadwick,
Cross-examination
Nov. 7th, 1932.
(continued)

A.—No, it is not evenly distributed.

Q.—If you have a pile 16 x 16 x 30 feet (as the one you used in your illustration) and it is resting only on three skids, how does it happen that you have the weight distributed on the whole base?

A.—We must depend on the gravel to distribute the load from the skids.

Q.—As a matter of fact, at the surface the whole of the load is carried on the surface of the skid, and on the underside of the skid?

A.—Yes, the load is all carried on the skid in the first instance.

10 Q.—And you have to depend upon this general knowledge that those stresses spread out to say that when you get down to four feet it has spread out over the whole surface?

A.—Yes.

Q.—If instead of being placed flat on the ground those skids were each put on a block one foot square, so that you had, say, twelve blocks under your three skids—twelve square feet bearing the whole load—would it spread out through the four feet of gravel?

20 A.—Generally speaking, if you put blocks under the skids, and if the area of the blocks is greater than the area of the skids, you spread the load out to a greater extent, in proportion to the areas.

Q.—But if instead of putting continuous blocks I put only four blocks under each skid?

Witness: How far are you putting your blocks apart?

Counsel: There would be one at each end of the sixteen-foot skid and two in between.

30 Witness: That would make them five and one-third foot centres?

Counsel: Yes.

Witness: What do you want to know, exactly?

Counsel: I want to know if with that situation a bed of gravel four feet in thickness will spread the weight out over the whole surface?

40 A.—Yes, I think four feet of gravel would spread it out.

Q.—Is there any scientific formula for calculating the extent it will spread through gravel, or is it just a matter of practical experience?

A.—There has been a great deal of research work done on the angles at which various materials will stand up, and there has been a great deal of research work done, and a great deal of theory worked

In the
Superior Court

No. 120.
Defendant's
Evidence.
(Supp. Hearing)
R. E. C. Chadwick,
Cross-examination
Nov. 7th, 1932.
(continued)

out, as to how earth pressures act, and how they spread; but I think in this case I go by my own practical experience.

Q.—But you have no practical experience with this particular layer of clay, because you have not done any work in that vicinity?

A.—We have two very good examples, which furnish the best practical experience in the world.

Q.—And what are they?

A.—You have the roadway across on that fill, and you have the big railway embankment.

10 Q.—You do not think the fact that they were put there before the clay became saturated is a factor of any consequence?

A.—If they were put there before the clay became saturated, the clay has since become saturated.

Q.—To the same extent as if this pressure had not been on it?

A.—I think practically to the same extent. It is exposed to water on the surface.

Q.—Of course, your personal knowledge as to how far below the present surface the natural surface was could only apply to this point where you saw the hole being made?

20 A.—Yes. The original surface was naturally variable.

Q.—And you could not say how much of the original surface was at this original level you apparently found at the point “Z”?

A.—No. That question did not interest me at all.

Q.—In the transcription of your deposition, your last answer reads:

“As I say, if I were claiming damages from a Power Company I presume I would try to ask for just as much as I was reasonably satisfied to get”.

30 Is that what you said?

A.—I think I said “Twice as much”.

Perhaps I might explain that. I have estimated that to restore this piling ground would cost \$10,000, and unquestionably if \$10,000 were spent you would have a far better piling ground than you ever had before, both for load-carrying capacity and everything else. I presume in assessing damages a man whose property is damaged is going to want more than the bare cost of restoring his property. He is going to have other consequential damages, and he is going to have trouble, and other expense. That is what I mean when I say he would ask for twice the actual cost of restoring it.

40 On the other hand, if the Power Company paid \$10,000 as being the estimated cost, I do not for a minute think any lumberman would spend that \$10,000 in restoring his piling ground. He would do it in a much cheaper way. He would not put in a solid gravel fill.

Q.—When you speak about the piling ground you mean the area bounded in pink on the plan Exhibit D-160?

In the
Superior Court

No. 120.
Defendant's
Evidence.
(Supp. Hearing)
R. E. C. Chadwick,
Cross-examination
Nov. 7th, 1932.
(continued)

A.—Yes. I think, generally speaking, I refer to the area bounded in pink; although that includes the siding also, which could not be used as a piling ground.

Q.—But that is the area in which this fill would be placed?

A.—I think it is intended to show the area that was proposed to be filled.

Q.—Did you get the actual measurement of the area, for the purpose of making up your estimate of 100,000 cubic yards of gravel, or was that just a guess after looking it over?

10 A.—It was arrived at from the sizes shown on the plan.

Q.—That is the plan Exhibit D-160?

A.—Yes.

Q.—Allowing for what average depth?

A.—This fill is variable in depth. I allowed an average of four feet.

Q.—Over what area?

A.—About 70,000 square feet. That is a little on the large size.

Q.—That would be almost an acre and three-quarters?

20 A.—I forget just offhand how many square feet there are in an acre. We do not use the acre measurement very much in my particular business.

Q.—You have not, of course, estimated what would be the cost of putting in piling, if it were found necessary to do so?

A.—We discussed piling, and I gave it as my opinion that with those conditions there was no necessity of piling.

Q.—So you did not make an estimate of what it would cost if whoever was doing it was not of your opinion and felt that piling had to be done?

30 A.—We made some approximate figures, yes.

Q.—What are the figures at which you arrived?

Mr. Ker: Does this arise from the examination in chief of the witness?

Mr. St. Laurent: I think it does. Mr. Chadwick has told us the cost of doing it in a certain way, and I am asking him if he considered what would be the cost of doing it in another way, and he says he did.

40 Mr. Ker: He says he did not consider it seriously, because in his opinion piling would not be necessary. I do not think there was any question of piling in the examination in chief of the witness, and while I have no desire to limit my learned friend's cross-examination, it seems to me we are getting rather far afield.

I think the question is irrelevant, and does not arise out of the examination in chief. Piling is absolutely beside the question. It might have been done with gold nuggets.

*In the
Superior Court*

No. 120.
Defendant's
Evidence.
(Supp. Hearing)
R. E. C. Chadwick,
Cross-examination
Nov. 7th, 1932.
(continued)

Mr. St. Laurent: If the witness will say the cost would be prohibitive, I do not care what his figure may be.

Mr. Ker: But he is not going to say that at all.

His Lordship: I will take the evidence under reserve.

10 Witness: If I remember correctly, I gave it as my opinion that piling would cost about 40 cents a foot. The question was asked me as to how I would suggest arranging this piling, if piling was necessary—that is, whether it would be practicable to put piling around the outside edge of the fill. I gave it as my opinion that piling around the outside edge of the fill was not necessary, and that it would not be any improvement. If you were putting up a heavy building, or a skyscraper, there, you might put piling in, or dig down to rock. I was dealing with the question of putting a pile of lumber on six feet of gravel.

20 Q.—When you speak of 40 cents a foot, do you mean 40 cents per square foot of surface?

A.—No; 40 cents per lineal foot of pile driven.

Q.—And there was no estimate of the quantity it would take?

A.—No, I do not think there was any estimate of quantity.

Q.—In any event, it would be a very large quantity? If they were going to pile before putting in the gravel it would take a very large quantity of piling, would it not?

A.—It would depend upon how close together they put the piles.

Q.—And you made no estimate at all of that?

30 A.—I maintain it does not take any quantity, because the conditions do not require piling, or do not warrant piling.

Q.—Is the figure of 40 cents per lineal foot as far as you got on the question?

40 A.—I do not know whether I made estimates of quantity. I made some figures in the Court room here while another witness was under examination, of what it would take in the way of piles to support the whole pile of lumber if no ground at all existed—as if you supported the piles of lumber up in the air. Those figures are based on six sills, 500 feet long, making 3,000 lineal feet of sills, and to support them without relying on the ground for anything at all. Assuming the whole thing was water, and no ground there, it would take some 480 piles.

Q.—480 piles, in addition to the sills?

A.—480 piles under the sills.

Q.—And you did not work it out into lineal feet?

A.—Based on the borings I saw, those piles would be about 20 feet long. That would make 9,600 lineal feet of piling.

*In the
Superior Court*
No. 120.
Defendant's
Evidence.
(Supp. Hearing)
R. E. C. Chadwick,
Cross-examination
Nov. 7th, 1932.
(continued)

Q.—And how many piles of lumber would that support?

A.—It would support two continuous piles, each 500 feet long.

Q.—That is, two rows of piled lumber 500 feet long?

A.—Two rows of piled lumber 500 feet long.

Q.—By whatever the width might be—12 or 16 feet?

A.—Whatever width you could spread over three sills.

I may say all those figures on piling were made very hurriedly, just while I was listening to one of the other witnesses, and I do not guarantee their absolute correctness.

10 Q.—You did not arrive at any figure as to what might be the cost of doing the job in that way?

A.—If all my assumptions are right, and my figures are correct—and they were just made hurriedly in the Court room here—we get 9,600 lineal feet of piles, and they are worth 40 cents a lineal foot. That would make a total cost of, I suppose, about \$4,000.

Q.—It would be a good deal cheaper to do it that way rather than put in the gravel?

A.—Yes, but I do not suppose it would be satisfactory.

20 Q.—Would it be solid?

A.—It would be solid, yes.

Q.—That would give you just a frame skeleton?

A.—It would support your piles of lumber on a frame skeleton. You could flood the land all around. You might have water all around.

Re-examination

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

30 Q.—You spoke of storage dams as having been built by your Company. I think the first was known as the Baskatong, or Mercier, dam at the head waters of the Gatineau?

A.—Yes; a series of dams called the Mercier Reservoir.

Q.—And some years later the Cabonga Reservoir was added?

A.—Yes.

Q.—They are the dams which regulate the flow of water into the Gatineau?

A.—Yes.

40 Q.—And both those dams were built upon the specifications and instructions of the Quebec Government, I understand?

A.—The Quebec Streams Commission.

Q.—I understand they were paid for by the Gatineau Power Company?

A.—I think the original ones were paid for by the International Paper Company, and I think the other was paid for by the Gatineau Power Company.

*In the
Superior Court*
No. 120.
Defendant's
Evidence.
(Supp. Hearing)
R. E. C. Chadwick,
Re-examination
Nov. 7th, 1932.
(continued)

Q.—In any event, the work was done to the order of the Quebec Government?

A.—Yes.

Q.—The Cabonga Dam was only commenced, I understand, after the Baskatong Dam had been completed and was in operation?

A.—Yes, that is correct.

Q.—Do you recollect when the Kabonga Dam was completed? About a year or two ago—say within a couple of years?

A.—I think it would be over two years ago.

10 Q.—There was some suggestion made by my learned friend in cross-examination that the ground underneath the fill constituting the C.P.R. right-of-way might have been in a more favourable position to hold that fill by reason of the fact that the fill was placed upon a dry surface. Assuming the clay underneath the C.P.R. right-of-way is of the same nature as the clay under this piling ground, am I correct in saying that the whole weight of the C.P.R. right-of-way, including the crust upon which it is built, falls on to that clay?

A.—Yes, unquestionably the weight is on the clay.

20 Q.—In the final analysis, whether the fill was built on top of a portion that was dry, or which has not yet been submerged, the total weight of that fill is really coming on to that saturated clay at the bottom, is it not?

A.—Yes, absolutely.

Q.—And the portion of that base which might be said to have been dry when the fill was put on it has now been under water for five years?

A.—Yes.

30 The fill itself is porous, and as soon as the water comes up around the fill it naturally flows through this porous fill and comes into contact with the underlying clay.

Q.—Referring to the last matter dealt with by my learned friend, namely the piling: I understood your estimate to be something in the neighbourhood of \$4,000 as the cost of making a series of piles which would carry a certain number of piles of lumber. Mr. St. Laurent stated that would be less than the cost of the fill. As a matter of fact, to adopt that piling system would mean you would have water up over the ground, unless you filled it, in the vicinity of the piles you drove?

40 A.—If you drove piles and put your sills on top of the piles to this required elevation, and then raised the water to the proposed level, you would have water around the piles of lumber.

Q.—And, in your opinion, that is not what should be done in this instance, seeing that you have recommended filling?

A.—I think it would be impracticable to have a piling ground in a sort of lake, with lumber sitting up on a trestle.

*In the
Superior Court*

No. 120.
Defendant's
Evidence.
(Supp. Hearing)
R. E. C. Chadwick,
Re-examination
Nov. 7th, 1932.
(continued)

Q.—And it would be probably equally impracticable to run a spur line of the C.P.R. into the place?

A.—The spur line of the C.P.R. would likewise have to be up on piles, and it would then become a bridge.

10 Q.—Am I right in assuming that your estimate of \$10,000 included the placing of the gravel to an average of four feet—that is from six feet out to nothing at 324.5—four feet of gravel—and the raising of the spur line of the C.P.R. to correspond to that, putting it into condition, and the other work necessary to bring the trestle and various other appliances on the piling ground into operating condition?

A.—Yes.

It is intended to include the whole of the restoration of the piling ground to the new level, including what changes would have to be made in the tracks, etc.

Q.—I think you said the cost of the gravel would be about 70 cents a cubic yard?

A.—I figured on an all-around price of \$1.00 a yard, to cover all the secondary operations.

20 Q.—With the experience you have had through your company and otherwise, could you conscientiously advise Mr. Cross that the fill of that ground would give him as good a piling ground or a better piling ground than he had before?

A.—I am of the opinion that a gravel fill there will unquestionably give a better ground than the present situation.

Q.—By “the present situation” you mean better than the piling ground would have been under normal conditions?

30 A.—I think under any conditions a gravel surface is better than a clay surface—under any possible conditions.

(And further deponent saith not.)

*In the
Superior Court*

No. 121.
Defendant's
Evidence.
(Supp. Hearing)
William S. Lee,
Examination
Nov. 7th, 1932.

DEPOSITION OF WILLIAM S. LEA, A WITNESS EXAMINED
ON BEHALF OF THE DEFENDANT

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

WILLIAM S. LEA,

10

of the City and District of Montreal, consulting engineer, aged 55 years, a witness produced and examined on behalf of the Defendant, who, being duly sworn, deposes as follows:—

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

Q.—You are an engineer by profession?

A.—Yes.

20

Q.—Practicing in Montreal?

A.—Yes.

Q.—Alone?

A.—Yes.

Q.—How long have you been practicing?

A.—I have been in private practice for almost twenty years.

BY THE COURT:

Q.—Always in Montreal?

30

A.—Yes, your Lordship.

BY MR. KER (continuing):

Q.—During that time had you had considerable professional experience in construction work, foundation matters, etc.?

A.—Yes, I have had considerable experience with construction and design of works, mostly hydraulic works.

Q.—Did you begin your practice alone?

A.—I have had experience as an engineer for thirty-three years.

40

Q.—Perhaps you might tell us briefly what your experience has been, and what you have been doing during your professional career?

A.—I think I put all that in when I was examined before.

Q.—In any event, you have had considerable experience in foundation problems?

A.—Yes.

Anybody who has anything to do with construction work must have experience in foundations, because it is one of the first things,

In the
Superior Court

No. 121.
Defendant's
Evidence.
(Supp. Hearing)
William S. Lee,
Examination
Nov. 7th, 1932.
(continued)

and one of the most important, to consider on any structure.

I have given opinions on foundations in connection with jobs with which I have had nothing else to do.

About eight or ten years ago I was called in by the Spanish River Company to report on a foundation for a dam they were building at Sturgeon Falls, and I have given opinions on the sufficiency of foundations for some buildings. Three years ago I was asked by the City of Winnipeg to report on the foundations for a dam on the Winnipeg River. This was quite an important structure, seventy-
10 five feet high, of an earth foundation.

Q.—You have no connection with the Company Defendant?

A.—No, sir.

Q.—None of those works you speak of were for this Company or for the International Paper Company?

A.—No.

Q.—I believe you have had occasion to examine Mr. Cross' property, and particularly the piling ground which we have been discussing?

20 A.—Yes.

Q.—When did you examine it?

A.—On October 10th of this year.

Q.—With Mr. Chadwick?

A.—With Mr. Chadwick.

Q.—And you saw the result of the borings that had been made?

A.—Yes.

Q.—You saw a hole or some of the holes being drilled?

30 A.—I saw one hole being drilled. It has been described here pretty often. It was alongside of hole No. 2. During the drilling of that hole I tested the hardness of the soil with the drill at three different depths. I examined the material that was brought up out of holes Nos. 3, 4, 5, 6 and 7. In the case of Nos. 5, 6 and 7 (two of which had been drilled on the same morning I was there, and one the day before, so I was told) we lowered a pipe down to discover whether or not the material was sufficiently stiff to stand up after the drill had been removed, and in each instance we were able to lower the pipe practically to the bottom, showing that the holes had not filled in.

40 Q.—In your opinion, have you made sufficient investigations to permit you to offer an absolutely definite opinion as to the possibilities of utilizing this piling ground by filling it in?

A.—Yes.

Q.—And whether thereby you would get a proper piling ground, and whether the filling in operation is an operation which can be recommended?

A.—Yes.

Q.—Will you tell his Lordship briefly your opinion as to the

*In the
Superior Court*

No. 121.
Defendant's
Evidence.
(Supp. Hearing)
William S. Lee,
Examination
Nov. 7th, 1932.
(continued)

work that should be done there to reproduce this piling ground with the water level at 321.5?

Q.—The proposal is to fill in the piling ground to elevation 324.5, that is, three feet above the maximum level to which it is proposed to raise the water. The filling would be extended out to contour 318. This would make a maximum depth of fill of six feet.

The maximum loads that would then be imposed on the stratum of clay which has been spoken of would be somewhere around three-quarters of a ton—certainly not over one ton—per square foot. In
10 my opinion, there is no question whatever of the fact that that clay subsoil will stand a load of about one and one-half tons per square foot. So I can see no objection whatever, or no danger whatever, to filling that ground to the level proposed and using it as a piling ground for the lumber.

Q.—And rehabilitating the railway spur?

A.—And rehabilitating the railway spur.

Q.—In your opinion, what would be the condition of the piling
20 ground after this was done, as compared with its usual condition before?

A.—That piling ground would be more level than it is now. The spur would be more suitable for handling the cars, on account of the fact that the grade would be diminished between the piling ground and the C.P.R. main line.

Q.—Would the draining capabilities of the ground be better or worse?

A.—Filled with gravel, all the surface water would drain off better than it does now.

Q.—And the surface would certainly be level?

A.—It would be level.
30

Q.—Did you hear the evidence of Mr. Chadwick with respect to the spreading of the load through the gravel on to the clay beneath?

A.—I heard some of it; I did not hear it all.

Q.—Do you agree with what he said as a sound principle?

Witness: That the load will spread?

Counsel: Yes.

40 A.—Yes, the load will spread if the soil settles. If a load is put on a foundation, and that foundation is so stable that it will not settle, the load does not spread. If the foundation settles, it pulls, and the load spreads on account of the fact that in any soil there is a certain cohesion or shear between the particles.

In the City of Montreal they are building certain sewers—and I know about it because I have something to do with it. They were doing the work in tunnel. Let us take DeCourcelles Street, for in-

In the
Superior Court

No. 121.
Defendant's
Evidence.
(Supp. Hearing)
William S. Lee,
Examination
Nov. 7th, 1932.
(continued)

stance. A sewer twelve feet in diameter is being put in there, and it is put in in tunnel. The roof of it is about 14 or 15 feet below the surface of the street. They go in there and excavate to a width of about fifteen feet. The traffic passes in places over it. Yet all the street stands up, because the soil over where they have excavated is supported by reason of the cohesion or shear in the particles of clay. If you dig out underneath the clay does not drop down. If it were all muck, it would drop down.

10 If you put a sufficient load on any soil so that it begins to settle, it cannot help but distribute sidewise, because it begins to pull down the soil alongside of it. So soils tend to equalize the load.

Another example of the fact that soils distribute the load will be found in railway lines. Those embankments are made with ordinary clay, or anything they can get. Then the rails are laid, and locomotives and trains are run over them. The concentrated load on one of the ties when two wheels of a heavy locomotive come upon it is very heavy. They put the ties about eighteen or twenty-inch centres, and those ties may rest on soft stuff with about eighteen inches of gravel over it, and they know it will distribute the load below.

20 Q.—You are now speaking of the grading?

A.—Yes.

You could not begin to put the concentrated load of a locomotive on the soft earth.

Q.—Without the gravel between?

A.—Without the gravel between.

Q.—In your opinion will those lumber piles, with the gravel fill, act in the same manner?

A.—They are bound to act in the same manner.

30 Q.—Have you made any estimate of the cost of restoring this piling ground by means of a gravel fill?

A.—I did not examine it in so much detail as did Mr. Chadwick, but I checked over the quantity of the fill with Mr. Ralph, and the price mentioned, 70 cents per cubic yard, I consider to be quite sufficient.

Q.—You think the work could be done for that figure?

Witness: For 70 cents per cubic yard?

40 Counsel: Yes.

A.—Yes, I think it could be done for that.

Q.—Have you given any thought to the extras which might bring the figure up to \$1.00, of which Mr. Chadwick spoke? The railway siding, the adjustment of the trestle, and so on.

A.—No, I did not make any figures on that.

In the
Superior Court

No. 121.
Defendant's
Evidence.
(Supp. Hearing)
William S. Lee,
Cross-examination
Nov. 7th, 1932.
(continued)

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

- Q.—If I am not mistaken, what you were concerned with was this area shown as being between contours 318 and 321.5?
A.—318 and 324.5.
Q.—That would be to bring what is now between 318 and 321.5 up to the level of 324.5?
A.—That is correct.
- 10 Q.—You checked with Mr. Ralph the quantities of fill that would be required?
A.—Yes. He was doing the figuring. He was scaling it off. I really did not do it myself, but I was watching him do it.
Q.—And, without your taking full responsibility for it, it appeared to be done in a proper way to get at the actual result?
A.—That is what I thought.
Q.—Have you done any work in that locality?
A.—No.
- 20 Q.—Then you have not any personal experience as to the cost of getting gravel to that point?
A.—No. I based myself on what I was told they could get it across the river at a borrow place where they had taken material out for building the road. If that be correct, 70 cents a yard is sufficient for it.
Q.—Would it have to be taken across the river in a barge, or how would it be brought across?
A.—If they were doing it in the winter they would haul it across on sleighs.
- 30 Q.—You were not here when some of the lumbermen described the serious difficulties of hauling across that river in winter, because of the variation of the level of the water?
A.—No.
Q.—Have you ever had any experience trying to have material hauled across a river the level of which varied considerably?
Witness: You mean in the winter time?
Counsel: Yes.
- 40 A.—No.
Q.—You did not know that, in fact, when they were hauling lumber, horses had been drowned in crossing that river?
A.—No.
Q.—You know there is no bridge nearby.
A.—I did not see any. I am sure there is no bridge.
Q.—There is no bridge which could conveniently be used for hauling gravel from the other side of the river?

*In the
Superior Court*

No. 121.
Defendant's
Evidence.
(Supp. Hearing)
William S. Lee,
Cross-examination
Nov. 7th, 1932.
(continued)

A.—I did not see any bridge. Of course, I did not go any farther up the river.

Q.—Of course, the price you mention would not allow hauling any very considerable distance?

A.—70 cents a yard would allow hauling three miles, anyway.

Q.—Did you examine any of the material that had been brought up out of the holes that were bored by Mr. Langford or under his direction?

10 A.—Just three of those holes: " F ", " G " and " H ", along contour 318.

Q.—You did not examine any material that was brought up from holes put in from a lower level than 318?

A.—No.

Q.—Is this clay material that would pack under pressure?

A.—No, sir. I do not agree with the suggestion that such loads as we are speaking of (which are really very light) would compress clay to such an extent that it would have an appreciable effect on water percolating through it.

20 Voids in ordinary soils will run around 40 per cent or 45 per cent, and even some stones have considerable voids—sandstone, for instance, which is simply sand that has been compressed by great pressures over long periods of time, geologically speaking. The voids found in sandstone run from 20 to 25 per cent. Limestones run up to 12 per cent. Even granites will in some cases show one and one-half or perhaps one per cent voids.

30 If we take a layer of clay eight or nine feet thick—say one hundred inches, and calculate how much that clay has to be compressed before it will make much difference in the voids, we will see that one inch is only one per cent. If it was like an igneous rock, it would be one per cent. I am positive if you were to put a load of a ton or a ton and a half per square foot on that dry clay, it would not settle over a quarter of an inch, which would be only cutting down the voids about 25 per cent.

40 My experience with clays like that is that if you mix water with them you can bring them to the condition where you can squeeze them and they will run anywhere. You can see that when men are working in the bottoms of trenches. They open trenches where the ground is hard, and they go in and work there in stiff material. If there is water in the trench, and they are working around it, or if water gets in while they are working in it, the material will get very soft, and in a matter of two or three hours those men will be up to their knees in muck. On the other hand, you can let the water rest on that same clay, and it will soften it a little on the top only, but three or four feet of water resting on clay under the pressures we have been speaking of here does not penetrate unless there is a crack

*In the
Superior Court*

No. 121.
Defendant's
Evidence.
(Supp. Hearing)
William S. Lee,
Cross-examination
Nov. 7th, 1932.
(continued)

in the clay. That is the reason why it is quite safe to put the load on top of it.

Q.—With respect to this compression of about a quarter of an inch from a load such as we are speaking of, would not the compression come in the first two or three inches?

A.—Yes.

10 It comes back to this (as I said before) that if the load on the clay is so great that the clay begins to settle, when it begins to settle it will distribute the load sidewise, because of the cohesion or shear between the particles of the clay, and if one particle tends to settle beyond another, it pulls the other down with it.

As I say, I believe that clay is so good that even if there were water right on top of it the load we have been speaking of would not carry down very far, because I do not think we would get down very far before the stability of the clay would be so great that it would not settle any more.

Q.—The voids would have been squeezed out of a very thin portion of the whole thickness?

20 A.—The voids would have been squeezed out of a very small portion of the top layer, yes.

When we are building dams on earth bottoms everyone is much more afraid of a high dam than he is of a low one. If it were true that the weight of the load on the clay would so compress the subsoil that the water could not get through it, we would not worry any more about a high dam than we would about a low one.

Q.—Would not the squeezing out of the voids in the layer on top tend to make it impervious, just as the glazed surface of pottery makes the whole thing impervious?

30 A.—No. The water will go through. We would not think of putting a dam on an earth bottom without putting in a corewall or something of the kind to stop the water going through.

Q.—Have the solidity or the weight-bearing qualities of this railway spur been affected by the change in conditions?

A.—No, I would not think so. Of course, they will raise the railway spur.

Q.—Do you think at the present time the railway spur has the weight-bearing qualities it had before the water was raised?

A.—Yes, I think so.

40 Q.—If instructions were issued not to allow engines over it, you would think those instructions were not warranted?

A.—No, I would not say that. I would not allow an engine on that spur, if it were mine. The ballast is very poor on that spur. It is not ballasted at all. It is not in good condition.

Q.—You think the material upon which the rails and ties are resting might settle?

A.—I think so. It does not look to me to be in good condition.

*In the
Superior Court*

No. 121.
Defendant's
Evidence.
(Supp. Hearing)
William S. Lee,
Cross-examination
Nov. 7th, 1932.
(continued)

Q.—I assume the area with which you were concerned is the one shown bounded in pink on the plan Exhibit D-160?

A.—Yes, that is correct.

Q.—And that is land covered, or affected, by the raising of the water to 321.5?

A.—Yes.

BY MR. KER:

10 Q.—Am I to take it that you would not allow a locomotive of your own to go in on that spur, not because the bearing surface of the ground is insufficient but because the spur as it is constructed was not constructed and maintained properly?

A.—I did not think that spur was properly ballasted.

Q.—It is a question of ballast?

A.—Yes. I would be quite content to let an engine go in there if the spur was well ballasted.

20 (And further deponent saith not.)

30

40