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No. 655

CANADA
PROVINCE OF
QUEBEC
MONTREAL

Court of King's Ben
(APPEAL SIDE)

12

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.

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1936

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 12

DEFENDANT'S EVIDENCE (Supplementary Hearing)
(Continued)

BROWN, MONTGOMERY & McMICHAEL
Attorneys for Appellant

MacDOUGALL, MacFARLANE & BARCLAY
Attorneys for Respondent

INSTITUTE OF ADVANCED
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*In the
Superior Court*

No. 122.
Defendant's
Evidence.
(Supp. Hearing)
J. A. Kennedy,
Examination
Nov. 7th, 1932.

DEPOSITION OF JAMES A. KENNEDY, 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

JAMES A. KENNEDY,

10

of the City of Westmount, in the District of Montreal, contractor, 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 a contractor?

20

A.—Yes.

Q.—With what Company are you connected?

A.—The Kennedy Construction Company.

Q.—Do you devote your attention to any particular branch of contracting?

A.—Railway and highways.

Q.—Can you mention some of the work you have been doing in connection with railway or highway construction during the last few years?

30

A.—We built the Taschereau Boulevard for the Provincial Government, between the Harbour Bridge and Laprairie. We built the Mountain Street and the Guy Street bridges for the Canadian National Railway. We built the subway at the approaches to Victoria Bridge, north and south ends, and the subway for the Canadian National on a branch of the Taschereau Highway. All this was in the last two years.

Q.—Previous to that you had done work on the Gatineau Highway up above Chelsea?

A.—Yes, we built the roads that were changed on account of the flooding.

40

Q.—I understand you were the contractor on the relocation and raising of the highway up above Chelsea which was necessitated by the construction of the dam?

A.—Yes.

Q.—Are you personally familiar with the ground conditions which existed up there?

A.—Yes, sir.

Q.—You spoke of having built the new road, just recently

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opened, from the Harbour Bridge to Laprairie. Will you tell his Lordship briefly what sort of construction that was, how broad it was, how high it was, and the nature of the ground over which it went?

A.—The first section, about 8,600 feet, varied from four to eighteen feet in height.

Q.—That is, fill?

A.—Yes.

10 It is seventy feet wide across the top, with a slope of one and one-half to one on the embankments.

Q.—What is the general nature of the ground upon which it is built?

A.—It is all clay.

Q.—Is it subject to being submerged at times?

A.—In the spring the water backs up from the St. Lawrence, and a good part of it is under water.

Q.—The bank on top of the clay is pretty heavy?

A.—Yes.

20 Q.—Have you examined the piling ground of Mr. Cross at Farm Point?

A.—Yes.

Q.—Would you give us an estimate of what your Company would be prepared to do the work of filling in and restoring that piling ground for, so that it would be intact and usable at an elevation of 324.5—raising it to 324.5, with the understanding that the water would be at 321.5?

A.—Basing the estimate on Mr. Ralph's figures, we would be prepared to do the work for \$10,000.

30 Q.—That would include everything?

A.—Yes.

Q.—Filling with gravel?

A.—Yes.

Q.—The raising of the siding?

A.—Yes.

Q.—And the necessary work to the trestles?

A.—Yes.

Q.—And the two little portions of the road that might be submerged?

40 A.—Yes.

Q.—Will you look at Exhibit D-168 and say whether your estimate would cover all the work indicated on that exhibit?

A.—Yes.

Q.—Your Company would be prepared to make a tender to do the work at this figure?

A.—Our Company would be prepared to do the work.

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BY THE COURT:

Q.—That is just what you would ask to do the work?

A.—Yes, your Lordship.

BY MR. KER (continuing):

10 Q.—You would be willing to enter into a contract to do it for that price?

A.—Yes, we would be glad to, at the present time.

Cross-examination

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

Q.—I understand what you have in mind is the area shown bounded in pink on the plan Exhibit D-160?

A.—Yes, sir.

20 Q.—That is land which would be affected by raising the level of the water from 318 to 321.5?

A.—In the piling ground, yes.

Q.—That is, the portion of the piling ground above 318, but below 321.5?

Mr. Montgomery: 324.5.

Witness: That is the portion of the piling ground as shown from 324.5.

30 BY MR. ST. LAURENT (continuing):

Q.—Down to 318?

A.—Yes.

Q.—But it only starts from 318?

A.—Yes.

Q.—And it rises from the height of what is 318 up to 324.5?

A.—Yes.

Q.—You figured that would require substantially the work itemized on Exhibit D-168?

40 A.—Yes.

Q.—And, you say at the present time you would be glad to do it for \$10,000?

A.—Yes.

Q.—The present time, and 1926, are considerably different, are they not?

A.—Slightly.

Q.—Is there not more than a slight difference?

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A.—Yes, there is.

Q.—As a matter of fact, are prices not down almost 40 per cent?

A.—In some cases.

Q.—Did you go to see this property?

A.—Yes.

Q.—When Mr. Chadwick and Mr. Lea were there?

A.—Yes.

Q.—Was that your first visit to it?

10 A.—No, I was there when we were working up there in 1926.

Q.—What were you working on in 1926?

A.—On the highway.

Q.—But, October, 1932, was the first time you examined Mr. Cross' property?

A.—Yes.

Q.—And, you made only one visit?

A.—That is all.

20 BY MR. KER:

Q.—Were you not there in May of this year?

A.—I forgot that. I was there in May of this year.

Q.—And when you were building the road you were there a good deal?

A.—Yes.

Q.—The road is practically on the same stretch of property, is it not?

A.—Yes.

30 Q.—And I have no doubt you were through that section frequently while you were building the road?

A.—We bought some lumber from Mr. Cross, and I was back and forth in and out of his mill.

Q.—Will you refer to Exhibit D-162, and say if the road which you constructed is the road shown in brown, with the letters "H-B"?

A.—Yes.

Q.—Running right through Mr. Cross' property?

A.—Along the front of Mr. Cross' property.

40 Q.—You spoke of prices at the present time being perhaps less than 1926. What is the price per yard that is being allowed for the gravel you speak of for this work?

A.—70 cents.

Q.—As a matter of fact what price per yard did you get for gravel at the time you built this highway in 1926 or 1927?

A.—\$2.40.

Q.—\$2.40 a yard for gravel?

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A.—Yes.

Q.—That was for the whole work per yard?

A.—Yes.

Q.—Including the construction of the road, and the whole thing?

A.—Yes.

Q.—I am instructed the actual filling part of that work, such as would be done here, was done at 65 cents a yard.

A.—Yes, the actual filling.

10 Q.—That is, the part of the job that would correspond to the figure of 70 cents mentioned here?

A.—Yes.

BY THE COURT:

Q.—Where did you get the gravel?

20 A.—We got some at Wakefield, and we got some from the farmers within a mile and a half radius around the work. We got it at different places along the highway.

BY MR. Ker (continuing):

Q.—You think a price of 70 cents a yard for that filling would have been a normal or a generous price in 1926?

A.—Yes.

BY THE COURT:

30 Q.—How much did you pay per yard for the gravel you bought?
A.—As a rule you pay 10 cents a yard.

BY MR. KER:

Q.—And, you have to cart it yourself?

A.—We have to cart it.

BY MR. ST. LAURENT:

40 Q.—And, you got \$2.40 a yard for it measured in place?

A.—Yes.

Q.—That is laid down, levelled off, and rolled (if it had to be rolled)—or did it require to be rolled?

A.—No, it did not require to be rolled. Just put in place, and levelled.

Q.—Practically the same kind of work as would have to be done here to make the fill?

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A.—About the same.

Q.—And you got \$2.40 a yard from the Provincial Government for that work in 1926?

A.—Not from the Provincial Government: from the Gatineau Power Company.

10 Mr. Ker: I would not like your Lordship to be under a misapprehension in regard to the figure of \$2.40 mentioned by Mr. Kennedy, and with your Lordship's permission I would like to clarify it.

BY MR. KER:

Q.—I understand your work on the highway was done for a price of \$2.40 for the top filling?

A.—For the top filling and gravel.

20 Q.—But, the main fill, which, as I say, would correspond with what you would do on Mr. Cross' piling ground: how much did that actually cost?

A.—65 cents.

BY MR. ST. LAURENT:

Q.—It was not hauled at all; it was just graded up from the sides?

A.—No, it was hauled.

Q.—Was that gravel?

A.—Sand.

30 BY MR. KER:

Q.—Quite a different proposition from gravel?

A.—Yes.

BY MR. ST. LAURENT:

Q.—For the gravel you got \$2.40?

A.—Yes. The top gravel.

40 BY MR. KER:

Q.—You got 65 cents for the fill gravel?

A.—Yes.

Q.—In any event, whatever it was it would have been the normal price for the same work in 1926 as you are asking now?

A.—Yes.

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Q.—For the same kind of work?

A.—Yes.

Q.—The work we are now speaking of is not road-building; it is filling in a hole?

A.—Yes, filling in a hole.

BY MR. ST. LAURENT:

10 Q.—Am I correct that you got \$2.40 a yard for what you had to use gravel for?

A.—Yes.

Q.—And 65 cents for what you used sand for?

A.—Yes.

Q.—That is the way it worked out?

A.—Yes.

BY MR. KER:

20 Q.—Sand and gravel, was it not?

Mr. St. Laurent: After all, this is my learned friend's own witness. I think we have covered the point sufficiently.

(And further deponent saith not.)

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(Recalled)
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30

DEPOSITION OF STUART S. SCOVIL, A WITNESS
RECALLED 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 re-appeared

STUART S. SCOVIL (recalled),

40 a witness already examined, now recalled on behalf of the Defendant, who being duly sworn, doth depose and say as follows:

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

Q.—Mr. Scovil, you have already been examined in this case?

A.—I have.

Q.—I understand since the time of your last examination De-

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endant's Exhibit D-162 has been filed, being an aerial photograph of a section of the Gatineau, showing Mr. Cross' property at Farm Point and some of the surrounding country. A question arose as to what the flow of the Gatineau River was at the time that photograph was taken and my learned friends asked that other evidence be made; a statement was made by a witness that there were thirty thousand five hundred feet, but I want to examine you in order to indicate exactly what that flow was?

10 Witness: What date?

Counsel: The photograph was taken by the Royal Canadian Air Force on the 23rd November, 1926, that is, some six months before the water was raised.

20 A.—The flow on the 23rd November, 1926, was 30,550 second feet. That is given in Water Resources Paper No. 58 of the Department of the Interior. This document has been referred to before. I don't know whether it was filed as an exhibit or not. In any event, that is an official record of the Government. His Lordship has it. It has already been filed.

His Lordship: D-122.

Witness: On page 179.

BY MR. KER:

30 Q.—Assuming, therefore, that when this photograph was taken there was a flow of 30,550 second feet in the river, would you tell me what that would bring the elevation of the water to at Farm Point?

A.—That would be equivalent to an elevation of 315.55 at Farm Point under natural conditions.

Q.—I understand this photograph, Exhibit D-162, was taken under natural conditions?

A.—Yes.

40 Q.—Just going a step further, could you tell me over a period of years, under natural conditions, how often in each year the water was at that elevation of 315.55 or 315, as close a level as you can give me, or any table you may have under natural conditions before the Gatineau Company raised the water?

A.—I have analyzed natural conditions from 1912 to 1926. I have a table showing the periods in each year at and above elevations 314, 315, 316, 317 and 318 the water would have been above these given elevations.

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For an elevation of 315, which is half a foot lower than a flow of 30,550 second feet for the period from 1912 to 1926 inclusive, the water elevation at Farm Point would have exceeded elevation 315.5 in every year but 1914, and an elevation of 316 would have been exceeded between 1912 and 1926 in every year except 1914 and 1920.

Q.—Let us take how many months, and what periods from 1912 to 1926 the water would have been at 315 at Farm Point; could you give us the dates?

10 A.—In the year 1912 the water level would have exceeded 315 between April 24th and June 10th.

In 1913 between April 15th and May 16th.

In 1914 it would not have exceeded 315. I may say in 1914 is the lowest year we have of record. The lowest year of run-off.

1915, between April 29th and May 21st.

1916, between April 17th and June 24th.

1917, between April 30th and May 22nd.

1918, between May 3rd and May 26th.

1919, between April 18th and June 15th.

20 1920, between April 27th and May 16th.

1921, between April 10th and May 12th.

1922, between April 13th and May 16th.

1923, between April 29th and June 5th.

1924, between April 29th and June 13th.

1925, between April 6th and May 27th.

1926, between May 7th and June 12th, and also November 20th to November 30th.

30 I might make a further remark: I have not continued this beyond 1926 on account of a regulation to get away from any adjustment of that nature, but in the year 1928 we had excessively high water.

Q.—I gather, then, that the condition which is shown in the photograph Exhibit D-162 existed in the years from 1912 to 1926, except 1914, for the periods which you have named in months?

A.—Yes.

Q.—Would you then say over what periods during the same years the water was remaining at 316, which is a somewhat higher level than that shown on this plan?

40 A.—The water was at and above elevation 316 the year of 1912, from April 30th to June 4th.

1913, from April 27th to May 13th.

1914, not at that level.

1915, from April 30th to May 15th.

1916, from April 23rd to May 30th.

1917, from May 5th to May 15th.

1918, from May 13th to May 20th.

1919, from April 24th to June 5th.

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1920, below 316.
1921, from April 20th to May 8th.
1922, from April 15th to May 1st.
1923, from May 2nd to June 1st.
1924, from May 2nd to June 7th.
1925, from May 1st to May 17th.
1926, from May 11th to June 6th.

10 Q.—That is to say, that during those periods of those years from 1912 to 1926 the water was for these periods higher than it is shown in this photograph under natural conditions?

A.—Yes.

Q.—Would you just explain what that table indicates, and will you file it as D-173?

A.—Yes. This table gives the period in each year when the water levels at Farm Point would be above given elevations, the given elevations being 314, 315, 316, 317 and 318.

Q.—What flow in the river would correspond to the level at Farm Point of 318?

20 A.—55,000 second feet.

Q.—That is to say, when there were 55,000 second feet going down the Gatineau under natural conditions, the water on Farm Point properties of Mr. Cross would be at 318?

A.—Quite right.

Q.—Is that as high as it does go in the Gatineau?

30 A.—Taking the period that I have used from 1912 to 1926, the highest recorded flow of the Gatineau was 73,200 second feet, which is equivalent to an elevation of 319.7 at Farm Point. The Gatineau has undoubtedly been higher in the past. The records are not of the best. The flow possibly would be somewhere between 80,000 and 90,000 second feet in flood flow.

Q.—That is, the flood flows?

A.—Yes.

Q.—That is under natural conditions?

A.—Under natural conditions.

Q.—Would you relate that to the level of Farm Point?

30 A.—80,000 second feet would be equivalent to an elevation of 320.3.

Q.—At Farm Point?

40 A.—Yes. I might correct that last statement of 80,000, and say that 85,000 would be equivalent to an elevation of approximately 320.6 at Farm Point, which I would judge as being the past recorded, or the extreme flood flow of the Gatineau.

Q.—That is to say that it has perhaps, not frequently, but it has under extreme flood flows come to within less than a foot of 321.5 level which is in question here?

A.—That is correct.

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Q.—What is the average flow under natural conditions on the river?

A.—The average flood period from 1912 to 1926 inclusive is 11.670 second feet.

Q.—And what does that give you as an average elevation of water at Farm Point?

10 A.—That gives an average elevation under natural conditions and under open water conditions of 312.0 at Farm Point. Under winter conditions at that location it would be higher than that. That is variable under winter conditions.

Q.—That is the general average one could depend on, under natural conditions at Farm Point?

A.—That is the average under open water conditions. Under ice conditions for that same flow the elevation would be higher.

Cross-examination

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

20 Q.—From what source do you derive this information which you have used in the evidence you have just given?

A.—From the records of daily flow of the Gatineau.

Q.—From documents issued by some Government Department?

A.—Original documents issued by the Department of Public Works followed by information secured from 1925 on by the Dominion Water Power Branch in the way of discharge measurements.

Q.—These elevations and flows are not from your personal observation?

A.—Not at all.

30 Q.—You have been analyzing reports which presumably have been gathered by employees of one or other of the Departments of the Federal Government?

A.—Quite right.

Q.—Do those reports purport to give the elevation at Farm Point?

A.—No, they do not.

Q.—Do they purport to give the flow at Farm Point?

A.—Yes.

Q.—I mean by observation?

40 A.—They give the flow at Alcove within a few miles.

Q.—They purport to give the flow at Alcove, a few miles from Farm Point?

A.—Yes.

Q.—Is that flow given from instrumental measurement of the flow, or is it given by the elevation on the gauge?

A.—By both, which is the one and only practice and method of deriving at the flow.

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Q.—I know it is, but I want to get it in the record?

A.—It is the recognized practice. I may say that this is the one and only method, and the only recognized method of deriving it.

Q.—But I want to get the facts. I don't care how much argument is added, but I want facts. There is an instrumental measurement made of the flow from time to time, is there not?

A.—Correct.

Q.—About how often?

A.—Let me give this explanation

10 Q.—Well, I would rather you would answer my question?

A.—I have to answer it in my own method.

Q.—I don't know about that, Mr. Scovil. It is quite simple. Can you tell me how often the instrumental measurement is made?

A.—The method

Q.—Will you answer my question, Mr. Scovil? Can you tell me how often the instrumental measurement is made?

A.—I must qualify my answer in this respect.

BY THE COURT:

20

Q.—Answer the question, and if you have any explanation to make you can make it and that will end it. First answer the question, and then you may give the explanation if you have any?

A.—I cannot give off hand to your Lordship now how often those measurements were made, but I can explain it, which is quite a proper and necessary explanation.

In gauging any river where there is a permanent rock control there is a definite relation between water elevation and discharge. Now, measurement is taken on the Gatineau at Alcove at elevation
30 322 under natural conditions with the permanent rock control below, two or three measurements taken at that elevation, that flow for that elevation is defined once and for all, other than the necessity of taking measurements to determine in winter months whether there is back water and ice, or choking at the control, so that if measurements are taken, as I know they have been taken, on the Gatineau, at the various points, because I have checked the discharge curve—that is the first work I ever did for the International Paper Company was to report on Gatineau flows, and I immediately went to essentials, and it had nothing to do with this case; it had
40 to do with the developments on the river, the prospective developments.

There may be no change in the discharge curve with the permanent control, and you do not need under such circumstances frequent measurements of discharge after the curve is once defined. That is why I wish to qualify my statement.

BY MR. ST. LAURENT:

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Q.—Having qualified it at some length, will you tell me if you know whether or not there was any instrumental measurement of flow made between 1912 and 1926?

A.—I know definitely.

Q.—You know?

A.—Yes.

Q.—When was one made?

A.—It may take some time. If you care I will read them out. To go back to November, 1911. . . .

10 Q.—We were talking about November 1912. I don't care for that. We are talking of the other period.

A.—We will take January 11th, 1912; again, on March 7th, 1912; January 5th, 1913; December 6th, 1913; March 6th, 1914; October 9th, 1914; October 15th, 1914; November 23rd, 1914; March 31st, 1915.

Q.—What was the flow on March 31st, 1915?

A.—I have not any other thing than the dates with me. I have not the discharge measurement, the actual measurement.

20 Q.—That is not in the high water period, because you told us that in 1915, which was from April 30th to May 15th, so this would be just a month before the high water?

A.—It would be before break-up.

Q.—It would probably be quite a low flow?

A.—In 1915 it was extremely low and following an extremely low period. On the 31st the flow was 3.570 second feet.

Q.—We are up to 1915. Just go through and let me see if there are any measurements made during any of these extreme high water periods that you have stated?

30 Witness: What elevation would you care for?

Counsel: The ones you mentioned, 315 and 316.

A.—To save the time of the Court, if I might submit tomorrow, I will have down here tonight a copy of the discharge curve which will show the actual measurements.

Q.—But what I am informed of is that, that these measurements are not made at the extreme high flows, but that those are obtained by working out mathematically the curve?

40 A.—I think you will find that that is not correct.

Q.—You think there have been some actual measurements?

A.—There have certainly been measurements taken in the higher discharges, not at the extreme.

Q.—That is usually worked out mathematically by plotting a curve and treating it according to the rules of hydraulics?

A.—If I may have the permission of the Court, I will have that curve here tomorrow with the points plotted on it.

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Q.—With respect to these dates you have given, they are also, I presume taken from publications of the Government?

A.—Yes.

Q.—Do these publications convey the result of the calculation, or do they just give the elevation at Alcove?

A.—They merely give the daily flows.

Q.—But what they get, I presume, from their observers, is the elevation on the gauge?

A.—Yes.

10 Q.—And somebody converts that into the daily flow?

A.—Yes.

Q.—And it is published in that form?

A.—That is quite correct.

Q.—And then, you take that and you reconvert it into elevation at Farm Point?

A.—I have done that, but I also spent, back in 1925, about two months steady work analyzing the flow of the Gatineau to report to the International Paper Company as to how much flow they would have available, and what they could get from storage.

20 Q.—So that we may be perfectly clear, you were analyzing the flow: were you analyzing it from the reports, or were you making observations at some given point of the river?

A.—I was analyzing it from reports, and previous to that time while I was directing the extreme measurements work for the Water Power branch I had had numerous requests for assistance. The Royal Securities investigated on behalf of the Riordan Company, and they asked for assistance in a study of Gatineau flows, which I gave them.

30 Q.—And which you also gave them from the material which had presumably been collected by the Department?

A.—By the Department, but some of it under my direction. The checks of discharge curves were made under my direction.

Q.—But neither in 1925, nor for the Royal Securities, did you make personal observations, personal readings, or personal measurements?

A.—Personally, I did.

Q.—When?

A.—At or about the winter of 1921.

40 Q.—At what point?

A.—At Kirk's Ferry and at Alcove.

Q.—That is, instrumental measurements of flow?

A.—Yes.

Q.—To check with the elevations read on the gauge?

A.—I did not do the metering myself. I had assistance with me, but I was on the ground.

Q.—You were on the ground having the metering done in 1921?

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A.—I think 1921 is the year. I am not positive. I could look that up.

Q.—And referring it to the elevation on the gauge?

A.—Yes.

Q.—Would that be under conditions which were affected by ice?

A.—Alcove has not shown under natural conditions ice affect.

10 What I have found was that certain records at Chelsea previous to 1911 were based on a lower gauge at Chelsea, a gauge which was in a back-water midway down the rapids and not a suitable gauging point at all. That is why I have only used records from the fall of 1911.

Q.—Perhaps we might leave that, because we will have more complete information on your curves in the morning. The next point is, you said that although the records showed only an extreme high of 73,200, you were satisfied there had been flows of between 80,000 and 90,000 cubic feet?

A.—Yes.

20 Q.—From what would you get the information upon which to base that statement?

A.—The earlier records for the lower gauge at Chelsea was extreme high water, I think, in the year 1909, and numerous evidences of this extreme flood, one from photographs I have seen of the water up on buildings in the Village of Wakefield, spreading right over the railway tracks, and we have a discharge curve for Wakefield.

Q.—You have a discharge curve?

A.—Yes, by relationship from Alcove.

Q.—And from that photograph you judge that on that occasion it was probably up between 80,000 and 90,000 cubic feet?

30 A.—Undoubtedly.

Q.—And that would be sometime around 1909?

A.—Yes. I can check that also.

Q.—But that is the only source of your information, is it?

A.—The only definite sources, those two, the record at Chelsea and the photographs.

Q.—And relying on the unreliable gauge, or the gauge placed at the undesirable place?

40 A.—In reporting on anything of this nature to any company, a man would be foolish if he did not make some definite statements as to what flood flows should be provided for, and it is on information of that nature that one must base it.

Q.—You spoke of the average flow of the Gatineau being equal to 11,670 second feet. Am I to understand that you arrive at that by taking the flow, or the total quantity of water from the record which has gone down during the year and dividing it by 365 days and twenty-four hours a day?

A.—Dividing it by

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Q.—The number of seconds in the year?

A.—By the total number of days in the year, the average daily flow divided by the total number of days for the period from 1912 to 1926 inclusive.

Q.—That does not mean, then, that for the greater part of the year that is the actual flow?

A.—It does not necessarily follow.

Q.—As a matter of fact, the flood flows for the few daws up to four or five weeks in the spring are very much greater, are they not,
10 than what flows during all of ten months of the year?

A.—Two months in the year the flows are higher.

I have already given evidence as to flow. I have given it in another way, that it would be available thirty per cent of the time.

Q.—So the elevation you fix at 312 would be the elevation thirty per cent of the time?

A.—Thirty per cent of the time.

Q.—And for seventy per cent of the time the elevation would be lower than that?

A.—Yes.

Q.—You said with respect to these records, “The records are
20 not of the best”?

A.—I refer to records previous—the record as to the extreme flood and previous to 1912.

Q.—So that your statement that the records are not of the best was with respect to records previous to 1912?

A.—Particularly with respect to the records previous to 1912.

Q.—Are these flows and elevations derived solely from the Al-
cove guage?

A.—No, they are not.

Q.—What other gauge is taken into account?

A.—The records on the Gatineau comprise the following:
The daily gauge records below Chelsea Falls from 12th Decem-
ber, 1899.

Daily gauge records above Chelsea from 24th October, 1911.

Daily gauge records at Alcove from the 11th September, 1917.

Discharge measurements at various locations at and below Chel-
sea from May, 1902, to October, 1916.

Discharge measurements at Alcove from 17th March, 1917.

Q.—So, then, the period from 1912 to 1917 is not taken from
40 Alcove?

A.—They are taken partially from Chelsea and partially from Alcove.

Q.—From 1912 to 1917 you have worked back using your curve from the Chelsea records?

A.—What I did personally in 1925 in checking on the discharges of the Gatineau was to relate the gauges above and below Chelsea

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and the gauges at Chelsea with Alcove, thereby fixing whether there was agreement between records or not, and if there was disagreement, why was the disagreement, if any, and determining where that disagreement came from, that is, in checking through I plotted a discharge curve for Alcove from all existing measurements and directly derived my discharge.

Q.—The operation was to get a co-relation curve between Alcove and Chelsea?

A.—Between Alcove and both Chelseas where possible.

10 Q.—And then, as you did not have readings for Alcove for the period from 1912 to 1917, you worked them out by using your curve, is that correct?

A.—That is correct. I used that method of checking back on the estimates made by the Department of Public Works on daily discharge.

Q.—By working up from the Cascades to Alcove you got a certain set of figures for Alcove?

A.—For Chelsea.

20 Q.—I mean, working from Chelsea you got a certain set of figures for the 1912-1917 period at Alcove, and here, for the purpose of this, you have worked downstream from Alcove to Farm Point?

A.—Quite right.

Q.—That is correct?

A.—Correct.

Q.—Well, then, the readings on the dates, or the instrumental measurements on the date you gave for 1912-1913 and 1915 were instrumental measurements at what point?

30 A.—They were measurements at various points between Chelsea and Ironsides.

Q.—Ironsides being below Chelsea?

A.—Let me correct that; from some measurement made at the mouth of the river on up and as far as I remember at the present time, above Kirk's Ferry.

Q.—So, then, from the mouth of the river working upwards as far as Kirk's Ferry?

A.—Yes.

Q.—If we got the impression that they were instrumental measurements at Alcove, we were going faster than you were?

40 A.—I am sorry. I did not intend to convey that.

Mr. Ker: Is it my understanding that my learned friend wants the witness to tell us the elevation of the Gatineau?

Mr. St. Laurent: I don't want anything prepared. I want to know if actual instrumental measurements were made.

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Witness: I can have that by phoning this afternoon and have it ready for you tomorrow morning.

Mr. St. Laurent: I just wanted to know what observations served as a basis for making the calculations.

BY MR. KER:

10 Q.—You had better procure that information, Mr. Scovil?

Witness: Yes.

(And at this point the witness' examination was suspended to allow him to get the information asked for by Mr. St. Laurent.)

(And further for the present deponent saith not.)

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20 DEPOSITION OF JAMES E. GILL, A WITNESS PRODUCED
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

JAMES E. GILL,

30 of the City of Montreal, geologist, aged 31 years, a witness produced on behalf of the Defendant, who, being duly sworn, doth depose and say as follows:

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

Q.—You are a geologist by profession, Doctor Gill?

A.—Yes.

40 Q.—How are you presently occupied in your profession?

A.—I am on the teaching staff of McGill University and operate as consulting geologist during the remainder of the year, and partly during the winter.

Q.—You are on the teaching staff of McGill University in geology?

A.—Yes.

Q.—How long have you been practising your profession?

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A.—Since graduating at Princeton University I have been practising seven years. I graduated in 1925.

Q.—Have you been occupied with the practical work of your profession ever since that time?

A.—I have been engaged in mining and geological work for sixteen years altogether.

Q.—How long have you been on the McGill University teaching staff?

10 A.—Three years. This is my fourth year.

Q.—You graduated originally from McGill?

A.—In 1921.

Q.—Have you had occasion recently to examine the property of Mr. Cross at Farm Point?

A.—Yes, I was up there on two occasions.

Q.—When were those occasions?

A.—On October 19th and October 30th.

Q.—Of this year?

A.—Of this year.

20 Q.—To what purpose was your examination chiefly directed?

A.—I went up to get a general view of the geological situation at Farm Point, and to secure specimens of the clay in dispute in this case.

Q.—Did you make borings?

A.—I made one boring on October 19th. I can show you the location of that on the Farley plan if it is available.

30 Q.—Would you look at the plan D-160, which is the plan prepared by Mr. Farley, and which I understand is the plan before his Lordship at the moment, and state at what point you made this particular boring and how it was made?

A.—I made the boring 29 feet in a southeastern direction from hole No. 2 on this plan D-160.

Q.—At what ground elevation did you make it?

A.—The top of the hole or collar was at elevation 318.

Q.—Was the top of the collar or the top of the hole, as you say, then submerged?

A.—It was submerged under 2.3 feet of water.

Q.—And what sort of appliance did you use to make this boring?

A.—A post hole augur.

40 Q.—Perhaps you can tell us in a general way how that is done? That is not what is called wash boring?

A.—No. It is an instrument that has a shell at the lower end with a series of pipe lengths coming up from it, and an open shell about eight inches in diameter with a cutting edge at the bottom, and by rotating the pipe, which extends upward to the surface, of course, at all times the teeth cut an actual specimen out of the clay.

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Then, after going down six or eight inches you saw the specimen out that is actually on it.

Q.—Will you indicate it on this plan D-160?

A.—It would be approximately at this point here.

Q.—Indicate it by the letter M?

A.—I have referred to it as the point M.

Q.—And at that point had you knowledge of any previous boring having been made in that vicinity?

10 A.—At the time I put the hole down I merely chose it to be on a 318 feet contour, that is, an elevation of 318 feet. I found afterwards that it was located within a few feet of Mr. Langford's hole which was drilled at an earlier time. That would be Mr. Langford's H hole.

Q.—It was nearby the hole H of Mr. Langford's?

A.—Very close.

Q.—Did you say it was 26 feet from H?

A.—No, from hole No. 2.

Q.—And it was within a few feet of hole H of Mr. Langford's?

A.—Yes.

20 Q.—Would you be good enough to tell us just what you encountered in the process of your borings?

A.—From the surface we penetrated a foot and a half (1.5 feet) of sawdust and chips and muck surface soil, with various other accumulations. We then passed into clay which I have described as greenish gray with yellow spots and streaks. The hole continued through material of this kind to a depth of 5.9 feet.

Q.—5.9 feet of clay, or 5.9 feet including the overboring?

A.—5.9 below the surface.

Q.—And then?

30 A.—And there stopped.

Q.—Therefore the bottom of the hole you drilled was at what elevation?

A.—312.1 feet.

Q.—Assuming the normal water elevation of the Gatineau to be 312 you would then have been practically at the water level under normal conditions, or at the water table?

A.—I would have been below the water table at that depth, because the water table is controlled in that vicinity by Meach Creek and not by the Gatineau River.

40 Water table, I might explain, is a technical term used to refer to the top of saturated soils which occur near the earth surface. In other words, rain water falling on the surface partly settles it into the soil and collects in the open texture soils at the surface at a certain depth. It will saturate the soil down to bed rocks and in cracks within the bed rocks and continues to rise until it reaches a certain level where equilibrium is reached between the flow outward to the streams and the flow within being contributed forward. That is tech-

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nically known as a water table, and always has been a little higher than the level of the adjacent streams because capillarity causes it to rise.

Q.—In other words, from the actual water level of the stream it slants slightly up due to capillary action?

A.—I think that can be seen from this chart.

Q.—Would you explain just what the technical term for water table is?

A.—I think I can do it.

10 I produce as Exhibit D-174 to explain what I mean by water table. This Exhibit D-174 shows a cross section across the valley of Meach Creek, and passing through the point M, that is, to the bore hole which I myself made, and also through Mr. Langford's hole H.

The cross section I might say shown on D-160 would follow line P-Q, and the view in this case is towards the west, facing west; the north line on the right side of the chart; the left on the south side of the chart. Here is Meach Creek. I have drawn the top of the water of Meach Creek as it would appear before the water level was raised from soundings shown on the Farley plan, and checked to some extent by myself, not exactly, but approximately by myself.

20 I have drawn the water level at 314, which I believe to be correct.

On the right hand side of the chart you see hole H represented by the letter M. They are shown to coincide here; they are so close it is not necessary to show two lines, and with regard to the water table what I was trying to convey was this, that underneath the creek bed you have complete saturation. All the open spaces are filled with water. That condition of saturation extends on both sides of the creek and rises slightly as you go away from the creek due to the effect of seepage and capillarity which is always higher than the creek bed. It has the general form of a surface topography but is a little more subdued, consequently I have drawn this red line that way to represent the water table. That is in approximate location; this black pencil line would represent the creek level, that is, 314, and at hole 8 then we have the water table shown above the level of the creek bed.

30 The black spot shown on that cross section and on the enlargement which is also included in D-174 shows the position from which certain specimens were taken, which I used for tests in connection with the clay itself, used for examination and test purposes.

Q.—The result which you have indicated means that the samples which you took at the bottom of this hole which is marked on this were definitely and clearly and always had been throughout history below the level of the water?

A.—Absolutely.

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BY THE COURT:

Q.—This hole is also marked on the exhibit?

A.—Marked with the letter M, that is quite right. The specimens were taken from a point which was below the water table previous to the time the level was raised artificially, and must have been in that condition for thousands of years before that.

BY MR. KER:

10

Q.—Then, I understand that you went down to the black point, and that is the basis of your drilling, and that you brought up samples of the clay you found there?

A.—Yes.

Q.—Would you be good enough to tell his Lordship just what you did with that clay—in what condition you found it, and what deductions you drew from what you found?

20 A.—I took the specimen of clay which I took from the hole, and placed it in a jar, an ordinary sealed jar in which fruit is preserved, and screwed the top down tightly so as to keep it as nearly as possible in its original condition. I then took it to the laboratory at McGill and examined it microscopically. I took other portions and subjected them to some tests; first of all, as to the general character of the clay I found that it would more correctly be described as a silty clay. It is composed mostly of discrete mineral crystalline particles. Some of them are quite sharply, angular; some are fairly well rounded particles, and they lie more or less in contact with one another. At numerous points in the interstices between these grains
30 we found a very small amount of clay or illuminous silicate. True clay in the technical sense would have a much larger proportion of these illuminous silicates, so it would be a very poor quality of clay from that standpoint, and not an extremely plastic clay.

In addition the minerals represented, were mainly quartz. Most of these crystalline particles were quartz. There were a few specks of mica easily visible to the naked eye, a few small garnets, and I should say about ten per cent as an estimate, of illuminous silicates.

40 Q.—It was suggested by one of the witnesses for the Plaintiff that this deposit at Meach Creek and about Meach Creek was, as I understood him to say, known geologically as a delta deposit. Would you give us your opinion whether you consider that a correct statement or not from the examinations you have made of the material which you found there, and of the district in general?

A.—I should not describe it as a delta deposit, the reason being, I do not think a delta deposit could form at this point under the conditions now existing, and under conditions which we may suppose have existed in the recent past.

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I believe that if you consider an expanded Gatineau River with Meach Creek also expanded flowing in it, the current there would be too great to have material of that fineness which we find there at the present time.

As to the origin of the material, my idea of the origin is, I think it most probable that this material is to be so co-related with the leader clay which has been laid down more generally over the Ottawa and St. Lawrence Valleys.

10 To understand that more fully I might recall for some of you the fact that about twenty-five thousand years ago the whole of this country, including the Gatineau Valley was covered by an ice sheet. As the ice gradually melted and the ground retreated it left the land at a much lower level than at present, so that, the waters of the ocean were permitted to pass up the St. Lawrence and Ottawa Valleys and up the Gatineau also, standing at their higher point, at an elevation in the vicinity of Ottawa of 690 feet as determined by Doctor Johnson of the Geological Survey at Ottawa. At that time the Gatineau Valley was submerged under marine waters, and into
20 these marine waters quantities of material, sediment, was being swept from rivers, streams, which debouched from the ice stream itself, from the melting of the ice sheet mainly, I would assume. In fact, I would be fairly confident that the bulk of this material originated in that way.

Q.—As a marine deposit rather than as a local delta formation?

A.—Yes.

Q.—Having taken this sample up, would you explain a little more particularly what you did with the clay that you brought up with some of the samples. I understood you to say you put it in
30 water. Perhaps you would explain a little more fully what you did with it?

A.—The question of the softening of the clay was mentioned to me as an important point. The theory of softening had been advanced, and I therefore, in order to remove any doubt at all as to whether or not this clay would become any softer than when I found it, I decided to test it.

40 First of all, I should say that knowing from its location it has been below the water table for some thousands of years, I would assume that it was completely softened. In other words, it had been saturated with water for all that time, but in order to remove any possible doubt I took a block of the clay, a small block prism shaped, cut it as carefully as possible without disturbing it in any way, or compressing it in anyway, so it would have exactly the characteristics which it had in the ground; I stood it in an upright position, in the same position in which it stood in the ground and covered it with water. It was then in direct contact with water, and remained in direct contact with water for eighteen days. During that time

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there was no perceptible softening of the clay. It retained its form, its dimensions, the sharpness of its edges perfectly. When it was first submerged the only thing I could see of any change which occurred, when it was first submerged, a few loose particles dropped from the side; it was not a case of plastic stuff, it was simply grains which had been disturbed in the filling in. After that nothing happened.

Q.—On what date did you put it into the water?

A.—October 20th.

10 Q.—Is it still in the water?

A.—It is still in the water. I have said eighteen days, including October 20th.

Q.—You still have it, and you say that it is still preserving its clean edges and its intact condition in the water?

A.—I measured it this morning and the measurements were exactly as they were when I put it in.

20 Q.—What inference do you draw from those tests and from the other investigations which you have made with respect to the character of this clay in regard to the possibility of further softening?

A.—I would conclude that no further softening is possible by contact with water. I might qualify that slightly. I may say that may be a little strong. Personally I think that no further change will take place. We know it has been in contact with water for thousands of years. Certainly if one were inclined to assume extremely slow softening, it would have to be excessively slow.

30 I might say, as an example if we assume, just for the sake of argument, that a hundredth of an inch had been affected by softening on the outside that would be perceptible; if you make a calculation on that basis you find that hundredth of an inch in eighteen days would be one inch in eighteen hundred days, or, approximately, five years. That means a foot in twelve times five, or sixty years, or ten feet in six hundred years. That is what I mean by excessively slow. It would have to be slower than that, because it is not perceptible at the present time.

40 Q.—Have you studied the surrounding locality with a view of determining whether or not that situation, insofar as non-softening is concerned, is borne out by any of the constructions about Meach Creek. Have you examined the Canadian Pacific right-of-way, for instance?

A.—Yes, I examined the grade and made some measurements on it.

Q.—Do you consider that the same clay underlies the embankment there?

A.—I think that would be quite a reasonable assumption.

Q.—In fact, I think it is the assumption that Mr. Langford made, that it was the same clay?

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A.—His sections I saw showed such co-relations.

Q.—Could you indicate by a diagram just what the relation of that saturated clay below bears to the weight on the surface on the Canadian Pacific Railway, and particularly would you refer to the question of whether or not, in your opinion, any difference is made by the fact that a part of that filling may have been made before the water was raised upon the ground?

A.—I have a diagram which I will submit as an exhibit.

Q.—Will you produce this diagram as Exhibit D-175?

10 A.—Yes.

Q.—And perhaps you will be good enough to explain what it means to his Lordship?

A.—This, your Lordship, you will understand is a diagram and is drawn approximately to scale. One inch equals two feet. It represents the longitudinal section through the railway embankment. On the left side a bridge is shown; also on the left side at a lower elevation the bed of Meach Creek. The elevation of the bed is drawn here at 310 feet on this scale.

20 I have also represented on this diagram the water table extending upward from the level of the water. The level of the water is shown a foot higher than the bed. Assuming the very low flow of water, the water table would then rise somewhat as shown along this line following a contour of the ground surface which is just above it; the red line being the water table and the black line above it the surface at which the railway embankment was laid.

30 We then have a situation whereby (and this is the situation which existed before the embankment was placed, and before the water level was raised)—we had two red lines downward or the open spaces filled with water, saturated above, in other words. Then, that red line, or above the water table, we may assume, the clay was dried out to some extent, usually not completely, because in this clay there is always a certain amount of rainfall seeping down through.

40 As I understand the testimony for the Plaintiff, great stress has been placed on the value of this crust, as it has been termed, part of the ground above the water table before the water level was raised, which was partially dried out—great stress, as I say, has been placed on the strength of its ability to support the weight of the railway embankment. I have been asked to consider that, and my opinion is this, that referring to the outer edge of that crust you will note that it becomes rapidly thinner on approaching Meach Creek and diminishes to zero at the creek. In other words, the creek itself is outcropping of the saturated zone, so that the elevation outside the thick layer of gravel, in other words, rests on the thinnest part of this crust, so called.

In this diagram, which is certainly approximately correct, you would have had from six inches to eighteen inches, say, underlying

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the gravel in the outer ten feet of the fall. Personally, I think that partially dried clay of that nature would be very weak indeed under a load of that kind. First of all, the drying produces cracks in it, and you have a thin sheet to begin with; a sheet averaging ten or twelve inches at most would be a rather flimsy support for a weight of that kind to begin with, and it would almost certainly, in my opinion, fail under such a load. Having failed, the crust should then be regarded merely as an additional weight on the underlying saturated material, therefore, we have to conclude that this saturated sub-stratum has been actually bearing the load of the grade during the time it has been placed, which is forty years.

10 Q.—I see the level 321.1 with the blue line

A.—Just following that point: the elevation 320 is the elevation of the water at the time I was at the property the first time on October 19th—320.3, to be exact. I have simply extended that through the gravel of the railway grade.

20 Actually, it would rise gradually, but the important point here to me is that the relationship of this water, after the water had been raised, to this thin crust, at one time it was strong enough to hold the load originally, then, you have also to assume that during the five years—I think that figure is correct—since the water has been raised to cover this crust, it has been in contact with water on the lower side around the outer thin edge of the wedge and on the top side; in other words, you have these two extensive surfaces, top and bottom in contact with water throughout that period. It is inconceivable to me that that clay would not have become saturated by this time, and on the hypothesis advanced for the Plaintiff, if it became so saturated it should have been weakened and allowed the embankment to sink through it.

30 Just this morning I made a further test of that material in connection with that point. I cut a small block of clay yesterday, and allowed it to air dry, stood it out for twenty hours. At the end of that time, on examination of the block—I actually cut it in two and it appeared to be dry, therefore, small checks had developed on it. I placed a weight of about two and a half pounds and it showed strong compression, but in my opinion it would be weak in tension, which is the stress which is important here because of the development of cracks.

40 I took a cup and put a sixteenth of an inch of water in the bottom of it. I took this dry block, which was half an inch high, just a small dry fragment, rectangular in shape, and placed it in a sixteenth of an inch of water and watched what happened. The water rose to the top in three minutes under capillarity, and in four minutes it was completely wet.

On that basis it could not take more than a few hours for that thin crust to be saturated.

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Q.—And once saturated the entire weight falls onto the same clay?

A.—Yes, and in my opinion the clay which is supported below ever since the embankment was placed.

Q.—Assuming, then, the same clay to exist under this part of the delta, which is known as the piling ground, would you consider that it, too, would bear weight in the same manner that the filling of the C.P.R. is bearing it?

A.—I would.

10 Q.—And to as great an extent at least?

A.—Well, I should say to the same extent.

Q.—I gather you do not feel that there would be any softening by the action of water in that clay in a manner to make it unstable beneath?

A.—I think any clay which is unsoftened would have essentially the characteristics, I think, when it became softened.

Cross-examination

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

20

Q.—What was the purpose of your second visit to this property?

A.—Just to look at the general surroundings. The first time I spent all my time at Farm Point. On the second visit I went up the Gatineau and up Meach Creek just to look around.

Q.—On your first visit on the 19th October, do you remember meeting Mr. White?

A.—Yes.

30 Q.—And securing from him or through him a couple of row boats?

A.—Yes.

Q.—It was necessary to use boats to get up to the point where you wished to make your observation?

A.—Yes.

Q.—There was at that time a couple of feet of water over the place?

A.—Two to three feet over the place where the boring M was made.

Q.—How many assistants had you to do this boring?

40 A.—Two.

Q.—It had to be started naturally under two to three feet of water?

A.—Yes.

Q.—That water, I suppose, was not, and did not, remain clear so that you could see through it? It probably became quite muddy?

A.—Well, it was muddy.

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Q.—So that each time you brought the augur up it was a matter of feeling around to get it back in the hole, was it not?

A.—Yes.

Q.—These boats were not absolutely fixed, they were moving?

A.—They were anchored to sticks, but moved slightly.

Q.—So was it not, in fact, a matter of some little difficulty getting back to the hole?

A.—Yes, it was.

10 Q.—And did not that have a tendency to push back into the hole some of the material that had collected around the mouth?

A.—Chips mostly.

Q.—But you were not keeping in the boat the whole of the core that was being brought up?

A.—No.

Q.—Most of that was being thrown back there?

A.—I kept specimens.

Q.—The rest was being dumped right back?

A.—Not in the hole.

20 Q.—I do not mean in the hole itself, but just over the side of the boat, in the vicinity of the hole?

A.—Yes.

Q.—What was the ultimate depth you went to?

A.—I went down 5.9 feet below the surface; 8.2 below the water.

Q.—How long did it take to get to the 5.9 below the surface?

A.—I should say four hours.

Q.—Do you remember at what time this operation started?

1.30 A.—I could not tell you exactly. I should say approximately and we finished about 5.25.

30 Q.—On the 19th of October at 5.30 it was getting quite dark?

A.—Well, it was getting dark. It was dark before we got back to Ottawa.

Q.—How much in weight did you bring away from there as samples?

A.—I should say three or four pounds. Three pounds possibly. I intended to say that I also had Mr. Ralph's specimen which I examined also.

Q.—I mean of your own?

40 A.—From my own hole I should say about three pounds in glass jars.

Q.—In two glass jars?

A.—In two glass jars.

Q.—Of course, this stuff had been brought up through the water?

A.—Through the water, yes.

Q.—And naturally as you lifted the augur out the water went down into the hole?

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A.—Yes, of course.

Q.—So your augur was working in mud?

A.—Yes.

Mr. Ker: Just exactly like Mr. Langford.

10 Witness (continuing): But the specimens as taken out were, I think, clearly representative of what was cut. I selected my material by taking a solid mass that came out of this post hole augur and cutting slices off the side to avoid contamination of any sort. I sheared it off.

BY MR. ST. LAURENT:

Q.—This stuff had been turned by the machine, had it not?

20 A.—No, not the inside. Merely the outer side was rubbed. There was a chunk that goes through between the jaws of the augur, solid chunk, I should say two and a half inches or three inches possibly thick; I could not give the exact dimensions—four or five inches long. The method was exactly that of Mr. Langford.

Q.—I am not defending his method. Does this augur resemble the kind of augur that is used to bore a hole through wood?

A.—No, not at all. This is designed to hold a specimen of the material cut. An augur that bores through wood simply discards the shavings.

Q.—Does this consist of a knife that cuts down on a diagonal?

A.—Yes.

30 Q.—And you get a chunk out that has been cut diagonally as the knife went through it?

A.—Yes.

Q.—And what would be the distance between the path of this knife as it goes around two or three inches?

A.—It depends how much weight you put on it. It depends on how hard you push and what the nature of the material is. It has to be forced through.

Q.—It is not made like a screw on the ordinary augur?

40 A.—No. There is that tendency because the blade is curved. It helps a bit but most of the downward penetration is due to push. That is why it takes four hours.

Q.—This is the only hole you bored?

A.—Just one.

Q.—Did you examine any of the soft material that had been brought out by Mr. Langford's borings?

A.—There was none of it available as far as I could see. In any case that clay will air dry rapidly.

Q.—You did not have the opportunity of seeing any of the soft

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stuff Mr. Langford claims were being brought up with his borings?

A.—No, I did not. I tried to secure the specimens which he said were left in the Court, and they were not available.

Q.—From this one boring you got the impression that this was not a delta?

A.—More from the general relation of the district, on the form of the valley. I should say there was a very active cutting by Meach Creek—actually it cut a trench for itself instead of a deposit.

10 Q.—Does it not appear from the plans that it made a winding course for itself?

A.—Yes.

Q.—Out towards the river?

A.—Yes.

Q.—Looking at Exhibit D-160, where it turns rather sharply to the left as you look at it, or to the south, did not that indicate that there presumably was some obstacle to its going out towards the river?

20 A.—It might or might not. Even if it were an obstacle it could very easily curve out of the stream bed itself at slack water.

Q.—Would it not indicate that there was less resistance towards the south than straight out?

A.—It would initially. It follows the line of least resistance that any stream will.

Q.—Would not that lead one to believe that between the point where it turns to the south of the Gatineau there presumably must have been originally some obstacle?

A.—Yes, I should say so originally.

Q.—Some firmer obstacle than towards the south?

30 A.—Yes.

Q.—Would not the presence of that obstacle at the mouth of Meach Creek tend to slacken the flow to such an extent that the material might deposit?

A.—If it did, it would deposit it on the other side as a temporary deposit which would be settled away at a later time as the stream reduces its bed cut down deeper.

Q.—So there is no other explanation for this but the 690 feet above sea water level?

40 A.—I should say that is the most probable explanation. I would not want to be dogmatic about it.

Q.—On your second visit you went up Meach Creek?

A.—We drove up a road which hit the Creek above the dam, quite a distance up, and then drove up the Creek for a matter of a mile or two.

Q.—Did you notice whether or not there was material there from which the stuff in what the other witnesses have called this delta, might have been derived?

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A.—I saw material which might be interpreted that way, yes.

Q.—And in favour of that theory there is the fact that Meach Creek is still flowing down to the Gatineau?

A.—Yes, and against it there is the fact that the same sort of material occurs all over the country.

Q.—But here you have Meach Creek still flowing through material of that character and flowing down to the Gatineau?

10 A.—Quite right. The Gatineau also flows through material of the same sort, that is, anywhere along any of this stream follows you can find material of that sort.

Q.—You do not mean to say that it was all along the river?

A.—It is found on the slopes of the valley.

Q.—From place to place?

A.—From place to place.

Q.—Sea water is not there, and we have no witness of anyone having seen it there?

A.—We have testimony of shells which are of marine origin deposited in the clays at elevation up to 605 feet.

20 Q.—Up to 605 feet above present sea level?

A.—Above present sea level.

BY MR. KER:

Q.—That is, referring to Doctor Johnson's report?

A.—That is published in Memoir 101 of Doctor Johnson, of the Geological Survey of Canada.

BY MR. ST. LAURENT:

30 Q.—And, of course, this estimate of the period of 25,000 years is just a guess?

A.—It is approximate. The figure comes from a study of the time required to cut the gorge of Niagara.

Q.—And a calculation much the same as your six hundred years for the one hundredth of an inch softening of the prism of clay?

A.—Of the same order I should say.

40 Q.—Is it your opinion that the whole of this dried out surface which has been spoken of, would act in the same way that your half inch tube acted when you put it into one-sixteenth of an inch of water?

A.—In the clay as presumed to be the same as I believe Mr. Langford assumes.

Q.—In the same way your calculation would be correct, but are you putting forward as a proper test of what would happen to this crust, the fact that such and such a thing happened to what you had in your laboratory a half an inch deep?

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A.—I believe the clay is fairly uniform. That is the only type of test I could think of.

Q.—But are you putting it forward as a fair test from which a Court of Justice could draw conclusions as to what would happen to this crust formed during the course of 25,000 years?

A.—I think the state at which penetration takes place is so rapid that we could say for the clay as a whole it should be penetrated quite rapidly, within a few days I should say.

10 Q.—Can you give us any estimate of what period of time it took for this crust to form or harden?

A.—It is hardening and softening all the time, depending on weather conditions. As rain seeps through it it is softening. When you have dry weather it is hardening. It is an alternating condition.

Q.—So it is not a gradual condition?

A.—As long as the water table remains fixed; if the water table rises you could get softening. It is more or less permanent until there is another change in the water level.

Q.—So this crust would be above the permanent water table?

20 A.—The crust shown in Exhibit D-175 was above the water table before the water was raised.

Q.—Of course, that portion marked crust area is approximate, is it not, as to its thickness?

A.—Yes. It is within a foot I might say.

Q.—How is it determined? I understand you determine your water table by a more or less regular curve?

A.—Yes.

Q.—As you go back from the level of Meach Creek?

A.—Yes.

30 Q.—And what is the rest. Just assumed?

A.—No, the surface is based on one point which I measured myself, a distance of 53 feet from the centre of the bridge. It is not marked on here, but I actually plotted it when I made the diagram.

Q.—You measured the original surface of 53 feet from the centre of the bridge?

A.—I made a sounding along the side of the railway grade. At the outer edge of the railway grade the elevation was 314 feet if I remember correctly.

Q.—There was about six feet of water?

40 A.—About six feet, and that was used for the rough purpose of this diagram. It is merely a diagram.

Q.—What is illustrated by that diagram would lead one to believe that the bottom of the crust would be found at a higher elevation the further away you got from Meach Creek?

A.—Yes. In other words the water table rises.

Q.—The water table rising the bottom of the crust would be at a greater elevation the further away you get from Meach Creek?

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A.—Well, slightly higher.

Q.—If borings revealed a different situation, and revealed a crust going further down the further away you got from Meach Creek, it would not fit?

A.—It would not fit, no, with modern ideas generally accepted and presented in all colleges I have ever heard of.

Q.—And if that is shown to be the fact, then this theory would not meet the situation that those facts would reveal?

10 A.—It would mean there was some local condition which interfered with the estimation of the water table as I have described. The presence of the former impervious bed would, of course, make a different situation.

Q.—You were not here when Mr. Langford testified?

A.—No, I was not.

Q.—And all you heard of his evidence was what was reported to you by Mr. Ralph?

A.—I read his testimony in the Court Record.

20 Q.—Were you able to draw any conclusions from his testimony I do not mean the opinion part of his testimony, but from the testimony he gave as to the facts encountered?

A.—I considered the facts and went up and checked them myself.

Q.—But you made only the one boring, you did not go out further to see whether this crust, if thin, thinned out as you got nearer Meach Creek?

A.—I simply took Mr. Langford's sections and examined them, and used them where I needed them, and I don't know whether they are correct or not.

30 Q.—And you found no fact in explanation of this claim of Mr. Langford that this holds out towards Meach Creek, that the bottom of the crust was at a higher elevation near Meach Creek?

A.—I do not remember such a statement. You say the bottom of the crust was at a higher elevation near Meach Creek?

A.—Yes.

You are referring to his theory of softening?

Q.—I am not asking you about his theory?

40 A.—Does it necessarily mean that the crust was at a higher elevation or that it merely disappears in a horizontal position or with the height which may have been towards the creek?

Q.—The impression I got from Mr. Langford's statement as to facts was that the further out he got the thinner the crust was; he got down to soft clay at a point higher than when he was further away?

A.—I did not read it that way.

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Q.—I always understood that clay was poor material to build a stone foundation on because it was too soft and slippery; is that a prejudice?

10 A.—I think it arises from the fact that the term clay is a very comprehensive one, and it has really no precise scientific significance. It covers quite a wide variety of materials, some of which are, as you say, very plastic, soft, have no strength, but it is also used to apply to material which is fairly strong. Now there are some phases of the leader clay on which a good part of the city of Montreal is
15 built, a great many residences, and some of the larger buildings in Montreal rest in that leader clay, and that is called a clay, but much of it is quite silty and sandy. There is a great variation possibly in the portion of the discrete crystalline particles of considerable size which can be present; the more of those you have present the stronger the clay. They act more or less as a sand. It is the particles rubbing against one another and the frictional resistance against grains rubbing one against another gives the deposit its strength. That is what gives the sand its strength. It is the friction between the grains.

20 BY THE COURT:

Q.—Do you find any difference between the nature of the clay you examined on the Gatineau River and the clay we have here in Montreal? For instance, would it be a material that you could put below the foundation of residences and with that material would the foundation be solid?

30 A.—I could not compare it unless I saw the clay. I should say the clay you referred to would be one of the very soft types. There is a considerable variation in leader clay in different places.

Re-examination

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

Q.—As a matter of fact, I understand there is a sort of blue clay that runs down underneath the Eaton Building. They had a lot of trouble with that?

A.—Yes.

40 Q.—That is a special kind of clay, and another kind of clay would be able to support such a load without any trouble?

A.—Yes.

Q.—Do you know the kind of clay I refer to? There is a streak of it underneath the tunnel, under the old High School on Peel Street, and the Mount Royal Hotel had a great deal of trouble with clay, Goodwin's and Ogilvie's had trouble?

A.—You get many variations within the leader group of clays, you might say, or you may say, that leader clay in general is going

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to behave in any particular way, because you can get one kind that will behave one way and another kind that will behave another way.

Q.—From your microscopic examination of this clay, do you consider it to be a reasonably good bearing clay?

A.—Well, I think I can answer that in the affirmative. In making that statement I am comparing it mentally with certain phases of the leader I have seen supporting buildings in Montreal. I refer to clay that underlies part of Montreal West, for instance. This happens to be one I am familiar with. It forms a satisfactory foundation
10 for dwellings in that place.

Q.—And it is similar in character to that?

A.—In a general way, I should say, yes.

(And further deponent saith not.)

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20

DEPOSITION OF JOHN S. PARKER, A WITNESS RECALLED
FOR FURTHER EXAMINATION

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

JOHN S. PARKER,

30 of the City of Ottawa, General Manager of the Electrical Distributing Division of the Gatineau Power Company, aged 45 years, a witness already examined and now recalled for further cross-examination, who, being duly sworn, doth depose and say as follows:

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

Q.—The last time you were examined, a Deed was filed, being a Deed of Sale from La Compagnie D'Eclairage de Napierville, Limitée, to the Gatineau Electric Light Company Limited, and in
40 that Deed it was stated the price was made for one dollar and other valuable considerations. That Deed, you will remember, was signed on behalf of the Vendor Company by my learned friend Mr. Montgomery and by his partner, Mr. Howard. Have you found out since what was the real price that was paid for that consideration?

A.—Yes, I have the cost of acquisition here.

Q.—How much was it?

A.—\$140,082.39.

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Q.—Did you find out how many customers there were on that line as at the date of the acquisition?

A.—There were 318 customers at that date, and that increased very rapidly.

Q.—But at the date of the purchase there were 318 customers?

A.—318 became 542 customers in 1931.

Q.—That is due to the extensions made by the Gatineau Electric Company?

10 A.—To some extent, a very small extent. The growth was more the taking of all customers on the existing line.

Q.—You added to your customers?

A.—Yes.

Q.—And this Deed called for possession being taken as at midnight on the 31st October, 1927? The Deed is here and I will show it to you if you like. It speaks for itself. It says, "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"?

20 A.—Yes.

Q.—I understand the villages included in this purchase were Napierville, Lacolle

A.—Lacolle, Napierville, Sherrington and St. Phillippe.

Q.—I now show you the first annual report of the Canadian Hydro-Electric Corporation Limited, dated 1928. Is this the Lacolle line shown here on the lower right hand corner?

Mr. Ker: Do you intend to produce this as an exhibit?

30 Mr. Scott: I will produce it.

BY MR. SCOTT:

Q.—Is that what it shows?

40 Mr. Ker: I object to the production of this Deed, if my learned friend is taking the annual report of the company which has no concern with this matter, and producing it in the record in order to have a map which accompanies the front part of it and which refers to all sorts of things connected with this Company. I do not object to his taking the map out, if he desires to produce it, but why should it go into the record with an annual report of the Company which has no concern here.

BY MR. SCOTT:

Q.—Attached to the First Annual Report of the Canadian

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Hydro-Electric Corporation Limited, date 1928, is a map, is there not?

A.—Yes.

Q.—And at the lower right hand corner there is a red line? That represents the territory covered by this purchase, does it not?

A.—Yes.

Mr. Ker: Do you propose to produce the plan, Mr. Scott?

10 Mr. Scott: I will produce it. I will tear out this map which is annexed to this report.

BY MR. SCOTT:

Q.—I will ask you to file that as Exhibit P-127?

A.—Yes.

20 Q.—This Napierville System did not develop its own electricity; I understand it purchased its electricity from the Montreal Light, Heat and Power Company?

A.—Yes.

Q.—How much was it purchasing, and what was it paying for it?

A.—It was paying \$35 per horsepower per year.

Q.—And how much was it purchasing and consuming?

A.—When purchased it was purchasing 93.7 horsepower.

30 Q.—Another Deed was put in by you the other day and was filed as Exhibit P-126; that was a purchase from Theophime Bonhomme, a sale to the Gatineau Power Company, and is dated 2nd June, 1927?

A.—Yes.

Q.—That was before you joined the Company?

A.—Yes, one month before, or two months before.

Q.—I understand the purchase price in this Deed was stated to be \$100,000, was it not?

A.—Yes.

Q.—Would you state how many customers you had on the line at the time of the purchase?

A.—184 at the time of the purchase and 360 within twelve months.

40 Q.—And subsequently your company extended the number of customers?

A.—Yes, on the existing line. No new transmission line was built at that time.

Q.—You first of all had an option on that system from Bonhomme?

A.—I would not know that.

Q.—Do you know?

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A.—No.

Q.—You do not know whether there was an option or not?

A.—No.

Q.—I suggest to you that this transaction commenced by the giving of an option by Bonhomme to the company, and at the time he gave that option he had no customers at all. Would you say that is correct?

A.—I have no knowledge of that at all.

10

Q.—Do you know where his customers were at that time?

A.—Yes.

Q.—Whereabouts?

A.—At the villages of Ste. Rose, Templeton and the Township Municipalities of West Templeton and East Templeton.

Q.—You do not know how those customers were divided as between the Municipalities and the Township Municipalities?

A.—No.

Q.—Do you know how long Bonhomme had been in the business at the time your company purchased from him in June, 1927?

20

A.—I don't know, but it would be a long time.

Q.—Do you think it would be a short time or a long time?

A.—If you are speaking of Mr. Bonhomme I know he was in business for a long time before that.

Q.—But serving customers with electricity?

A.—I don't know when his first advent into the electrical game was, but it was at a time considerably previous to that date he was in the electrical business.

Q.—At any rate this transaction was entered into before you joined your company?

30

A.—Yes.

Q.—As to Napierville, that was a stock purchase, was it not? The Gatineau Power Company bought out the shares of the Napierville Company, did they not?

A.—I presume the document speaks for itself.

Q.—From enquiries you have made since, have you not ascertained that that was a stock purchase for the purchase of shares?

A.—I would rather stick with the documents. There are a lot of deeds here.

40

Q.—The deed shows it is a purchase of assets. Was not certain indebtedness of the Napierville Company also assumed, something of the order of \$32,000?

A.—I do not know that.

Q.—When you gave me this figure of \$140,082, was that just the sum of money that was paid for the stock?

A.—That was the complete cost of acquisition. I saw the figures in the office, but all I have here is the total.

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Q.—Do you know, as a matter of fact, whether that includes the assumption of certain liabilities of the vendor company?

A.—It assumed several amounts apart from the stock purchased.

Q.—Apart from the stock purchased?

A.—Yes.

Q.—That figure of \$140,082 was adding up everything?

A.—Yes, it was adding up everything.

Q.—You are quite sure of that?

A.—I am quite sure.

10 Q.—Were you able to get us any further information about the purchase from the Papineauville Electrical Company, for instance, as to the number of customers?

A.—The total customers of the Papineauville Electric Company at the time we have a record of first. . . .

Q.—That was in 1927, was it not?

A.—We have not any record at the beginning. Those books were not as well kept as some others. The first record I have is at January, 1928, 403 customers. That would be a few months after the purchase.

20 Q.—The deed of sale is dated the 2nd June, 1927, and your first record of customers is January, 1928?

A.—January, 1928.

Q.—So you have not any for June, 1927?

A.—I have not any for June, 1927?

Q.—I presume then, you do not know what the gross revenue of the company was in June, 1927?

A.—No. I have the gross revenue for the year 1928.

Q.—How much was it for the year 1928?

30 A.—\$17,278.36.

Q.—And have you ascertained what the purchase price was?

A.—I think you have the deed—\$200,000.

Q.—Have you any record of the gross revenue of the Napier-ville system in October 1927?

A.—No, not as early as that. For twelve months, from November 1927 to October 1928 inclusive, \$17,174.12.

Q.—That was for the Napierville System?

A.—Yes.

Q.—From October, 1927 to October, 1928?

40 A.—Yes.

Q.—During that time from what had your number of customers grown?

A.—It began at 318, and I gave the number as at December, 1931, which, of course, would not cover the same period—as 542. I really don't know what it was in that first year.

Q.—The purchase from the Quebec Southern Power Corporation in 1927, I think you told us, was quite a large power, and not

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comparable to anything of the order of the properties possessed by Mr. Cross?

A.—I said that about these other properties too.

Q.—But also about this Quebec Southern Power Corporation?

A.—Yes.

Q.—That ran into something of the order of \$200,000 or \$300,000, something like that?

A.—Something like that. I have not the figures here. They are on the document.

10 Q.—I think you also told us the purchase from the Montreal and Ottawa System was not comparable to anything possessed or owned by Mr. Cross?

A.—Yes.

Q.—Did you ascertain the gross revenue of the Bonhomme System at the time of its acquisition by the company?

A.—I have the first year's record ending June 30th, 1928.

Q.—That is, after it had been operating?

A.—Yes.

20 Q.—Have you any record of what it was at the time you purchased?

A.—No, I could not get any record.

Q.—Have you got it for the Bonhomme system prior to the time you operated?

A.—No.

Q.—But for your first year that you operated?

A.—For the first year I have ending June 30th, 1928, \$11,378.83.

Q.—Did that include any sale to your East Templeton mill?

A.—No.

30 Q.—That was just for the country side?

A.—Just for the country side.

Q.—No sales to the Gatineau Power Company or to any of the subsidiaries of the Gatineau Company?

A.—No, absolutely not.

40 Q.—When you were in the witness box the other day you filed Exhibit D-148: that was the sale from the Vankleek Hill Electric Company to the Ottawa-Montreal Power Company Limited, dated the 30th December, 1926, and a certain purchase price is mentioned as you will see it here, and then, on the third page there is a reference to certain privileges accorded to the mortgage, to J. A. Robertson of the Town of Vankleek Hill subject to certain conditions, the whole of which is particularly described and explained in a certain written undertaking of even date excluded in favour of the said James A. Robertson, etc. That was a certain additional consideration was it not, given by the purchasers with reference to this purchase price of \$18,000 mentioned here, or do you happen to know what that consideration was?

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A.—I know what that consideration was. It was a consideration that he would have free lighting of his own house.

Q.—That is, in addition to the purchase price?

A.—Yes. He got that for some little time, and then he moved to California. He came back again for one summer at Hudson, and he got it again for that summer. Since that time I have not heard of it.

Q.—That is what that refers to?

A.—I am quite certain that is what that refers to.

10 Q.—Was that given to his successors and assigns, or just to him personally?

A.—To him personally I believe.

Q.—For how long?

A.—So far as I know it was for his lifetime. I am not sure.

Re-examination

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

20 Q.—I understand when you were previously examined, you testified that the usual and more or less standard method of appraising the value of a system devoted strictly to distribution, was on the basis of a price equal to four times the gross revenue?

A.—Yes.

Q.—And in order to elucidate that you produced four deeds of such companies, strictly distribution companies, which were comparable, in your opinion, to that of Mr. Cross?

A.—Yes, four or more, I am not quite sure.

Q.—Well, several?

30 A.—Yes.

Q.—There was the Hudson Heights System?

A.—Yes.

Q.—There was the Vankleek Hill System?

A.—Yes.

Q.—The Argenteuil Lumber Company?

A.—Yes.

Q.—And the L'Original?

A.—Yes.

Q.—And the Ste. Jovite?

40 A.—Yes.

Q.—And with regard to the Ste. Jovite System, I understand you stated it was about five to one by reason of the possibilities from summer hotels and its proximity to Montreal?

A.—Yes.

Q.—You were then asked by my learned adversaries to state whether or not the Company had not purchased other systems, and you were asked to produce the deed of Napierville, of Bonhomme

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and of Papineauville and of the Quebec Southern Power Corporation and the Ottawa-Montreal Electric Company and various deeds?

A.—Yes.

Q.—Will you state with respect to this Napierville transaction which you have produced, and upon which you have been examined by Mr. Scott, just in what respect that does differ in classification from Mr. Cross' system and the other systems that you referred to of Hudson, etc., and why it is not comparable?

10 A.—The Napierville system leads from a point near Montreal to the American border. It consisted of a newly-constructed 25,000-volt transmission line with the necessary high voltage sub-stations. It was built along the main highway between Montreal and New York. It served, and does serve, very large hotels near the border which have had a very thriving business during the last five or ten years. It abuts on the properties of affiliated companies, and carried at the time of the purchase a contract for export of power of 25,000 volts to the Champlain Electric Company, of Champlain, New York, which held then, and does now hold, an export license for 500 horsepower.

20 Q.—To the United States?

A.—To the United States.

It carried a considerable amount of power connection. I do not know whether I have the exact amount or not, but there was quite a number of power customers as well as lighting and commercial—no, I do not seem to have it readily available.

Q.—Did it carry with it the ownership of any immovable property as well?

30 A.—Well, it had the immovable property upon which the sub-stations were built.

Q.—And the sub-stations also?

A.—And the sub-stations also.

Q.—Did it not carry with it also certain leasing rights of sub-stations, rights on the railway property of the Canadian Pacific or the Canadian National?

A.—I am not so sure as to sub-stations. It carried leasing rights on the Napierville Junction Railway for transmission lines.

Q.—It also included a considerable amount of privately-owned right-of-way?

40 Mr. Scott: The deed speaks for itself.

Witness: I am not sure on that point.

BY MR. KER:

Q.—The deed speaks for itself on that point. In any event, it was a 25,000-volt line?

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A.—Yes.

Q.—Mr. Cross' is a forty-five hundred volt line?

A.—Well, approximately.

Q.—It carried with it that very desirable feature in those days of an export license to the United States?

A.—Yes.

Q.—Are there any such things now in existence in this Province?

10 A.—No new licenses and there are no licenses so far as I know from the Province of Quebec.

Q.—As a matter of fact, has there not been in the last few years a direct Act passed prohibiting under every circumstance the exporting of electricity from this Province?

A.—I believe so.

Q.—Even with all those advantages, and were you in any competitive position with respect to the purchase of that place?

20 A.—Yes. We were between the Quebec Southern Canada Power Company and the United Power Company at that time, and this was a narrow strip of territory between the two. It was somewhat competitive.

Q.—Even granted you take all those advantages into consideration, what was the price basis actually on the revenue that you were earning when you did purchase it with all those advantages added?

A.—The ratio was 8.16 to 1.

Q.—The ratio was 8.16 to 1 instead of

A.—Instead of 4.

Q.—Instead of the Ste. Jovite 5, and the others 4?

A.—Yes.

30 Q.—Just let us turn for a moment to the Bonhomme system. Would you characterize that in relation to Mr. Cross' system in respect to its physical assets and possibilities?

A.—It also had a newly-constructed line, 6,600 volts.

40 I was asked to produce the length of that line. The total length was 12.25 miles, but it served an area in which a large number of the employees of the Canadian International Paper Company and affiliated companies were residing, and where a new town site was being built. The fact that although this started with 184 customers, it had, at the end of 1931, 586 customers, shows somewhat the rate of that growth. It had developed power and also undeveloped power. The installed capacity at the developed plant at High Falls was 515 horsepower, and the undeveloped power at McGuire Falls was 430 horsepower and at Perkins Mills, 500 horsepower.

Q.—As a matter of fact, the purchase price of \$100,000 which the Company paid included the developed and operating power of 500 capacity?

A.—515.

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Q.—And two undeveloped water powers having a total horsepower of

A.—950 horsepower.

Q.—And all the immoveable property connected with this?

A.—Yes.

Q.—Together with a completely newly-built transmission line?

A.—Yes.

Q.—And approximately 200 customers?

A.—Yes.

10 Q.—In a district which was probably, was it, or was it not, susceptible of easy development and picked development?

A.—The statistics of the recent census show very clearly that the population has, I believe, more than doubled in the last three years—three times in the last ten years.

Q.—On the basis in which your first revenues are available, even with all those advantages of developed powers which are not comparable in Mr. Cross' case, immoveable properties, and all the other advantages, what did it work out at?

A.—The ratio?

20 Q.—Yes.

A.—8.1 to 1.

Q.—What is it now?

A.—5.7 to 1, that is, for the year 1931, and including in the purchase price immoveable properties, power plants and everything else.

30 Q.—As a matter of fact, my learned friend asked you whether this was not subject to option before you purchased it. Is it not true there were no customers on the line as the option was given, which would indicate it was not a question of customers at all in that case, if that were the case?

A.—It would indicate that.

Q.—If I remember, it had an exclusive franchise for the Township of Templeton, had it not?

A.—Well, it purported to be exclusive. Under the Quebec Public Service Commission I do not suppose any franchises should be considered as exclusive.

40 Q.—Without going further into this matter, the Papineauville Electric Company was practically parallel to that; it had developed powers, immoveable properties and various other assets which are not included in Mr. Cross' property?

A.—Yes.

Q.—On the basis of gross earnings what does that work out at now?

A.—6.66 to 1 in Papineauville, including all the purchase price.

Q.—That is not on the original. The original purchase with the power and everything works out at about ten or eleven to one?

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A.—11 to 1.

Q.—I am asked to clarify the evidence which you gave at page 94, in order to make it quite clear. You produced an invoice from the Hull Electric Company for certain poles—I am now reading from page 94 of your previous evidence:

10 “ 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?”

That question was asked you in connection with an estimate which you had made of the cost of poles in valuing the portion of the transmission line below Cascades, to Kirk's Ferry. Would you state what this \$5.25 really represents—poles sold by Mr. Cross to the Hull Electric Company?

20 A.—Well, I was somewhat confused at that time as to whose signature it was, and I was led away from the close reading of the actual order. I would like to read that now. I have a copy of it here, and there is also a copy in the record.

“ Sixty, thirty-foot six to seven inch top cedar poles to be delivered between New and Old Chelsea at a distance of 125 feet between each pole, the price, \$5.25 per pole delivered ”—as compared with the unit prices used in our valuation; these poles are delivered at the spot where they were to be used against our estimate of poles f.o.b. the cars or f.o.b. Mr. Cross' yard, had they been bought from him.

30 I would say that the cost of delivering those poles at the point where they were to be used would be at least one dollar per pole, which is less than a carload lot. If they were shipped, the freight would be rather high and there would be the loading and unloading and teaming. If they were drawn by truck, there were several heavy hills to negotiate, and the cost would not have been less than one dollar a pole.

I also have an invoice here of poles bought about the same time at Kazabazua, thirty-foot cedar pole at \$3.25, dated June 13th, 1927.

40 Q.—I understand your estimate had been for poles at

A.—\$4.00.

Re-cross-
examination

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

Q.—As regards the Napierville Company, were they ever exporting power or electrical energy to the United States?

A.—Yes.

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Q.—I am not talking about their having a license. Were they, in fact, ever exporting electrical energy to the United States?

A.—The contract term commenced November 1st, 1924. They ceased taking power about October 1st, 1925.

Q.—Who are they?

A.—The Champlain Electric Company.

Q.—The American purchasers?

A.—Yes.

10 Q.—When did they cease taking power?

A.—About October 1st, 1925.

Q.—And subsequent to that, they never took any, did they?

A.—No, but they paid for it.

Q.—And then, did your Company, the Gatineau Electric Company, export power under a license?

A.—We have maintained that original license.

Q.—You have taken one and have had it renewed?

A.—We had it renewed, and have it today.

Q.—Even in spite of the 1926 Statute passed at Quebec?

20 A.—Yes.

Q.—Even in spite of that?

A.—It was not in spite of it. We had the license and we kept it alive.

Q.—How much? 500 kilowatts?

A.—500 horsepower.

Q.—You are sure of those figures?

A.—Well, I have always heard it spoken of as 500 horsepower.

Q.—Your Company has never exported

A.—No, but we have been paid for it.

30 Q.—For all those years?

A.—There was an adjustment closing out the contract, but we were paid for it.

Q.—There was an adjustment closing out the contract in 1926 or 1927?

A.—I cannot give you the exact date.

Q.—But you are not exporting any at the present time?

A.—No.

Q.—And you do not know anything about the flow of the River Blanche—the average six months' flow?

40 A.—No. I don't believe there are any published figures.

Q.—And I do not suppose you know how much horsepower was actually developed by Mr. Bonhomme? I am not talking about installed power now?

A.—I do not know. I do not suppose it was measured.

Q.—As to this power from the Argenteuil Lumber Company which you spoke of and which was filed as Exhibit D-151, being the sale of the 5th March, 1930. What was covered by that was just a

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certain amount of poles and wires, was it not? There were no properties?

A.—There were no properties on that.

Q.—Again, with reference to the Blanche River, the undeveloped power below Perkins Mills was not owned by Bonhomme?

A.—High Falls is below Perkins Mills.

Q.—And right below Perkins Mills, did that belong to Bonhomme?

A.—I would not know that.

10

(And further deponent saith not.)

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Superior Court*

No. 117.
Defendant's
Evidence.
(Supp. Hearing)
S. E. Farley,
(Recalled)
Examination
Nov. 8th, 1932.

DEPOSITION OF SIDNEY E. FARLEY, A WITNESS
RECALLED ON BEHALF OF THE DEFENDANT

20

On this eighth day of November, in the year of Our Lord, one thousand nine hundred and thirty-two, personally came and reappeared:

SIDNEY E. FARLEY,

of the city of Ottawa, Ontario, Land Surveyor, aged 46 years, a witness already examined, and now recalled 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, in connection with your previous examination in this case I observe at pages 254 and 255 of your evidence reference had been made to certain dampness of the soil about the piling ground which you had observed before the raising of the water, and his Lordship asked you to signify the times at which you had observed this, and you stated to the Court that you desired to verify these dates from your field books. Would you say now whether you are in a position to give evidence as to the times that you observed this condition of dampness in order that we may complete the record on that point?

A.—In looking over my field notes I find I can only tie down practically one particular date on which I recall that the ground was damp, from the survey made practically along the piling ground itself. I have been there on many other occasions, but I cannot say that I can pin down any particular date on which I made that specific

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observation, but on November 15th, 1916, I made a survey of the Toy Factory property, and have a distinct recollection of the ground being soggy.

Q.—How many years before the water was raised?

A.—About ten years.

Q.—The Toy Factory is shown on the plan?

A.—The Toy Factory is shown on the plan.

Q.—It is in the vicinity of the lumber yard?

10 A.—Yes, and I walked right through the lumber yard. At the time I ran right through the lumber yard to the side line.

Cross-examination

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

Q.—I do not suppose you have any note in your field notes as to what kind of weather it had been for a week previous to the 15th November, 1916?

A.—No, unfortunately, I have not.

20 Q.—And you have nothing which would enable you to say at what elevation the water of the Gatineau was at that time?

A.—None whatever.

Q.—Your recollection is that at the time you were there making the survey of the Toy Factory, your side line passed through the lumber yard, and it was soggy?

A.—Yes.

Q.—And your field notes enable you to fix the date?

A.—To fix the date.

30 BY MR. KER:

Q.—As a matter of fact, it was a question of fixing dates. I understand you said you were there many times?

A.—Yes.

(And further deponent saith not.)

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Defendant's
Evidence.
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Lyttleton Cassels,
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DEPOSITION OF LYTTLETON CASSELS, A WITNESS
PRODUCED ON BEHALF OF THE DEFENDANT

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

LYTTLETON CASSELS,

10

of the City of Ottawa, Ontario, Quebec Land Surveyor, aged 44 years, a witness produced on behalf of the Defendant, who, being duly sworn, doth depose and say as follows:

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

20

Q.—You are a Quebec Land Surveyor by profession?

A.—Yes.

Q.—And also a civil engineer?

A.—Yes.

Q.—You are practising your profession in Ottawa?

A.—Yes.

Q.—In partnership with Mr. Sidney E. Farley, who has been examined in this case?

A.—Yes.

Q.—Under the name of Farley and Cassels?

A.—Yes.

30

Q.—How long have you been practising your profession?

A.—As a Quebec Land Surveyor since 1920.

Q.—And also generally as a professional engineer?

A.—Yes, since 1913. The War intervened—since the end of the war continuously.

Q.—I will ask you to look at the plan produced as Defendant's Exhibit D-160, which is a plan prepared by Mr. Sidney E. Farley. Did you in the making of that plan have anything to do with that plan in any way?

A.—Nothing whatever.

40

Q.—Have you been asked recently by the Company Defendant to go on the ground as a Quebec Land Surveyor and make an independent check of this portion which is shown in red of the piling ground, and particularly to check the line of 324.5 on that plan?

A.—Yes.

Q.—Have you done so?

A.—Yes.

Q.—Will you state whether, in your opinion, that is an abso-

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lutely accurate plan, and whether or not the contour 324.5 is accurately and correctly shown from the observations taken on the ground?

10 A.—Yes. I would qualify that to this extent, that I would not expect anyone to do any better. May I put it in that way? In locating a contour, the absolute location of a contour to a hair is almost impossible. What I am driving at is, that under the circumstances which a similar plan would be prepared elsewhere, if it was similarly accurate, I would say it is correct, in other words, is correct according to the usual procedure.

Q.—That is to say, according to the art of a Quebec Land Surveyor?

A.—Yes.

Q.—You would say that that is accurate in all respects as indicating the situation?

A.—Yes, as indicating the situation.

Q.—As to the location of the line in question?

A.—Yes.

20 Q.—You took the levels yourself in verification?

A.—In person.

Q.—And did you take various other spot levels outside of that line to pick up any other spots at all?

A.—I undertook to verify, or to check the spot levels—or to take spot levels immediately south of the road shown in black, crossing in front of the power house and immediately west of the creek, the area, in other words, between the piling ground and the creek, and south of that, the small area.

30 Q.—You were basing yourself in taking your levels on the actual condition of the ground as it stands now?

A.—Yes.

Q.—What was there as to piling ground now?

A.—Yes.

Q.—Did you also verify the line of 321.5?

A.—Yes.

Q.—I understand you did not take the line 318, which is the lower red line, because it was under water when you were there?

A.—It was under water.

40 Q.—Where this line of 324.5 crosses the spur line in the upper or western portion, what is the nature of the ground there? Is there any overbearing on there, or is that virgin ground?

A.—In places it has the appearance of being original ground. I would not commit myself as to its being absolutely original ground, but there is grass and hay and one thing and another on it.

Q.—In any event, what I am getting at is, that you have taken your elevations on the existing surface on the ground as indicated

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in the piling ground, whether it may be filled in or not; that is what you have taken it at?

A.—Well, on the surface as it exists.

Q.—I suppose if someone were to come along and put a crow bar down through the sawdust and get down lower, he would probably get down lower than that?

A.—Possibly.

Q.—And that is the elevation on the piling ground as it exists?

A.—Yes.

10 Q.—Would you be prepared to state whether or not there would be any effect of water at a level of 321.5 in this river, and will you state whether there will be any effect on the land outside of this 324.5 contour?

A.—None.

Q.—It is all above it?

A.—It is all above it; in the immediate vicinity I have to limit myself to.

Q.—Of course, naturally, if it is a mile away, but in this vicinity you are speaking of?

20 A.—Yes, in that vicinity.

Cross-examination

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

Q.—When did you take these levels?

A.—On the 3rd November.

Q.—1932?

A.—1932.

30 Q.—And you speak of the surface you found on the 3rd November, 1932?

A.—Yes.

Q.—You do not know anything at all about what was the surface in 1926 or 1927?

A.—No.

Q.—When you say that it is as accurate as you would expect to find any plan, I presume that comes from the difficulty of placing an exact contour line of something which is substantially level?

40 A.—No. The difficulty is this, that if you hold your rod—if you are taking a level, and I am taking a level and you hold your rod six inches from my rod you come the day after and hold your rod six inches, that bit of ground you hold your rod on is apt to be perhaps a little lower or a little higher; in other words you can find a little rise in the ground, and there may be an elevation of 324.5 there and another one there. You do not draw a microscopic contour.

Q.—And if this line had been a few feet from where it is shown on the plan, you probably would still say, "It is as accurate as I would expect to find it".

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(continued)

A.—Yes.

May I illustrate that. There is a rock ledge which obviously I would not need a level to show the contour line along the face of it,—one side of that part of that rock ledge, and you would agree with me that that piece of contour line along that rock ledge, that is where the Toy Company used to stand.

Q.—And it is not attempted to verify the elevation which was over in the contour line?

A.—No.

10 Q.—You verify certain spots and tie them in?

A.—Say forty feet. It would vary, but close enough to make a continuous line.

Q.—And if it happened that one man was hitting the high spots and the other man (although both were acting in good faith) would hit a lower spot, the contour line might be several feet distant from one another?

A.—The wobbles in it would vary. It would intersect at places and there would be small wobbles.

20 Q.—So in order to get at the same contour line that another surveyor or engineer got you would almost have to know just exactly the spot at which he started, and the distance between each verification of elevation?

A.—Yes, except that if I draw a contour, make a sketch showing a contour, and I spot my sketch, and my contour is close to the other fellow's contour, then I say his contour is correct.

Q.—But it is not like a matter of actual lineal measurement where you get it absolutely?

A.—Not absolutely, but very close though in places.

30 Q.—And, of course, the accuracy or otherwise depends a good deal upon the nature of the thing of which you are making the contour?

A.—Yes, to some extent.

Q.—I suppose some contours along a lake shore would probably be absolutely accurate where you get an even slope brought about by the action of the water?

A.—It could be made, I would say, absolutely accurate on a rock surface, for instance.

Q.—And on hard sand?

40 A.—Or hard smooth sand.

Q.—You did not at any of these points attempt to determine whether or not there was over-burden or there was fill that had been placed within recent years?

A.—No.

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(continued)

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

Q.—Mr. St. Laurent spoke of the question of making an independent sketch and checking by the plan which you are endeavouring to check. As a matter of fact, without any reference to this plan whatsoever, before you went on the ground, did you make a sketch plan of your own for your own survey of this property?

A.—Yes.

10 Q.—Have you copy of that sketch?

A.—Yes.

Q.—I will ask you to produce this sketch plan which you speak of as being a sketch plan made by you, indicating the 324.5 and 321.5 level, as Exhibit D-176?

A.—Yes.

Q.—Was that plan made without reference to this plan of Mr. Farley's, when you were on the ground?

A.—Absolutely.

20 Q.—Will you apply your plan to Mr. Farley's plan and see whether they coincide absolutely or not?

A.—No, they will not coincide absolutely, but they will coincide closely enough to justify me in saying that Mr. Farley's plan is correct, as close as I would expect the contour.

30 Q.—I would ask you, having your plan before you, to look at the plan which has been produced as Plaintiff's Exhibit P-93, which is alleged to be a plan, not apparently prepared by a Quebec Land Surveyor, but it has been produced as an exhibit, and will you indicate whether the position of the 321.5 line on that plan is correctly shown or not?

A.—I find there is a different scale which makes it a little difficult. The 321.5 appears to be above where I found it or further inland than the creek.

Q.—It is not where you find it?

A.—No, I can say that.

Q.—Does the same remark apply to the 325 contour as given on that plan—of course, yours is 321.5. You both have the 321.5 and you find yours and Mr. Farley's is not the same as this?

40 A.—Just one moment, and I can speak to some extent about 325. I have the following levels which would apparently fall inside or on the creek side of the 325 as shown on this plan P-93.

I have given 326.8 which would fall below the 325 as shown on this.

I have given 327.3 which would fall below.

I have given 326.4, taken where two tree stumps are apparently part of the original stump, which would fall below the 325.

Q.—Below the 325 level given on the plan P-93?

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A.—Yes.

Q.—In other words, spot levels you have taken indicating on your plan levels ranging from 326?

A.—326.8, 327.3 and 326.4, all of those I am pretty sure would prove to be below this elevation.

Q.—Elevation shown as 325 on this plan?

A.—Shown as 325.

(And further deponent saith not.)

10

*In the
Superior Court*

No. 126.
Defendant's
Evidence.
(Supp. Hearing)
W. A. E. Pepler,
Examination
Nov. 8th, 1932.

DEPOSITION OF WILLIAM ARTHUR E. PEPLER, A
WITNESS PRODUCED ON BEHALF OF DEFENDANT.

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

20

WILLIAM ARTHUR E. PEPLER,

of the City of Montreal, Forest Engineer, aged 33 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,
(under reserve of Paragraph 54 of Plea):

30

Q.—Mr. Pepler, you are by profession a Quebec Forest Engineer?

A.—Yes.

Q.—By what company are you at present employed?

A.—The Canadian International Paper Company.

Q.—And how long have you been in the employ of that Company?

A.—I have been with them a little over five years.

Q.—Are you a graduate of any University?

40

A.—Yes. I am a graduate of the University of Toronto in Forestry, and a post-graduate of Yale University, also in Forestry.

Q.—Are you a member of the Quebec Society of Forestry Engineers?

A.—Yes, I am.

Q.—Just what does that mean?

A.—It is an incorporated association, and under a Quebec Act, limiting the practice of the profession of Forestry in Quebec, that is

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to say, in order to practice the profession of Forestry in Quebec in a way that is acceptable to the Quebec Government, you must be a member of the Quebec Society of Forestry Engineers.

Q.—Does that carry with it any official standing from the point of view of inspection or valuation, or determination of timber?

A.—Yes, it does. Every Company operating in Quebec is required to forward certain reports to Quebec, to the Department of Lands and Forests. They have to make an inventory of their properties, and they have to make surveys of their cut over areas, and none of those reports are acceptable to Quebec unless they are signed by a Quebec Forestry engineer.

10

Q.—What length of experience in the practice of your profession have you had?

A.—I have had from ten to twelve years' experience in the practice of my profession.

Q.—And what percentage of that time would you say had been spent in the determining and cruising of limits, or in making estimates in connection with them?

A.—About sixty per cent of that time has been spent in cruising timber limits, and making inventories.

20

Q.—Your company is considerably interested in the Gatineau Valley, I understand?

A.—Yes.

Q.—And have you had occasion for many years to study particularly the wood resources of the Gatineau Valley?

A.—Yes, I have.

Q.—For how many years?

A.—Five years.

30

Q.—Have you some knowledge of the general lumbering activities which have been carried on in the Gatineau Valley?

A.—Yes, I have.

Q.—During the same period?

A.—Yes.

Q.—Would you describe in a general way the character of the bush land or forests in the lower reaches of the Gatineau River Valley?

A.—The forest cover in the lower Gatineau is of second growth, that is to say, it has been partially cut over, or burned over. There are no virgin stands of timber existing there now. For many many years it has been logged. I do not know the exact dates, but over eighty years ago the first loggers came into the Gatineau Valley in the lower valley and took out the white pine. Most of the logging has been done selectively, that is, working the higher class of material all in one cut. After the white pine was gone, other loggers came and took the spruce, and that is the better spruce that would make saw logs;

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then they came in and have taken the better hard woods and the smaller spruce for pulpwood.

The result of that is that the stands that exist there now are the poorer class of hard woods, and they are more or less in inaccessible location. If they could have been economically logged they would have been as the demand and the market occasioned.

10 After logging, as has always happened, fires come, and in the slash, the logging slash, and in the past forty years the greater part of the lower Gatineau Valley has been burned over. Many places have been burned more than once.

Q.—After these general observations with respect to the bush in the lower part of the Gatineau Valley, have you made an inspection and a particular cruise of the timber properties of Mr. Cross which are mentioned in this case?

A.—I have.

19 Mr. Ker: My Lord, I may say those properties are set out in certain exhibits in this case. I do not want altogether to rely on the Plaintiff's Declaration, because, since making the Supplementary Declaration, the Plaintiff has withdrawn certain parts of those limits from his Declaration, and has disclaimed the ownership of them. The matter is set out more fully in his Particulars, in his Examination on Discovery.

BY MR. KER:

Q.—Have you made a detailed cruise of these limits?

30 A.—Yes, I have made a detailed cruise, and I have made a Forest Type Plan showing the forest covered types over the limits.

Q.—In what districts are these lots located?

A.—They are in Wakefield, Hull and Eardley Townships.

Q.—That might be termed the Lower Gatineau?

A.—Yes, they are in the Lower Gatineau.

Q.—In your opinion, would they be subject in a general way to the same remarks which you made about the history of the wood on the Lower Gatineau?

A.—Yes, the general remarks I have made apply to these limits.

40 Q.—Would you be good enough to produce this Forest map which you have made, indicating all the limits of Mr. Cross on the official plan, where they are, and will you produce this plan as Exhibit D-177?

A.—Yes.

Q.—Will you just state now for the information of his Lordship what this plan purports to be, and explain its legends?

A.—This plan shows in colour the lots that are claimed by Mr.

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Cross as his timber limits, and the various colours represent the forest types that occur on the lots.

We have first the green. That is merchantable forest area, and that includes all area on which there is any merchantable forest standing now without pine logs.

Then, we have unmerchantable area in yellow. That is an area which is covered by second growth. It is twenty to forty years old, and will not be merchantable for saw log material for another sixty or eighty years.

10 Then we have the dark brown, which is areas clean cut, that is, everything that is merchantable has been cut off that area.

Then there is the barren and waste area which is not capable of producing the forest or not valuable for the forest, which is in light brown, and certain of that is hatched, has cross lines on it. That indicates it is cultivated land.

Q.—Those squares that are coloured red, the hatchings that Mr. Cross has referred to in the amended exhibits?

A.—Yes.

20 BY THE COURT:

Q.—How many acres would that cover?

Mr. Kerr: I think, my Lord, that will appear as the examination proceeds.

BY MR. KER:

30 Q.—What I wanted to get at, was the physical make-up of this plan, how did you go about making that plan and getting this information together? Can you answer his Lordship's question roughly as to the acreage?

A.—The total acreage of the whole area is between six and seven thousand acres, or, approximately eight to nine square miles. That is the whole acreage.

Q.—The total?

A.—The total.

Q.—As shown on the plan?

40 A.—As shown on the plan.

Q.—Of those eight or nine miles, how many acres or miles are, immediately in the vicinity of the Farm Point Mill?

A.—There are some thousand acres, or sixteen hundred acres in the vicinity of the Farm Point Mill. There are sixteen hundred acres in the vicinity of the Farm Point Mill.

Q.—There are sixteen hundred acres in the vicinity of the Farm Point Mill, that is, on the west side of the river?

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A.—Yes.

Q.—Those are the limits which have been spoken of in this case as being on the west side of the river?

A.—Yes.

Q.—And the limits on the upper right hand portion of the map—the east side of the river area?

A.—Yes.

Q.—Are these all Government licenses?

10 A.—They are Crown licenses.

Q.—They are not owned; they are Crown licenses?

A.—They are Crown licenses.

Q.—The others on the west side, on the lower part of the plan are either freehold or under cutting rights from individuals?

A.—Yes.

Q.—And the part which is adjacent to Farm Point, you say consists of about sixteen hundred acres?

A.—Yes.

Q.—The balance being on the east side?

20 A.—Yes.

Q.—What distance would the limits on the east side be from Farm Point?

A.—The ones on the east side vary considerably in distance, that is, they run from three or four miles to twelve, that is, the actual distance in a straight line as you would go by road, some of those limits are as much as nineteen and twenty miles from Farm Point. The closer ones are three or four miles from Farm Point.

Q.—How did you go about distinguishing the various kinds of wood as set out in these colors, one from the other on the plan?

30 A.—The area is mapped in the field and then it is coincided with aerial photographs in the office. This whole area has been photographed from the air by the Dominion Government, and the field maps which I made are taken in and compared with the aerial photographs to check as to the exact line.

40 You understand when you make a cruise, you just run a line through the property at various intervals, and as you pass from one type to another you make a note in your notes to that effect. Well, then, there is a gap between the lines that you run, and that gap is filled as to where the line runs from the aerial photograph which, of course, is a very accurate method.

Q.—In other words, before aerial photography limits were run at lines parallel to each other?

A.—Yes.

Q.—Now you can look down and see the intervening part, you having gone over it and you can see what you think it is by the cruise?

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A.—Yes.

Q.—And that has been done in this case?

A.—Yes.

Q.—By you?

A.—Yes.

Q.—And under your supervision with your men?

A.—Yes.

10 Q.—I would like first to have you refer to the lots on the west side of the river, and to give us an estimate lot by lot of the merchantable timber on each one, from the investigation you have made, and from the information you have compiled with regard to it?

A.—On the west side of the river there is

Q.—Take them by groups?

A.—I could take them by groups according to the paragraphs there in the Supplementary Declaration, and according to the exhibits, and in the first group I have paragraphs 15-A and 15-C.

Q.—You are now speaking of the groups that are referred to in the declaration, paragraphs 15-A and 15-C?

20 A.—Yes. They are covered in Exhibit D-125, D-126, D-127 and D-128.

Q.—Those are the deeds for these limits?

A.—Yes, I believe so.

Q.—I may say No. 15-B is one from which the plaintiff has desisted. That is why it runs from A to C. Will you tell us where, on the plan that little group is?

A.—That group if limits includes this block which is closest to the river, and it also includes certain of the block marked 24-A, etc. Those are in the 12th Range of the Township of Hull.

30 Q.—Referring to the groups A and C claimed in plaintiff's declaration, would you state what your estimate of the total merchantable timber on those two groups is as a result of your cruise?

A.—The total merchantable timber on the lots included in paragraphs 16-A and 16-C, and the exhibits I have just mentioned is, 300,000 feet board measure.

Q.—Would you just say what lots those include on your plan?

40 A.—Those include lots 19-A in the 11th Range of the Township of Hull, and 18-A, 19-A, 19-B, 22, 23-A, and 24-B, all in the 12th Range in the Township of Hull.

Q.—And the total amount of merchantable timber feet board measure is 300,000?

A.—The total amount is 300,000 feet board measure.

Q.—Would you take the next group?

A.—The next group is included in paragraph 15-D, and the exhibit numbers are D-129 and D-130.

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Q.—You are now speaking of the timber referred to in plaintiff's declaration paragraph 15-D?

A.—Yes.

Q.—Will you tell me what lots those are on this plan?

A.—That includes the group of lots at the head of Meach Brook, or Meach Creek. There are three small lots.

Q.—There appear to be three in number coloured brown?

A.—Yes. There is nothing on those lots. They are cut over.

10 Q.—There is no merchantable timber on those lots whatever?

A.—There is no merchantable timber for saw log manufacture on those lots.

Q.—For any kind of manufacture?

A.—There is fire wood.

Q.—But there is nothing for the lumber industry?

A.—Not for the lumber industry.

Q.—Will you take the next group?

A.—The next group is the Crown licensed land.

Q.—Have you exhausted all those on this side?

20 A.—No, there is another group here. There is paragraph 15-F, which is a later paragraph. I can put it in here.

Q.—Keep on the west side and exhaust them all first—paragraph 15-F?

A.—And exhibits D-132 and D-133.

Mr. Ker: I may say, my Lord, these exhibits were exhibits which the Plaintiff produced on his examination on discovery to indicate his title to these limits.

30 Witness: Those lots are along Meach Brook. They are adjacent to the Meach Brook, and they form the remainder of this lot on the west side of the river. The lots on the west side included in this group are 24-A in the 12th Range of the Township of Hull; the west half of 21-B in Range 13, Township of Hull; also 24-B, 25-B, 26-A in the 13th Range of the Township of Hull, and lot 25-B in the 14th Range in the Township of Hull.

Q.—Will you state what you found in the way of merchantable timber on that group?

40 A.—The total merchantable timber on that group is 576,000 feet board measure.

Q.—Therefore, the two groups together, all the limits on the west side, have a total of?

A.—They have a total of 876,000 feet.

Q.—Including merchantable timber on all the limits on the west side, there are 876,000 feet?

A.—Yes.

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BY MR. SCOTT:

Q.—How many acres?

10 A.—The merchantable area that that is on is 693 acres. There is a difference between the total area of these lots and the area on which the merchantable timber is found. Certain of the area is cultivated, barren or waste, rock areas, or second growth, and when I speak of the merchantable forest area, or the merchantable forest timber, I am always speaking only of that small area that the timber is on, and when I speak of the average stand per acre I am also referring to that merchantable area, and that is the area I deal with.

BY MR. KER:

Q.—In other words, the 876,000 feet is combined in approximately 693 acres?

A.—In approximately 693 acres.

20 BY THE COURT:

Q.—Have you fixed the value there?

A.—No, not yet.

Mr. Ker: I may say, my Lord, we will have other witnesses to testify as to the value.

His Lordship: I thought you mentioned the value.

30 Mr. Ker: I meant estimate of the amount of timber, my Lord.

BY MR. KER:

Q.—Now, will you take the eastern side?

A.—On the east side of the river are the Crown leased lots which Mr. Cross has under timber license, and they are contained in his supplementary declaration, paragraph 15-E, and Exhibit No. D-132, and the total amount of merchantable timber on those limits is 2,167,000 feet, and that timber is on 2,152 acres of merchantable area.

40 Q.—The same legend applies to these Government limits?

A.—Yes.

Q.—I presume the exhibit you speak of is a Government lease?

A.—Yes, I believe it is.

Q.—These Government limits you speak of included everything in the vicinity, and up as far as, you said, some nineteen miles by road way from Farm Point?

A.—Yes.

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Q.—What would be, therefore, the total of merchantable timber on all the property of Mr. Cross which he owns, or which he has cutting rights for, or under which he has timber rights as claimed in the declaration?

A.—The total amount of timber would be 3,043,000 feet board measure.

Q.—Have you a statement indicating exactly the tabulations which you have given in this evidence?

A.—I have.

10 Q.—Will you please produce it as Exhibit D-178?

A.—Yes.

Q.—You have spoken of these several millions of feet board measure. Have you something which will indicate the kinds of wood which go to make that up?

A.—Well, I have distributed that total estimate according to species. I have not got each individual species, but I have the soft woods by species.

20 The first is white pine, the second is hemlock, and then I have a group of spruces and balsam which are closely related species. Then the hard woods. I have another group of the northern hard woods which are beech, birch and maple, and have similar characteristics, and are marketed in the group of the last group in the estimate, first for hard woods, of which there was not enough to give an estimate separately, that is, they are in very small quantities, and they are given as a group.

Q.—Would you produce that breaking up of these species as D-179?

A.—Yes.

30 Q.—Does this estimate of 3,043,000 square feet board measure which you have given include timber suitable for manufacture of ties as well as for ordinary lumber?

A.—Well, it does. It includes all trees of that merchantable timber from six inches in diameter up, that is, freehold or private leased areas which are west of the river, and it includes all trees twelve inches and up, which is the minimum diameter limit allowed for cutting by the Quebec Government on the Crown leases lying east of the river.

Q.—The minimum the Government allows is twelve inches?

40 A.—Yes. You can do what you like on private lands.

BY THE COURT:

Q.—That is, at the stump?

A.—That is at the stump.

BY MR. KER:

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Q.—I want to make quite sure about the care you have gone to about preparing this plan, and in making this cruise. I would be obliged if you could just let me know the method, how you made up all these estimates in making the plan?

10 A.—The method I used is known as the sample plot method cruise lines, that is, a straight compass line is run through the limits, and they are run at intervals parallel to each other, similar to a grid, and along those lines also at stated intervals the cruiser stops and takes a quarter acre plot; he takes that plot so that it is in exact measurement, and he tallies every tree on the plot in its diameter class. The volume is worked out for each plot, and they are averaged and they are multiplied then by the merchantable forest area, so that it is a method of sampling.

BY MR. KER, K.C.:

20 Q.—When Court adjourned you were explaining the method adopted by you in connection with the preparation of the plan Exhibit D1-77, and in connection with the estimation of the merchantable timber on those lots; and I think you stated it had been done by the sample plot method?

A.—Yes.

Q.—Would you mind explaining what is the sample plot method?

30 A.—The cruiser takes a straight line through the timber that he wants to estimate, and along that line, at certain definite intervals, he measures a plot of certain dimensions, and he tallies all the trees on that plot according to their diameter class—that is, he tallies them in diameter groups. Then he moves over a definite interval, and runs a second line; and so on. So that the area is gridded, and also spotted. At mechanical intervals all through the area he has taken samples of the area. Then he averages the volume of those samples, multiplies it by the area, and arrives at his total estimate.

Q.—And, if I understood you correctly, after that is done it is plotted out, and it is checked from an aerial photograph?

40 A.—Yes. He checks his types. Of course, you cannot check the stand per acre. You cannot check the diameters of the trees, or anything like that; but you have a certain type, and when you pass from one type to another you mark where it is on the cruise map. From the aerial photograph you can see the type quite plainly and distinctly, and you have the exact delineation of the boundary of that type to put on your map.

Q.—Is this method a recognized and standard method of cruising and estimating?

A.—Yes, it is a standard method.

The Quebec Regulations present two alternatives.

Mr. St. Laurent: Should that be proved orally?

Witness: They are both sampling. One is sampling on a strip, and the other is sampling in plots. They are exactly similar, and it is the standard recognized method.

10 BY MR. KER (continuing):

Q.—Is that set out anywhere in regulations of any kind?

A.—Yes, it is set out in the outline for forest regulations that the Quebec Government prescribes.

Q.—And those are available to anyone who may desire to read them, I suppose?

A.—Yes.

Q.—Just what part of this work did you do yourself?

20 A.—I supervised the work of the men in the field. I have been in the field myself. I have carefully checked the mapping. I have done all the checking of the field notes with the aerial pictures, and I have done the computing of the total estimate.

Q.—Is that the standard method of proceeding to a cruise of this kind?

A.—Yes. Of course, I could not do all the field work myself. What I did was more than I would ordinarily do in a cruise. I would accept their computations, and their typing, inasmuch as the volume of work I would have to do would be stupendous if I did it all myself.

30 Q.—Would you say what you did was much as or more than you would do if you were sent on a cruise for the Government, under the Regulations?

A.—It is more.

Mr. St. Laurent: I object to this evidence as not being relevant, and not being evidence that can change the laws of evidence applied before Courts of Justice.

40 BY MR. KER (continuing):

Q.—As a Quebec Forestry Engineer, I take it you have assured yourself as to the accuracy of this plan and of the estimates you have made, in so far as the rules of your art provide?

A.—Yes, I have.

Q.—Utilizing for that purpose the ordinary and standard methods adopted in this province?

A.—Yes.

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Q.—Would you give me your opinion as to the portion of the timber on the west side of the river represented by those lots—the quantity or portion of the timber represented on those lots, which would be, in your opinion, contributory to the place known as mileage 12? And will you say whether you know where mileage 12 is?

A.—Yes, I do.

The lots shown in the first block west of the river. There are four lots, and it is from those lots the timber is contributory to mileage 12.

10 Q.—What are those lot numbers?

A.—They are lots 19-A in Range 11, Township of Hull; lots 18-A, 19-A, and 19-B in Range 12, Township of Hull.

Q.—Why do you distinguish those as being, as it were, contributory to that point rather than to the Farm Point Mill?

A.—They are on the side of the slope towards the Gatineau River, where mileage 12 is; or they are on the top of the height of land, so that it is possible economically to haul them over the top.

20 Q.—In your opinion would it be economically possible to utilize the wood on the other portions of those west side limits at Mileage 12?

A.—No, it would not; not over that height of land.

Q.—Those would, then, be contributory to Farm Point?

A.—They are contributory to Farm Point.

Q.—Referring to those four lots you speak of as being naturally to some extent contributory to Mileage 12 location, have you figures to indicate the amount of merchantable timber in those four lots?

A.—Yes. The total amount in those is 115,000 feet.

Q.—That is the total merchantable timber in those lots?

30 A.—That is the total.

Q.—Supposing you were not utilizing Mileage 12, or were not making those limits contributory to that mill, what would be the difference in distance to bring the timber to the Farm Point mill?

A.—About four miles.

Q.—Can you give me any idea of the estimated cost of bringing into the Farm Point mill instead of to the Mileage 12 mill?

40 A.—That is a question which is dependent a great deal on the roads, the nature of the roads, the class of equipment, and so on; so I could not give a very definite figure. I should say it would be in the neighbourhood of \$4.00 to \$6.00 a thousand feet. Of course, that is just a round general figure.

Q.—Is that the total cost of bringing the timber from those limits to the Farm Point mill?

A.—No, that is the excess of cost.

Q.—To utilize that wood at the Farm Point mill, instead of at Mileage 12, would mean an additional cost of haulage of between \$4.00 and \$6.00 per thousand feet?

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A.—That is the idea.

Q.—What would be the approximate total for all the available merchantable timber on those lots?

A.—In the neighbourhood of \$500 to \$700.

Q.—Additional cost of haulage?

A.—Additional cost of haulage.

Q.—One of the witnesses examined in this case on behalf of the Plaintiff, Mr. John Omanique, gave the following evidence (page 842):

10 “ Q.—You do not really know, though, just how much he did cut?

A.—No, I do not. By his figures he claimed he cut three million feet, ever since he started. That is a good many years.

Q.—How long do you think his limits would last at that rate?

A.—At that rate they would last as long as he lived. He figures he has around forty or fifty miles more, and if there is any timber at all I figure the limits grow around five to ten per cent.

20 Q.—Your idea is that he has forty or fifty miles?

A.—That is what I understand. He had not that. What I mean is, he claims he can get it.

Q.—And you think that should reproduce itself every five or ten years?

A.—Five to ten per cent, which would be ten or twenty years.”

30 I would like to have your opinion as a forestry engineer as to the accuracy of a statement of that kind with respect to the reproduction of the timber on those limits?

A.—The stand would not reproduce itself under one hundred years.

If you speak of that timber as a crop, the average age of it now is 125 to 150 years, and if Mr. Cross harvested that crop today he would have to wait that same time, or at least 100 years, before he could harvest the same crop off the same area.

Q.—At page 843 Mr. Omanique gave the following testimony:

40 “ Q.—There is a little bit of hardwood on it. Do you think that it is a fair assumption that those forests would reproduce themselves in ten to twenty years?

A.—I think pine—hemlock will double in twenty years.”

Have you anything you would care to say in regard to that statement?

A.—The same remarks apply to pine as to hardwood. The

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average age of the merchantable tree is over one hundred years, and it takes that long to grow to that age and to that size.

BY THE COURT:

Q.—From what diameter?

A.—From nothing.

Q.—But if the trees there have a diameter of from six to twelve inches?

10 A.—If the trees that are there have a diameter of six to twelve inches it would require another sixty years.

Q.—As much as that?

A.—Yes.

BY MR. KER (continuing):

Q.—Both pine and hemlock?

A.—Yes.

The average diameter of a merchantable stand of soft timber—pine, for instance—would have to be 15 to 16 inches to make it economically operative. You could cut it less than that, but it would not
20 be an economical operation. Under the Quebec Regulation the minimum allowable diameter is twelve inches on the stump. That limits you to trees above that diameter for cutting. The pine trees that are being cut today run right up to 200 years of age, and if you cut off the merchantable timber, as a rule in a pure stand of pine there is nothing six to twelve inches, and it is a case of reproduction coming in afterwards.

If Mr. Cross harvested his crop today he would have to wait one hundred years to harvest that same crop again. The stands that are underneath would not replace the crop before that time.

30 I do not know if I have made myself clear. The point is this: in the stand you have the trees of merchantable size, and you have trees that are not merchantable—they are small, averaging six inches in diameter. There are not enough of the six-inch diameter trees to make a cut when it is of full size, and you have to wait for those that are actually going to take the ground space of the ones that are cut to make a full economic cut off the area.

BY MR. KER:

40 Q.—A merchantable cut?

A.—Yes.

Q.—That does not mean to say the wood would not be there?

A.—The wood would be there. I am speaking of a merchantable saw log cut.

Q.—On Mr. Cross' own limits—the limits that he might own personally—he would not be restricted to weight for the twelve-inch size?

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A.—No. His own limits he owns in freehold, and he can cut to any diameter he likes. He is not controlled by the Quebec Regulations in the circumstances.

Q.—Mr. James C. McCuaig was examined as a witness on behalf of the Plaintiff. I do not think he cruised the limits or examined them, but he referred to the growth on the east side of the river, where the lots are under Government license. I asked him:

10 “Q.—What would you say about the growth on the east side?”

and he answered:

“A.—The east side is much better timber. There are some on the east side that will run 25,000 to 30,000 feet per acre. Some will not run that much.

Q.—Does that include merchantable timber?

A.—Yes, merchantable timber.”

20 Then he made reference to various lots on the east side of the river, and I asked him:

“Q.—Can you pick out any lot that has 25,000 or 30,000 feet?”

and he answered:

“A.—Yes, I can.”

30 He was then asked:

“Q.—Can you give me the number of the lot that you maintain has 25,000 or 30,000 feet of merchantable timber?

A.—Yes.

Q.—Will you just give me the limit number, whatever it is?

A.—24 and 25 on the fifth range of Wakefield.”

40 After the cruise you have made, what is your estimate of those lots per acre?

A.—The lots referred to, 24 and 25 in the fifth range, contain about 1,300 feet per acre. I would like to point out that that is merchantable area, and that it does not contain 1,300 feet per acre over the total area of the lot.

Q.—That is on the merchantable part of it, taking the best of it?

A.—On the merchantable part of it. Taking the estimate, it runs 1,300 feet per acre.

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Q.—Are those lots to which you now refer among the lots which you personally inspected?

A.—Yes.

Q.—When did you make that inspection?

A.—I made the inspection of those lots in October of this year. I made one or two visits to them.

Q.—Had you made inspections of the Cross limits before?

A.—Yes, I had made inspections in May and June.

Q.—What were the dates in May?

10 A.—I made inspections on May 20th, May 30th, June 4th, and then again on October 4th and October 8th.

Q.—When were lots 23 and 25 in the Fifth Range visited?

A.—They were visited on October 8th, and again since that date. I do not recall the dates, but it was Friday and Saturday of last week.

Q.—The 4th and 5th of this month?

A.—Yes.

20 Q.—Presuming Mr. Cross did not want to take lumber from his own limits, but wanted to buy it; from your own knowledge, will you give me an estimate of the amount of timber available in that locality which it would be economic to bring to his mill at Farm Point?

A.—I have made no estimate of that other than my general experience in the lower Gatineau Valley, but I would think he would have difficulty in doubling or trebling the amount he has on his limits now. That is to say, I do not think there would be more than six million to ten million feet available in that district for purchase, that he could take to Farm Point economically.

30 Q.—Being connected with a large lumber or pulp and paper company such as the International Company (which owns great limits), have you any idea of the values of this standing timber, in feet board measure; and if you have, will you please let us know whether you can give us any information about the values existing on Crown land, let us say, and the values existing on freehold land, and the values existing on land which may be under lease from another individual? And perhaps you might explain the differences in those values?

40 A.—The only sales we have made have been made from Crown lands, and the average general figure for standing timber, hardwoods and hemlock on Crown lands would be about \$3.00 a thousand feet. Although it is not my place to make those sales, I know we have made sales, and the average price is around \$3.00 a thousand feet, plus the Government dues. As a rule, that is the way the sales read on timber sold off Crown land, because as the timber is cut the logger is required to pay Government dues to the Government. When you are in possession of a lease, and you sell the timber off it, you sell

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the timber at a price, plus the Government dues, which the purchaser has to pay.

Q.—After the purchaser has paid the \$3.00 per thousand feet for this standing timber, which he converts into lumber, what does he have to pay the Government per thousand feet?

A.—The amount he pays differs with each species, but the average price of a run of timber such as is in those limits would be \$3.25 a thousand feet.

10 Q.—\$3.25 to the Government?

A.—Yes. In 1926.

Q.—The prices you are speaking of are 1926 prices?

A.—Yes.

Q.—Will you now refer to the freehold limits, and indicate in a general way what those would be worth per thousand feet board measure, standing timber?

20 A.—The general figure for that would be the sum of the two I have mentioned. If you own the timber outright, you would have a right to the \$3.00 per thousand feet value of the standing timber, plus the \$3.25 which would have to be paid to the Government if it were a Crown lease.

Q.—In other words, owning the land outright, you would be able to take advantage of the fact that you did not have to pay any Government dues?

A.—Yes.

Q.—And the amount of those dues would be added to the price of the standing timber?

A.—Yes.

30 Q.—And those two figures, \$3.00 and \$3.25, would make freehold standing timber worth \$6.25 a thousand feet board measure?

A.—Yes.

Q.—Then, taking such land as may not be Government leased, and may not be freehold, but may be under lease from individuals (such as some of those lots of Mr. Cross), what would the price be?

40 A.—The total price there is the same \$6.25; but when you buy it it would depend on what the original owner was asking as stumpage dues—what you would pay to him to purchase. For instance, if I owned limits, and I was asking \$4.00 a thousand stumpage dues, then any purchaser of this would figure the price at \$2.25, in addition to which he would have to pay me the \$4.00.

Q.—In other words, it would be \$2.25, plus the \$4.00 he would have to pay you?

A.—Which would make the total price of the freehold limit. All those prices are more or less gauged by the price on the Crown lands, because their dues are set at \$3.25.

Q.—They, so to speak, set the pace?

A.—Yes.

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Q.—On the basis of the quantity of timber on the Crown limits, and the quantity of timber on the freehold limits, and the quantity of timber on the limits leased from individuals, can you tell me what the total of Mr. Cross' holdings would be worth in thousand feet board measure, on the prices you have just mentioned?

A.—Yes, you could take those prices, and use the figures in Exhibit D-177, and arrive at a value of the limits.

Q.—Of all his wood?

A.—Of all his wood.

10 Q.—Would you mind splitting it up, and indicating what the totals would be?

A.—In that connection I should say I do not know the amount that is asked for the private leased lands.

Q.—The Deed says it is \$5.00 a thousand he has to pay on those. In any event, you may assume that. I am sure the lease of those private lands calls for a payment to the owner of \$5.00 per thousand for the cut.

A.—I have made a figure of about \$9,000.

20 Q.—Can you split it up, so that we may understand how you arrive at it?

A.—The value of the Crown Lands, on which there are 2,167,000 feet of merchantable timber, I valued at \$3.00.

Q.—Making a total of how much?

A.—\$6,501.00.

Then, the freehold land, on which there are 300,000 feet of merchantable timber, I value at \$6.25; which comes to \$1,875.00.

The leased land, which has 576,000 feet on it, I valued at \$1.25, which comes to \$660.00. A total of \$9,036.00.

30 Q.—You valued the leasehold land at \$1.25, because he has to pay \$5.00 in addition to his lessor?

A.—Because he has to pay \$5.00 in addition to the lessor.

Q.—Would you mind checking the 576,000 feet at \$1.25, and say whether your calculation resulting in \$660.00 is correct?

A.—No, it is not. It should be \$710.00, instead of \$660.00.

Q.—Then, what would the total be?

A.—The total would be \$9,086.00.

Q.—Would you kindly tell me again the amount applicable to those Government leases on the east side of the river?

40 A.—2,167,000 feet: \$6,501.00.

Q.—Have you any information as to what Mr. Cross actually paid for all those limits?

A.—No, I have not.

Q.—The Deeds indicate he paid something over \$2,000 for them altogether, some years ago—in 1916, I think. This price you estimate at \$6,501?

A.—Yes.

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

Q.—You have been giving information with respect to quantities, areas, etc., as if it were a matter that you had personally established; and I have no doubt you obtained the figures in the ordinary manner you obtain them for the ordinary purposes of your business in forestry. In order that we may know just exactly what you did personally, there are a few questions I would like to put to you. I notice the plan Exhibit D-177 is marked: “Cruised by W.A.E.P.”. I assume that is yourself?

A.—Myself, yes.

Q.—“Traced by E.R.B.”. Who is he?

A.—A draftsman.

Q.—What is his name?

A.—E. R. Beckwith.

Q.—He traced this from another map, I suppose?

A.—Yes.

Q.—And to the tracing taken from the other map he then added the colouring which corresponds with the legend?

A.—I would do that. I put those lines on, and did the colouring myself.

Q.—Then, all he did was to trace the skeleton, as it were, from another map?

A.—Yes.

Q.—And you took it and painted on the colours which correspond with the legend?

A.—Yes.

Q.—Can you tell me when this map was thus coloured by you?

A.—That map was coloured by me in the month of November. The original map was coloured by me in June, 1932.

Q.—This copy before the Court was taken from your original?

A.—Yes.

Q.—Just recently?

A.—Yes.

Q.—What you did recently was to make a copy of what you had previously done in June?

A.—Yes.

40 BY MR. KER:

Q.—An exact copy?

A.—An exact copy.

BY MR. ST. LAURENT (continuing):

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Q.—Your work as a forestry engineer on the map was done in June?

A.—Yes.

Q.—And your subsequent work was just a matter of copying, which did not require the qualifications of a forestry engineer: it required an accurate eye to reproduce what the original contained?

A.—Inasmuch as I signed that copy as a forest engineer, my original work and my original type mapping are as exact on that copy as on the first.

10 Q.—But, what you did as a forest engineer was completed in June?

A.—Yes.

Q.—And then you made a copy of it for the Court?

A.—Yes.

Q.—When you made this map in June, you had visited the locality on May 20th, May 30th, and June 4th?

A.—Yes.

20 Q.—How much time did you spend there on each of those three days?

A.—The whole day.

Q.—That would be how many hours?

A.—Say ten hours a day.

Q.—From early morning until the end of the day?

A.—Yes.

Q.—Can you tell me what lots you visited on May 20th?

Witness: Would you like the exact lots?

30 Counsel: Yes.

A.—Starting in Range 1 in the Township of Wakefield, I visited 10-A, 10-B, 11-A, 11-B, and 13.

In Range 2 I visited lots 10, 11, 12 and the north half of 13.

In Range 4, I visited lots 10 and 11.

In Range 6, I visited lots 12, 14, 15, 16 and 17.

In Range 7, I visited lot 16.

Q.—That was all on the one day?

40 A.—All on the same day—no, I am wrong in that: That represents two days' visits, on the 20th and the 30th.

Q.—Can you tell us what you visited on the 20th, and what you visited on the 30th?

A.—No, I could not, because I went to the same locations on the two days.

Q.—Or to some of the same locations?

A.—Yes.

Q.—You would not say you visited all those lots twice?

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A.—No, I did not visit them all twice; I visited some of them twice.

Q.—You went to some of the same locations on the two days?

A.—Yes.

Q.—The ones you have mentioned were all you visited on those two days?

A.—I would not like to make that as a definite statement. I might have touched on some others.

10 I think I can make it definite those were all the lots I visited on those two days.

Q.—What lots did you visit on June 4th?

A.—On June 4th I visited lot 18-A in Range 12 in the Township of Hull, and 21-B in Range 13.

Q.—So, with respect to the lots on the west side of the river, the only ones you visited were 18-A in Range 12, and 21-B in Range 13?

A.—At that time, yes.

20 Q.—Did you visit them at any other time before making your forestry plan?

A.—No. I made the original plan, but that plan has been corrected. The original list of lots I had to visit was, apparently, not a full statement of the number of lots.

Q.—You told us that your visits to those lots shown on the plan were made on May 20th, May 30th, June 4th, October 4th, October 8th, November 4th, and November 5th?

A.—Yes.

Q.—Those are all the dates?

A.—Yes.

30 Q.—And the map was made up in June?

A.—Yes.

Q.—So the map was made up on the visits you made on May 20th, May 30th and June 4th, plus the information you obtained from assistants?

A.—Yes, with revisions at this date. I have made visits since then, and I have revised the map.

Q.—But I understood you to say just a moment ago that you had not revised the map, but that this was an exact copy of the map you made in June?

40 A.—I was in error in making that statement, inasmuch as I have made revisions on the map, for additional lots.

Q.—Will you tell me what changes there are in this map, Exhibit D-177, as compared with the map made in June?

A.—There are no changes in the typing of any individual lot, but there are lots on this map which were not included on the map I originally made in June.

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Q.—What are the lots shown on Exhibit D-177 that were not on the map made in June?

A.—There were lots in Eardley Township—a group of three. Would you like the lot numbers?

Q.—I understand they are the three brown spots on the extreme left of Exhibit D-177?

A.—Yes.

10 Q.—With that exception the rest is just as it was on the June map?

A.—Yes.

Q.—They are not numbered on Exhibit D-177, but they are the three brown spots to the left of the word "Cascades"? The numbers do not appear on the plan, but they are the three brown spots on the extreme left of the plan, to the left of the word "Cascades"?

A.—Yes.

Q.—And below the words "Cameron Lake"?

A.—Yes.

20 Q.—Did you run any line with respect to lot 18-A in Range 12?

A.—No.

Q.—Did you take any sample?

A.—Yes.

Q.—How many samples did you take on lot 18-A in Range 12?

A.—I could not recall that. Probably two or three.

Q.—Have you a field book in regard to that?

A.—I have the notes in Ottawa.

Q.—You took one or two samples on 18-A?

A.—Two or three samples on 18-A.

Q.—I understood you to say one or two.

30 A.—I think I said two or three.

Q.—Was it for the purpose of checking sampling that had previously been done, or was it original work?

A.—For the purpose of checking sampling which had been done.

Q.—And they were samples of what size?

A.—A quarter acre.

Q.—How many samples were taken altogether by you and your assistants on lot 18-A in Range 12?

40 A.—The number of samples are dependent on where the line runs. The total number of samples would average out at four samples per lot.

Q.—The average would be four samples per lot?

A.—Yes.

Q.—But you would not want to say there were actually four taken on lot 18-A in Range 12?

A.—I would not say that, no.

Q.—Did you take any samples on lot 21-B in Range 13?

A.—No.

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Q.—Would you be prepared to say the average number of four were taken?

A.—It is only a quarter of a total lot, and it is 80 per cent farm land, and that is the reason there were no samples taken on it. There was no timber. It was farm land, and second growth. There was a small area of second growth in one corner, and there was no necessity for taking samples there.

10 Q.—So what you did with respect to the lands on the west side was to check two or three samples on lot 18-A? I mean, what you did personally?

A.—Yes.

Q.—And to make calculations from information gathered by your assistants with respect to the rest of the lots on the west side?

A.—Yes.

Q.—Did you personally run any lines with respect to the lots on the east side?

A.—Yes.

Q.—On what lots?

20 A.—I ran lines, or took samples.

Q.—But I am speaking about the lines, first.

Witness: The original lines?

Counsel: Yes.

A.—No, I did not run any of the original lines.

Q.—The lines were run by your assistants?

A.—Yes.

30 Q.—You took samples on each lot?

A.—I took samples on the lots I have enumerated to you a minute ago, if there was merchantable timber on those lots. If I see a lot, and I go over it, and it has been mapped as burned, barren, rock country, I cannot take a sample; so I just walk over the lot.

Q.—You told us you visited lot 12 of Range 2?

A.—Yes.

Q.—Did you take any samples on lot 12 of Range 2?

A.—Yes.

Q.—Do you remember where, or how many?

40 A.—No, I do not remember how many, but I judge from the distance I see it is an area of merchantable timber, and I would take four in that distance.

Q.—You judge you would take four, but I am not talking about what the practice may be. I am referring to what actually took place, and I am trying to ascertain what you remember as facts that did take place. Do you remember lot 12 of Range 2 at all?

A.—Yes, I do.

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- Q.—And do you remember having taken one or more samples on it?
- A.—Yes, I do.
- Q.—How far would your actual recollection go?
- A.—I do remember having taken three or more plots on that lot.
- Q.—They would be quarter acre plots?
- A.—Quarter acre plots.
- Q.—Would your answer that the average number of samples taken would be four per lot apply to the east side of the river as well as the west side of the river?
- 10 A.—Yes.
- Q.—Those samples are not taken at random?
- A.—No.
- Q.—Before you go on the lot you determine what samples you are going to take, and how you are going to take them, and they are taken accordingly?
- A.—We take our samples every ten chains on the line—that is, a distance of 660 feet.
- 20 Q.—And wherever the end of the chain happens to come, that is where you take your sample?
- A.—Exactly.
- Q.—And from the information you obtained from your assistants you gathered that an average of four samples were taken per lot?
- A.—Yes.
- Q.—And those lots would have an average acreage of how much?
- A.—About 100 acres. They are listed as half lots in many cases. When I speak of them as lots, I mean 100 acres.
- 30 Q.—A half lot would mean two samples?
- A.—Yes.
- Q.—I notice the plan purports to be drawn to a scale of two inches to the mile, so that the block on the west side, the compact three lots, would be practically one square mile?
- A.—Yes.
- Q.—That would be 640 acres?
- A.—Yes.
- Q.—So those lots would be 200 acre lots?
- A.—Yes, they are. Except, as you see, they are listed as 24-A and 24-B, the north half and the south half. When I speak of the
- 40 four sample plots per lot, I speak of the half lot—a 100 acre lot.
- Q.—One acre to one hundred?
- A.—Yes.
- Q.—Which would mean a one per cent sample?
- A.—Yes.
- Q.—And if the end of the chain happens to fall on a poor spot, so much the worse for the lot?

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A.—You trust to your average to cover that. It is absolutely mechanical. We have tried judgment in it, and it does not work.

Q.—Do you not agree with me that this is a very good method for cruising a large virgin forest?

A.—Yes.

Q.—And that your average over a large area will correct the accidents which might happen from one of the plots coming at a burned spot, and another following it coming at a burned spot?

10 A.—That is true.

Q.—When you are in the virgin forest, and you are going over a large area, it would be unusual to have your samples always coming in the poor spots? The good spots, better than the average, will compensate for the poor spots that are poorer than the average?

A.—That is so.

Q.—But that is not necessarily correct to the same degree when dealing with a small area, in forests which have been cut over more or less?

20 A.—If the forest is of a sufficiently even nature throughout, the degree of accuracy would be just as good. If you have a stand which runs the same throughout its whole extent, then if you choose one sample it would be quite sufficiently accurate.

Q.—But if it has been burned, or cut over, or otherwise affected, and you are taking your samples at the rate of one per cent—every 660 feet— it is apt to lead you into some error?

A.—Only if the stand varies a great deal. If the stand is even, your accuracy is just as good.

Q.—But you are just putting in as your condition what will, of course, make it all right.

30 A.—I will go further than that, and I will say the merchantable timber on Mr. Cross' holding is of an even run.

Q.—I thought perhaps you would say it; but we know now how much of the forest you have personally seen, and we are interested in what you have seen and not in what has been reported to you.

Lot 18-A, on the west side of the river, is shown as a cut over area in its whole extent?

A.—Yes.

Q.—Why was it necessary to take any samples?

40 A.—If you come to a cut over area there are occasions that it has not been clean cut—it has been selectively cut, and there is merchantable timber remaining in it, and you take those samples to discover whether or not there is any merchantable timber remaining.

Q.—But if you are only taking a one per cent sample on this cut over lot you are not very apt to get the stray trees into your one per cent sample?

A.—If the trees are so stray that you do not get them in your

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one per cent cruise, then they are not sufficiently numerous to make it a thought for logging.

Q.—Will you tell us what you mean by a merchantable sawlog cut?

A.—I mean a tree, or a stand of trees, which contains sound logs that can be cut into timber or ties.

Q.—Whatever the quantity be?

A.—I do not understand you.

10 Q.—Whatever may be the quantity per acre?

A.—It is so dependent on your logging roads, and the country, that it is impossible to say exactly what a stand per acre would have to be to be merchantable. Is that your question?

Q.—I am trying to put into the Record your explanation of what you mean by merchantable sawlog cut?

20 A.—In making the type map of the merchantable forest area I included everything that bore merchantable trees to the extent of 300 feet per acre. I will say that, by itself, is not my idea of a merchantable stand; however, if the logger on his road to a stand which contained 6,000 feet per acre passed a stand containing 300 feet per acre, it would pay him to cut those trees which only ran 300 feet per acre. Therefore I included it in my estimate, because I do not know where the roads are going for the logs.

Q.—In other words, by a merchantable sawlog cut you mean something which, in your opinion, could be cut and made to yield a profit to the operator?

A.—I have included more than that. If you want my opinion, I may say a stand of 300 feet per acre cannot be operated at a profit.

30 Q.—When you were using the expression “merchantable sawlog cut” did you mean a stand which could be profitably operated?

A.—When I speak of merchantable area I mean every possible acre that a logger could get timber off at a profit.

Q.—And you set your minimum with respect to that at 300 feet?

A.—Approximately 300 feet. I would not say that figure very definitely. It might run 300, or 500. It would not probably go above 500. If it were 500 or more, it is assuredly included.

Q.—How did you ascertain the sizes of the trees in those samples which you took yourself?

40 A.—I calipered or actually measured sufficient to estimate others.

Q.—I would like to know how many that would be. Your sample is one per cent of the total?

A.—Right.

Q.—How many did you caliper in the sample?

A.—If I caliper a nine-inch tree, and I see another nine-inch tree there, I do not need to caliper it. If there are nine, ten and eight

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inches trees all around, I still would not need to caliper. If I caliper a ten-inch tree, and I see the next is a fifteen-inch tree, I would caliper the fifteen-inch tree.

I cannot tell you exactly how many trees I calipered.

Q.—How many trees did you caliper in lot 18-A of Range 12?

A.—I could not tell you.

I doubt if there were more than two or three of any size. That stand is less than what I would call a merchantable stand, and the trees would not be there to caliper.

10 Q.—Can you tell me how many trees per sample you calipered in lot 12 of Range 2, Wakefield?

A.—No, I could not.

Q.—Can you say you did caliper some?

A.—Yes, I can say that. I calipered some, but I cannot say how many.

Q.—You would not say whether it was half a dozen or one hundred?

A.—I would say it was more than half a dozen, and less than one hundred.

20 Q.—And is that as definite as you would care to be?

A.—It is a matter of my estimating. If you are an estimator by profession, you only measure what you have to measure to maintain the standard of accuracy which you think you have and which you think is sufficient and which you can prove to your employers is sufficient.

Q.—After calipering half a dozen or more, or more than half a dozen and less than one hundred, how do you arrive at the board feet content?

30 A.—You take the diameter of the trees, and the board feet for a tree of a particular diameter is stated in a table which is made up from the Quebec Log Rule.

Q.—By the operators, for their own convenience?

A.—From the tables made by everyone. An operator makes a table for himself, or uses the standard table which he can get from the Governments. The Governments do most of the work in that connection, because it is research work.

Q.—When you speak of notices of the Quebec Government, you refer to Mr. Piché and his staff of foresters?

40 A.—Yes.

Q.—And when you speak of Government regulations with respect to Quebec, you refer to Mr. Piché's instructions?

A.—Yes.

Q.—You do not mean the Order-in-Council Regulations which govern the exploitation of the forests?

A.—Yes, they are also part of Mr. Piché's department. The

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cutting regulations, and the regulations of the Government, and the inventory of the forests in the Province come under Mr. Piché.

Q.—Do you consider his Regulations of the same class as those published as an appendix to the Statutes known as the Forest Regulations?

A.—Yes. The inventory is just as much part of the Statutes as are the cutting regulations.

Q.—That is your understanding of it?

10 A.—The Orders-in-Council impose the prescribed inventories laid out by Mr. Piché.

Q.—What table did you use to arrive at the board feet content of the trees you calipered?

A.—I used the table which is prepared by the Dominion Forest Service for northern hardwoods. That table is applied also to the Canadian International Paper Company limits in the lower Gatineau.

Q.—Applied by you? You are its forester?

A.—Yes.

20 Q.—Looking at Exhibit D-178: after having told us what you did personally, and what probably was from information gathered by your assistants, you would not, I suppose, be in a position to tell us what figures in D-178 were prepared under actual observations, and what figures were prepared from the information supplied by your assistants?

A.—I consider the figures all from my personal observation.

Q.—But whatever you may consider is not going to bind the Court. How many, and which, of the figures come from the samples you calipered?

30 A.—None.

Q.—Looking at Exhibit D-179, can you tell us which of the figures come from the samples you calipered?

A.—None of those figures, except as a check. I checked the work of the assistants who did it, and I am satisfied with it.

Q.—Perhaps you are, and possibly your employers would be, for their purposes. I am asking you for the actual facts, however. None of these figures are the result of measurements you made; they are all the result of measurements made by your assistants?

40 A.—In considering them I make certain measurements. Then I would have made measurements good for nothing. The measurements were made by my assistants, and I checked their accuracy. That is the only value of the figures I got personally. When I am satisfied with their accuracy, I present the estimate.

Q.—What proportion of their figures did you check? We have the samples, which are one per cent of the area. We have figures, which are the result of calculations. What proportion of your assistants' observations did you personally check?

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(continued)

A.—Around 25 to 30 per cent. I would like to point out that that is an extra large amount to check.

Q.—But we are not dealing with forestry problems as you deal with them. It may be that in spite of all I am asking you the whole result of your figures will be accepted by the Court. I am simply trying to get the process, so that the Court may know upon what your figures are based. You will understand I am not trying to criticize your procedure as a forester.

A.—I understand.

10 Q.—As a matter of fact, you cannot actually tie in any of the figures with some of your own caliperings?

A.—Oh, yes. There are figures there which I can tie in with my own estimate. Any one of the lots I personally visited, the stand per acre at which I arrived by my sampling and my area would be so close to the one previously obtained by my assistants that I am perfectly satisfied. So that the estimate of any one of those lots that I visited is correct, using my figures.

20 Q.—Was the outline of lot 12 of Range 2 made from the aerial map?

A.—Yes.

Q.—Do you know when those aerial photographs were taken?

A.—No, but they are on record with the Topographical Surveys of Canada, and the dates of the photographs could be obtained at any time.

Q.—You do not know who did the work?

A.—I only know the Royal Canadian Air Force did the work, in conjunction with the Topographical Surveys.

Q.—They were probably all made at the same time?

30 A.—They are undoubtedly part of the same job as the photographs which have been used here.

Q.—What we have here are probably enlargements from the originals?

A.—Yes.

Q.—Is the Dominion Forest Service a Government Service?

A.—Yes, a Federal Service. It is a branch of the Department of the Interior.

40 Q.—With respect to lot 18-A in Range 12, was your observation such that you could tell us whether there was evidence of recent cutting there?

A.—Yes. On the eastern half it would not be recent—that is, it would not be within the past five years. On the western half I think there would have been some within the past five years.

Q.—Any substantial quantity?

A.—It is very hard to say now. I would not care to say whether it was a substantial quantity or not.

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Q.—Was there evidence of there having been anything like a few thousand feet per acre cut?

A.—There has been at times more than a few thousand feet per acre. However, the stumps are cut a little this year, a little next year, a little last year, and so on; and a hardwood stump decays very quickly and it is very difficult to say just what year it was cut.

At the time I was there I did not have any thought of making an estimate of what had been cut.

10 Q.—The same would apply, I suppose, to lot 21-B in Range 13?

A.—Yes. There is nothing on that. It is farm land.

Q.—No recent cutting there?

A.—No.

Q.—Did I understand you to give it as your opinion that in that whole section of the country there would not be more than six million to eight million feet of lumber remaining?

A.—I think I said six million to nine million or ten million.

Q.—That is your opinion?

A.—Timber that would be economically brought to Farm Point.

20 Q.—Where would the limit go? Would it cover everything this plan shows?

A.—No, it would not. The part of the plan that shows lots going down the River Blanche, is an area which I do not think could be economically used for Farm Point. The timber could not be economically taken to Farm Point.

Q.—When you speak of what could be taken economically to Farm Point, is there anything on the plan to the west of the Gati-neau River which you would exclude?

30 A.—No. Of what shows on the plan here the area down to the bottom of Range 11 in the Township of Hull would be economically taken to Farm Point.

Q.—From the top of the plan down to the bottom of Range 11?

A.—No.

40 It is hard to say. Somewhere between Alcove and Wakefield. Of course, when you say that you are perhaps hauling past another sawmill, which alters the question whether it would be economical to take it to Farm Point or not. You might have some timber close to Alcove, and there might be a mill located somewhere where it would be cheaper to take it and have it sawn, rather than take it to Farm Point. That is a question upon which I would not like to give very definite answer.

Q.—But, I want to know what you have in mind with respect to the west side of the river as the territory which might have from six million to nine million feet?

A.—Say from a circle of four or five miles in a straight line up around Farm Point—four, or five, or possibly six miles.

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Q.—Farm Point being the centre of a circle with a six-mile radius?

A.—Well, it is not exactly a circle. In some places it might be only four miles, and in some others it might be as much as six miles. If it was a straight down grade to Farm Point, you might go six miles, or in that neighbourhood.

Q.—That would exclude ranges 5, 6 and 7 of Wakefield?

A.—Yes, it would.

10 Q.—So that it would be from Range 4 of Wakefield, down to Range 11 of Hull?

A.—Yes.

Q.—Has there been much cut from that territory within the last ten years?

Witness: What do you mean by "much"?

Counsel: Millions of feet each year.

20 A.—No, I should not think so.

Q.—You would not think so?

A.—No.

Mr. Ker: To what territory do you refer?

Mr. St. Laurent: This area where there may be six million to nine million feet left.

30 Witness: It is very hard to say. I did not study it from that angle. I made no observations as to what had been cut in the past ten years.

BY MR. ST. LAURENT (continuing):

Q.—Would it seem extraordinary to you that in the last ten years twenty-five million feet had been taken from that area: or, would you think that was possible?

A.—I would think it was possible that twenty-five million feet had been taken off that whole area in the last ten years.

40 Q.—You said the average diameter of merchantable stand on Government Limits would be about fifteen or sixteen inches?

A.—Yes, to make a good cut.

Q.—To make it practicable to operate?

A.—Of pine.

Q.—And if it were of other species that are indicated, would it have to be the same thing? I see you have hemlock, spruce, balsam, and then the northern hardwoods?

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A.—Probably the diameter would not need to be so great with the hardwoods—thirteen or fourteen inches, I guess.

Q.—How would the time period of a thirteen or fourteen inch hardwood tree compare with the time period required for a fifteen or sixteen inch pine?

A.—It would be over one hundred years. It might be one hundred and twenty-five years.

Q.—Practically the same thing?

10 A.—Practically the same thing. When you get over one hundred years, it is hard to say.

Q.—All this area had been logging prior to ten years ago, had it not?

A.—Yes, there had been logging throughout the whole area prior to ten years ago.

Q.—When you say there had been logging, the merchantable timber, or what was considered merchantable at the time the logging took place, had been removed more than ten years ago?

20 A.—Yes. Eighty years ago, for instance, the white pine of certain standard dimensions (which I could not give you at the moment, but which was large) would have been taken out, I am sure, throughout the whole area. At a later date, when the pine had run out, the better spruce and so on could be taken out at a profit.

Q.—And the hemlock was left?

A.—No. At another stage the hemlock would go too.

Q.—But at a later stage than the pine and big spruce?

A.—Yes.

30 At the time they took out the pine, if there was a hemlock or a big spruce standing beside the pine they would undoubtedly take it, but if it were all by itself, a pure stand of hemlock, the chances are the original pine loggers would not touch it.

Q.—Then the natural order was probably the white pine, the big spruce, the hemlock, and lastly the hardwood?

40 A.—Yes. You understand, of course, that is putting in a definite order things which do not happen in a definite order. That is to say (as I pointed out before) when the pine was originally there and the logger went in to take it, he would at the same time take the hemlock and the spruce, if it was handy; and he would use some of the hardwoods for his runners for his sleighs, and that sort of thing. So you could not definitely say all the pine was cut, and then all the spruce, and then all the hemlock, and then all the hardwood.

Q.—But the principal object of the operation would be originally for pine?

A.—Yes.

Q.—Secondly for big spruce?

A.—They are very close together.

Q.—And thirdly for the hemlock?

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A.—Yes.

Q.—And finally for the hardwood?

A.—Yes.

Q.—From your knowledge of that country has there been any pine there within the last ten years?

A.—Yes, there is still pine of a very rotten nature that has been left standing all those years. I do not think there is any of the original stand of pine, to any extent. I have not seen any.

10 Q.—From your knowledge of the locality would you consider it possible that seven years ago about seven million feet of pine was cut in that region?

A.—I would not like to say whether it is possible or not. It might have been possible. Your question is that seven years ago you could cut seven million feet of pine from the general area around there?

Counsel: The area contributory to Farm Point.

A.—You might have.

20 Q.—Of course those valuations you gave us are merely the mathematical multiplication of the quantities by the unit figures you gave?

A.—Yes, that is all.

Q.—The whole thing depends upon the acceptance, or non-acceptance, of the original quantities?

A.—Yes.

Re-examination

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

30 Q.—In view of my friend's questions with respect to the method of making those cruises, I would like to have it quite clearly before the Court. Am I right in assuming you had under your supervision a certain number of persons who were accustomed to doing this class of work?

A.—Yes.

Q.—How many would they be in number?

A.—Six.

40 Q.—And would you give those men the lines through those forests or timber lots to work upon?

A.—Yes.

Q.—Straight lines, running parallel?

A.—Yes.

Q.—Like a sort of football field, or grid?

A.—Yes.

Q.—And at a certain distance along each of those lines (you said 660 feet) a quarter acre was taken?

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A.—Yes.

Q.—And each tree in that quarter acre would be measured or calipered?

Mr. St. Laurent: The witness said each tree they felt should be measured was measured.

Witness: Each tree is tallied.

10 BY MR. KER (continuing):

Q.—What is tallied?

A.—Putting it down on paper.

Q.—The nature and size of each tree?

A.—Yes.

Q.—Then you go to the next 660 feet?

A.—Yes.

20 Q.—And after a certain time those men of yours bring the measurements they have made of those lines, and the figures are tabulated in a certain way, with respect to the number of trees, their sizes, and so on?

A.—Yes.

Q.—Then you go into the lots yourself?

Mr. St. Laurent: I think it would be as well for my learned friend to allow the witness to say what he does.

BY MR. KER (continuing):

30 Q.—Just tell his Lordship what you do then?

A.—After the men under my supervision have completed their work I go into the lots, or the timber, and I run a similar sort of line, and I take exactly similar plots, and make a separate total and average of the plots I take, and I check that against the plots they have taken. On that I base the accuracy of their work. As I have said before, it is a standard method—standard practice—in the profession.

40 Q.—And, beyond that, you then take your aeroplane picture and check out in a general way to see that your calculations are correct, checked by what the aerial picture shows to be the situation?

A.—Yes.

The aerial picture, as you will realize, absolutely delineates the boundary between two types, just the same as if you take a photograph of anything you can see the outside boundary of it. The accuracy of those aerial pictures is as perfect as you can get.

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Q.—And is that the most perfect way of arriving at the quantity of feet there are in different trees in a plot of land?

A.—Yes.

Your percentage of the cruise (as Mr. St. Laurent has tried to point out) varies. If you have mahogany trees, or something like that, you could afford to take what we would call a one hundred per cent cruise, and then you would measure every tree, because the value that would be in each tree would make it worth while to go to each tree and measure.

10 Q.—How many trees would you measure in a lot of one acre?

A.—In a sample plot of a quarter-acre

Q. (interrupting)—A plot of an acre?

A.—Of course, all our plots are one-quarter acre, and, as I explained, I measured a sufficient number of trees to maintain a certain standard of accuracy.

Q.—But how many trees would that be?

A.—I cannot tell you that, because if the objects I am looking at (that is, the tree diameters) vary considerably, then I must keep
20 measuring, because my eye gets out. However, if they are all the same, or nearly the same, my eye is for the time being trained to that range of diameters and there is no necessity to measure. I cannot think at the moment of an example by which I can illustrate it, other than the fact that one's eye becomes trained to making certain notes from certain sights it sees, and if you quickly alter the texture of what you are looking at, you immediately have to make an adjustment to bring yourself to the new level. I do that rapidly by actually measuring one of the new diameters. As I say, if you are running an average of eight, nine or ten-inch trees, I am quite sure
30 you are capable of estimating whether it is an eight, or a nine or a ten-inch, continuously, for a long time, without remeasurement. On the other hand, if you are going through a run of eight, nine or ten-inch, and you come to a fifteen-inch tree, it will be necessary for you to measure.

Q.—I have seen logs cut and brought to the mill, and in order to pay the man the value of the log to the foot, we would measure the diameter of the log. Is not that more accurate than your system?

A.—Yes, it is; but you have to cut the tree, and bring the log
40 in before you can do that. You cannot do it when the tree is standing.

BY MR. KER (continuing):

Q.—When the tree is standing you have to measure it according to the tables?

A.—You have to measure it according to the tables. You meas-

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ure the diameter, and you apply the table, which gives you the volume.

Q.—You spoke of measuring by calipers, and then getting your eye accustomed to that measurement. That is merely for taking the size of the tree. Beyond that, all the trees are tallied, and put down?

A.—Exactly. It is merely to distinguish whether it is an eight-inch tree, or a nine-inch tree, or a ten-inch tree, that you mark down. You actually make a count of every tree on the sample plot that you take. You count the tree, and then estimate its diameter, and you
10 see what species it is. Then you put it in a certain place on the tally sheet.

Q.—That is only to give an idea of the number of feet there may be in a plot one acre square?

A.—One-quarter acre square.

BY MR. ST. LAURENT:

Q.—One-quarter acre square to every twenty-five acres?

A.—Yes.
20

Q.—You say you measure every tree. You measure every tree, when you are on Government license, which you feel is above twelve inches in diameter?

A.—Yes. You tally every tree.

Q.—You tally every tree that you feel is above twelve inches in diameter?

A.—Yes. If you are in doubt you would caliper. If you are in doubt you would actually measure the tree.

Q.—But you do not tally anything that is below what you are using as your minimum diameter?
30

A.—No.

(And further deponent saith not.)

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DEPOSITION OF MARSHALL C. SMALL, A WITNESS
EXAMINED ON BEHALF OF THE DEFENDANT

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

MARSHALL C. SMALL,

10

of the City and District of Montreal, lumberman, aged 51 years, a witness produced and examined on behalf of the Defendant, who, being duly sworn, deposes as follows:

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

Q.—What is your occupation?

20

A.—I am in the lumber business.

Q.—How long have you been in that business?

A.—Since 1904—twenty-eight years.

Q.—During that time with whom have you been identified in the lumber business?

A.—I was with Price Brothers & Company, in Quebec, for ten years. I was with the Laurentide Company, at Grand Mere, for eighteen years. Since then I have been for myself, with the Pembroke Lumber Company.

Q.—How many years were you with the Laurentide Company?

30

A.—About eighteen years.

Q.—And since then you have been carrying on your own business?

A.—With the Pembroke Lumber Company, Pembroke, Ontario.

Q.—In which you are personally interested?

A.—Part owner, yes.

Q.—You are not in any way connected with the Gatineau Power Company, the Defendant in this action?

A.—No.

40 Q.—During the years you have been engaged in the lumber business, have you had occasion to familiarize yourself with lumber, timber limits and lumbering operations in general?

A.—Yes.

Q.—Have you had occasion to examine the Farm Point property belonging to Mr. Cross?

A.—Yes.

Q.—And to estimate the physical peculiarities and properties of that business?

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A.—Yes.

Q.—As a lumber business generally?

A.—Yes.

Q.—When did you do this?

A.—I was at Farm Point in the month of June, this year.

Q.—Last June?

A.—Last June.

Q.—Have you been there since?

A.—Yes, I was there on two occasions since.

10 Q.—Will you describe in a general way the nature of this lumber industry of Mr. Cross at Farm Point?

A.—It is a small saw mill, manufacturing lumber and railroad ties.

Q.—From where does it draw its wood supplies?

A.—From the country in rear of the Meach Creek district, and the Township of Hull, and the Township of Eardley.

Q.—What are the general characteristics of that district as a district to draw upon for the lumber industry?

20 Witness: You mean the timber lands?

Counsel: Yes, the available timber supplies.

A.—It is a hardwood stand, in a country that has been lumbered continually for a number of years.

Q.—Is it an old settled country?

30 A.—An old settled country in the extreme lower part of the Gatineau. I imagine the country has been settled in there for over one hundred years.

Q.—How would you describe it from the point of view of availability for supply of wood for lumbering purposes?

A.—I would consider that area of country in what would be called a cut out condition.

Q.—Have you had occasion to look at the particular timber lots under Deed and under Government Lease by Mr. Cross?

A.—Yes, I was through that country. I was through the lots.

Q.—What examination were you able to make of them?

40 A.—I have gone over the figures which have been made by the previous witness, Mr. Pepler, and I have consulted with him on the lots, and I was with him on the lots. If you wish me to give my own figures, I will do so, otherwise I would agree with his quantity as liberal in estimating the timber that is there.

Q.—You would consider it was a liberal estimate of the available timber on those limits?

A.—On the lots on the west side of the Gatineau, and also the east side.

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Q.—What experience have you had which would enable you to corroborate a witness such as Mr. Pepler with respect to his estimate of wood supply?

A.—During the time I was with the Laurentide Company I was in charge of the logging, and the purchasing of timber limits, for that Company. We purchased several timber lands and limits, and I did a lot of cruising for them. The lands and limits were bought on my reports.

10 Q.—You did a lot of cruising for the Laurentide Company during a period of years?

A.—Yes.

Q.—And the limits and timber lands were bought upon your reports?

A.—Yes.

Q.—Since leaving the Laurentide Company have you done the same sort of work to any extent?

A.—Yes, I have done considerable of the same sort of work since that time.

20 Q.—Have you made appraisals of the nature of standing timber, and values of standing timber, for any particular corporations?

A.—Yes, I have made some reports for bankers on lumber areas, saw mills, and timber lands, in the Province of Quebec.

Q.—Can you name any of the Banks?

A.—For the Bank of Montreal.

Q.—Estimating on the values of matters in which they were interested?

A.—Yes.

30 Q.—Do you consider the method adopted by Mr. Pepler to be a proper method of appraisal of the quantity of wood on those limits?

A.—There are two methods: there is the forester method (which Mr. Pepler described) and there is the method of an experienced man walking through the woods and making his own estimate of what is there. There is the forester system, and there is what you might call the practical system.

Q.—Mr. Pepler adopted the one, and you followed the other?

A.—I adopted the other.

40 Q.—You went on the limits, and satisfied yourself that he was reasonably correct in his assumptions?

A.—I have been over quite a portion of Mr. Cross' limits.

Q.—What is the situation with regard to the mill? What is its size, and what do you think its capacity to be?

A.—At the present time the mill is not operating. There is some lumber on hand in the yard from the last season's operation. The place looks in a kind of neglected condition.

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Q.—What do you think is the capacity of the mill? How much do you think it would be able to saw a year?

A.—It is a circular saw, operated by waterpower. It should produce probably 12,000 feet of lumber per day.

Q.—12,000 feet per ten hour day?

A.—Yes.

BY THE COURT:

10 Q.—It would saw that?

A.—It would saw that.

It also has a tie machine, which should produce probably 250 ties per day.

BY MR. KER (continuing)

Q.—In 10 hours?

A.—Yes.

20 Q.—In other words, the mill has its lumber section and its tie section?

A.—Yes. The tie mill is on the right hand side, and the circular saw for lumber is on the left hand side.

Q.—And working at full capacity, in your opinion it would produce approximately 12,000 feet board measure of lumber, and approximately 250 ties, per day?

A.—Yes.

30 Q.—What would you consider that would be translated into yearly capacity? How many months would you think it would run in the ordinary way saw mills run in this Province? It is open to the weather, I suppose?

A.—It is closed on one side.

Q.—And open on three sides?

A.—It is open on two sides. It is closed at the end, and at one side.

The season's production in that mill would be during the summer season, from May to October—to freeze-up. Its production of lumber would be 1,800,000 feet. It would run probably 150 days.

40 Q.—It would saw 150 days in a year, and produce approximately 1,800,000 feet of lumber?

A.—Yes.

Q.—What would you consider its tie capacity to be?

A.—150 days of ties, at 250 per day—roughly about 40,000 ties a year.

Q.—37,500, as a matter of fact?

A.—Yes.

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Q.—Are ties a dependable sort of merchandise in the lumbering business?

A.—It is difficult to count them on a yearly production. The railroads seem to get an accumulation of ties, and there are years when there is no contract for ties.

Q.—The railways seem to accumulate them, and then stop buying?

A.—Yes.

10 Q.—However, you are assuming 40,000 ties working at full capacity for the whole year?

A.—Full capacity for the whole year. I do not, however, mean to say that they could be sold every year.

Q.—You do not mean he could each year sell the quantity he could produce, because of this tendency on the part of the railways to accumulate?

A.—That is the idea.

Examination
(continued)
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BY MR. KER, K.C.:

20 Q.—At the adjournment yesterday we were speaking of the timber supply applicable to Mr. Cross' Farm Point mill, and I think you stated that you had, independently of Mr. Pepler, examined those limits and this supply. Am I right that you have made any estimates of the available supply both on the freehold limits and on the Government limits on the east side of the river; and, if you have, would you please give us the figures you made?

30 A.—I think I gave a confirmation of Mr. Pepler's quantities, but I did not separate the timber that would come from the east side of the river to Farm Point.

Q.—In other words, if I understand you correctly, you agree from your own experience with the result of Mr. Pepler's cruise, but you have not separated the wood available on the east side of the river?

A.—I did not say where it was; except that I had agreed generally on the quantity.

40 Q.—As I recall Mr. Pepler's evidence, he made a cruise and estimate of the available wood on the freehold limits—that is, on the west side of the river—on the basis of trees six inches and over on the stump. Is that correct?

A.—That is right: six inches and over.

Q.—That would be on the freehold limits, because there is no restriction as to the size of a tree which may be cut on one's own limits?

A.—Right.

Q.—And, so far as timber on the Government Licenses, on the east side of the river, were concerned, he made his estimate on the

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(continued)

basis of the cut allowable by the Government Regulations: that is to say, twelve inches on the stump?

A.—Twelve inches and up, yes.

Q.—How does that leave those limits on the east side—the Government Limits—in respect to wood which may not be up to twelve inches in diameter at the time, but which may be available in the future for cutting under the Government Regulation of twelve inches, and how would you think the remainder would compare in quantity with the quantity of twelve-inch material?

10 A.—That is the reason of the restriction in regard to cutting twelve inches and up; so that there will be reproduction on the limits, that may be cut in later years.

It is a hardwood country, mostly, and I should not think it could be cut over again for thirty years.

Q.—In other words, if you harvested everything that you could harvest of the size of twelve inches and up on the Government Limits, it is your opinion there would not be any more that you could cut under the Government Regulations inside of thirty years?

20 A.—There would not be a sufficient cut to warrant an operation under a thirty-year period.

Q.—How fast do those trees grow? If there were some of twelve inches, would there not be some of eleven, some of ten, and so on?

A.—Yes. There would be some of ten, and some of eleven. The eleven-inch would reach the size of twelve inches inside of thirty years, but there would not be enough of them to make it worth while going in to cut.

Q.—And, the ten-inch would require a longer period?

A.—Yes.

30 Q.—Applying the same principle to the freehold limits, in which you can cut as low as six inches because there is no regulation, what is the reason why you should not cut below six inches?

A.—It could be cut below six inches, but a six-inch log would not pay to saw. Economically no one would cut under six inches for saw logs or lumber.

BY THE COURT:

Q.—Or, even for pulpwood?

40 A.—It is hardwood, mostly. Pulpwood is spruce.

Q.—But, there is not much spruce there?

A.—There is no spruce—none worth while.

Q.—You can make pulp with other woods besides spruce?

A.—It is generally with poplar. The wood for pulp is floated, generally. The easiest transportation is floating—and hardwood will not float.

BY MR. KER (continuing):

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Q.—Of course, the mill at Farm Point is not in any way connected with the pulp industry. It is not a pulp mill: it is just a lumber mill.

A.—It is a lumber and tie mill.

Q.—So if, as Mr. Pepler stated, you took the harvest from the freehold limits on the west side of all the merchantable timber of six inches and above, could you have any expectation, or what would your expectation be for the immediate future years in so far as those limits are concerned?

10 A.—Those measurements of six inches and twelve inches are figured about two feet from the soil. It would be down to six inches on this freehold, and I would say that would be pretty clean cut, and there would be no prospect of a crop there.

Q.—Of course, you would have the natural growth coming on after that?

A.—But it would take a very long period.

Q.—It would take the same relative number of years to bring growth below six inches up to six inches as it would take to bring
20 what was below twelve inches up to twelve inches?

A.—Fifty or sixty years, possibly.

When you are cutting to six inches it is a clean cut. A country cut to six inches is considered clean cut.

Q.—In your estimates you are giving Mr. Cross credit for practically a clean cut on his own limits?

A.—Yes.

Q.—At what do you estimate the amount of timber on the freehold land; that is, on the west side?

30 A.—The amount of timber on the freehold in the Township of Hull that would go to Mileage 12 is 115,000 feet; 19,000 feet of hemlock and 96,000 feet of hard woods.

Q.—That is, which would be applicable to the Mileage 12 mill alone?

A.—Yes. I was talking of the freehold.

Q.—Let us make it perfectly clear. I am speaking now of the timber on the west side of the river.

A.—Yes, I understand.

Q.—What was your estimate of the total merchantable cut on all those freehold limits on the west side of the river?
40

Witness: Do you want it including what would go to Mileage 12?

Counsel: Yes, both Mileage 12 and Farm Point.

A.—310,000 feet, total.

Q.—That is, taking everything six inches and over?

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A.—Yes.

Q.—How much of that 310,000 feet would, in your opinion, naturally go to the Mileage 12 mill?

A.—To the Mileage 12 mill on the Gatineau, there would be 115,000 feet; 19,000 feet hemlock and 96,000 feet of hard woods.

Q.—What quantity would be applicable to the Farm Point mill?

A.—50,000 feet of hemlock and 145,000 feet of hard woods; 195,000 feet in all.

Those do not include the cutting rights—freehold only.

10 Q.—Can you tell us what he might get by cutting the freehold rights?

A.—The freehold lots on which there are cutting rights all go to Farm Point.

Q.—And amount to how much, in feet?

A.—There is a quantity of 556,000 feet.

Q.—That is on limits on the west side which he does not own but on which he has cutting rights?

A.—Freehold lots.

20 Q.—And they could be cut to six inches?

A.—It depends on the contract with the owner.

Q.—You have assumed they could be cut to six inches?

A.—Yes.

Q.—What is the grand total, therefore, of all available wood on the western side of the river, in Mr. Cross' own limits, and in those upon which he has the right to cut?

A.—886,000 feet.

Q.—You have had a long experience in lumber and timber with the Laurentide Company, Price Brothers, and for yourself?

30 A.—Yes.

Q.—I would like to give every possible advantage I can to Mr. Cross in respect of the possibility of available wood. Do you honestly believe that on the limits which have been set out on the plan Exhibit D-177 on the west side of the river, the estimates which you have given are fair and honest figures of the available wood either belonging to Mr. Cross or that he may have the right to take from the limits of others on the west side of the river, converted into feet board measure?

A.—Yes.

40 BY THE COURT:

Q.—Do you call them freehold lots?

A.—Freehold on the west side. Cutting lots and freehold lots.

BY MR. KER (continuing):

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Q.—Approximately 700,000 feet of the 866,000 feet would be available to go to the Farm Point mill?

A.—750,000 feet.

Q.—Which would go to the Farm Point mill on the west side of the river?

A.—Yes.

Q.—Speaking of the limits on the east side of the river as Government limits: they are not owned in freehold, but they are a part of the mill? They are limited to a twelve-inch cut. Those are all
10 Government licenses on the east side of the river?

A.—Yes.

Q.—And on those licenses nothing below twelve inches is allowed to be cut?

A.—Those are the Regulations.

Q.—Looking at those limits on Exhibit D-177, and having in view the ordinary rules which are carried on through the industry of lumbering, would you say from what lots on the east side of the river you would reasonably expect to take wood to the Farm Point mill, and what others could not reasonably be expected to contribute to
20 the Farm Point mill?

A.—There are lots in the western section of Range 1, Range 2, Range 3 and four half lots in Range 4 from which timber could be hauled to Farm Point—a distance of four to nine miles—crossing the Gatineau River. The logs would have to be hauled uphill to be hauled to the Farm Point mill.

Q.—Can you say in a general way to what lots you refer as being likely to send wood to the Farm Point mill?

A.—No. 10, No. 11, and the north part of No. 13, in Range 1;
30 the south part of lot 10, the south part of lot 11, all lot 12, and the north part of lot 13, in Range 2; lot No. 13 in Range 3; the south half of lot No. 10, the south half of lot No. 11, the south half of lot No. 13, the south half of lot No. 14, and the west half of the north part of lot No. 14—could be hauled to Farm Point.

Q.—And that would involve a haul of what distance?

A.—From four to nine miles.

Q.—From four miles for the nearest ones, to nine miles for the farthest away?

A.—Yes.

Q.—Why do you not refer to the upper lots as being applicable
40 to the Farm Point mill?

A.—On Ranges 5, 6 and 7 of Wakefield, the water of those lots does not flow to this location; it flows over towards Alcouve.

Q.—The water for the lots in Ranges 5, 6 and 7 are not tributary to the Gatineau at all?

A.—They are tributary to the Gatineau, but the haul would have to be uphill. There is a rise between this spot and Farm Point.

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Q.—I am referring to those lots shown on the right hand corner of the plan.

A.—The east end of the range of lots would fall to the Blanche River.

Q.—From your long experience would you consider it economical, sound, or possible, to use the wood on those limits in Ranges 5, 6 and 7 for the Farm Point mill?

A.—No.

10 Q.—Taking the wood on the Crown limits (which you said would involve a haul varying from four to nine miles) which might be made applicable to the Farm Point mill, have you estimated the number of feet there would be there?

A.—Yes. The quantity that would go to Farm Point off Ranges 1, 2, 3 and 4 would be 244,000 feet.

Q.—That would be the quantity on the east side of the river which could possibly be brought to Farm Point economically?

A.—Not too economically, but it could be brought.

Q.—It could be done?

20 A.—Yes.

Q.—Added to the total of the west side lots, how much does that leave in wood tributary to the Farm Point mill, on both sides of the river?

A.—That is including the cutting leases, the freehold on the west side of the river, and the Crown Licenses on the east side of the river, which could be hauled there—995,000 feet.

Q.—Is that after deduction of the Mileage 12 lots?

A.—Yes.

Q.—It is just Farm Point?

30 A.—Just Farm Point.

Q.—I suppose in addition to that Mr. Cross could buy a certain amount of timber?

A.—I really do not know if it could be purchased or not. It is a summer residence country, and it is settled with farmers, and I imagine the people who owned timber around there are not very liable to want to see it sawn up.

Q.—Is there a very great supply?

A.—There is a small supply.

40 Q.—I think Mr. Pepler estimated there might be from five million to nine million feet available that could economically be brought to Farm Point and manufactured there—apart from the wood on Mr. Cross' limits. Can you express any opinion as to that estimate?

A.—There might be that quantity available, but I doubt very much whether it could be bought.

Q.—In any event, apart from the 995,000 feet you speak of, the remainder of any wood he might use would have to be purchased?

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A.—Yes.

Q.—I think yesterday afternoon we discussed the capacity of this mill, and you mentioned as an estimate for 150 days of run, which would be the normal run for any mill of that kind

Mr. St. Laurent: I object to the form of the question. We do not agree with my learned friend's statement that 150 days would be the normal run for any mill of that kind.

10 BY MR. KER (continuing):

Q.—In your opinion, what is the normal amount of lumber that mill would take care of? I think you spoke about it yesterday, but perhaps you might repeat what you said. How many feet of lumber, board measure, would it take care of?

A.—I said if the mill was efficiently run it should saw 1,800,000 feet of lumber in the season.

Q.—That was on the basis, I think, of 12,000 feet a day?

20 A.—12,000 feet a day.

Q.—For 150 days?

A.—Yes.

Q.—Is that the normal way a mill of that kind would be run in any circumstances? Would it run for more than 150 days in a year?

A.—Usually the hardwood lumber is sawn in winter in mills, but this hardwood has been driven in Meach Brook, so they saw there in the summer time. The mill is not rigged for winter sawing.

Q.—The mill is not equipped to operate in winter?

30 A.—No.

Q.—I think you stated it was divided into two operating sections; one applicable to the lumber, and the other applicable to ties?

A.—There is a saw for ties, and one for lumber.

Q.—What did you state to be the tie capacity?

A.—Around 40,000 a year.

Q.—Of 150 days?

A.—Yes.

Q.—At the rate of 250 ties a day?

A.—Yes.

40 Q.—In your opinion, how long would Mr. Cross be able to feed his own mill with lumber from the limits he owns and controls, and which could be brought to Farm Point?

A.—If the mill was run to capacity in ties and lumber, it would require three million feet a year of logs to operate. The quantity we find he owns, and has cutting rights on, coming to there, is one million feet.

Q.—So he would have to buy wood to keep his mill going?

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A.—Yes.

Q.—You have examined the mill?

A.—Yes.

Q.—You knew it had been burned down in 1928, I think, and was rebuilt?

A.—I heard Mr. Cross state in his evidence here that the mill had been rebuilt in 1928.

10 His Lordship: It was burned in 1928, and rebuilt?

Mr. Ker: Rebuilt in the same year, your Lordship.

BY MR. KER (continuing):

Q.—I think you have told us the capacity of that mill works out at 1,800,000 feet of lumber per year?

A.—Yes.

Q.—And 40,000 ties?

20 A.—Yes.

Q.—Would you give His Lordship your opinion and estimate of the earning power of the mill at that capacity?

A.—It is an opinion of my own that I would give, because the mill was not operating when I was there. I have to form my own opinion as to the cost of the logs.

I would say there would be a possible profit of \$2.50 a thousand feet on the lumber.

Q.—How much would that work out to in dollars and cents, if the mill were run to capacity?

30 A.—\$4,500.00.

Q.—That is taking the figure of \$2.50 a thousand feet?

A.—Yes.

Q.—In your opinion, would that be a reasonable profit to make with that mill?

A.—I was estimating that as 1926 sawing.

Q.—How would that compare with your own experience under the same conditions?

40 A.—It is from experience I have had that I made that price of \$2.50 profit—the cost of logs, the sawing of the lumber, and the shipping out. A net profit of \$2.50 would be all that could be expected.

Q.—That is your honest opinion of what could be made out of that mill per thousand feet board measure?

A.—Yes.

Q.—And, at capacity, it would be \$4,500.00?

A.—Yes.

Q.—What would be a fair profit on the ties?

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A.—The ties I figured at six cents profit per tie.

Q.—How would that work out?

A.—40,000 ties would be \$2,400.00.

Q.—\$2,400 a year?

A.—Yes.

Q.—I think you made some reference to the tie market being perhaps spotty at times, and the railroads not buying every year. What would you think would be the average per year, taking everything into consideration? Would the figure of \$2,400.00 you have mentioned be a fair average to be made out of ties each year?

A.—No, I do not think a tie contract could be expected except possibly every three years.

Q.—In your opinion, what would be the average profit to be expected from ties each year?

A.—I should say on an average \$1,500.00 profit.

Q.—\$4,500.00, plus \$1,500.00, would make a total of approximately \$6,000 profit out of that mill?

A.—\$6,000.00.

Q.—I would like to have it perfectly clear. Is that giving consideration to every normal thing which would enter into the operation?

A.—Yes; it is my fair opinion, quite disinterested, of what I consider could be made out of that mill running to capacity.

Q.—If you wanted to purchase that milling industry of Mr. Cross at Farm Point, what steps would you take to form an idea as to what should be paid for it?

A.—My first enquiry would be the standing timber behind the mill. If I want to purchase a mill, my first enquiry would be as to the standing timber behind it.

Q.—Your first thought would be the timber?

A.—What timber is available to operate the mill, and what timber the millowner owns.

Q.—Let us assume you found plenty of timber behind the mill, and realizing the mill had a capacity such as you speak of, and an earning capacity of \$6,000 a year. What return would you expect on the money you invested in that saw mill?

A.—The lumber business is a risky business, and the timber limits back of the mill depreciate as the timber is cut. Less than 15 per cent or 20 per cent return on a property of that kind would not be good business.

Q.—You would expect a return of at least 15 per cent on your money?

A.—At least.

Q.—Having in view the risks you are running, the depletion of your limits as time went on, and the depreciation, etc., on your property?

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A.—Yes.

Q.—Assuming there was plenty timber behind the mill to operate, what would you consider to be the value of the industry as an industry, in 1926?

A.—\$6,000 revenue, at 15 per cent return, would be \$40,000.

Q.—That is your honest opinion of what would be the normal price for that whole industry if there was plenty of wood behind it?

A.—If there was timber to run the mill for a period of years.

Q.—Would that include the timber?

10 A.—That would include the timber.

Q.—I would like to put you what may be, in a sense, a hypothetical question.

Let us assume that you were the owner of this mill, just as it stands: knowing what you know about the timber behind it; knowing the property; knowing the physical capabilities of the mill; knowing what you would expect to get in the way of yield on your money—if the Gatineau Power Company had come to you in 1926, and said: “ We have to put the water in this river up to elevation
20 321.5. This will mean that half of your piling ground is going to be submerged, or affected by seepage or otherwise. We frankly admit that. Now, we would like to make an arrangement with you to compensate you for the loss and inconvenience we are going to cause you. We also have to submerge other pieces of land which are not essential to your business, although they belong to you. We are also going to affect a few small dwellings. The essential part is your piling ground ”. What is your honest opinion, as a disinterested person who has had a large experience in this business, as to a fair compensation you should get from the company—put yourself in
30 Mr. Cross' place.

His Lordship: That is, the whole compensation?

Mr. Ker: I am looking at it from the point of view of the prejudice the lumber business is suffering. I do not know whether Mr. Small has made an estimate in regard to the other pieces, which do not really affect the lumber business.

BY MR. KER (continuing):

40 Q.—If you were in Mr. Cross' position, in your opinion what would you consider to be the prejudice to the lumber business? In other words, what would you think it would be fair for you to ask this company, or what would you think it would be fair for the company to pay you for the prejudice you suffered by reason of the piling ground being affected?

A.—If I owned that property, and there was timber I could purchase to continue operating it, I would expect my piling ground

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to be raised so that it would not be affected by the raising of the water, and I would expect a compensation for the time I was disturbed while that ground was being raised.

Q.—Am I to understand you as saying that what you think as reasonable is restoration into the same position as it was before, or the cost of restoring to the same position as it was before?

A.—Raising the piling ground so that it would not be affected by the raising of the water in the river.

10 BY THE COURT:

Q.—And any inconvenience that might be suffered?

A.—During the time it was being filled. There is no inconvenience, that I can see, above the piling ground. The mill can operate just the same. It is the piling ground and the railroad track that are going to be affected by this raising of the water.

BY MR. KER (continuing):

20 Q.—You would, therefore, say to give him the cost of making as good a piling ground, or a better piling ground, and you would go further and say “ I want something in addition to that. I have been put to inconvenience, or I have to get a contractor to raise this piling ground ”.

A.—Yes.

Q.—In your honest opinion what do you think he should get over and above the cost of raising the piling ground? Put yourself in his position.

30 A.—The duration of filling that piling ground, I should not think would take over a month's time. During that month there would be disturbance if shipping and so on was taking place. There would be disturbance by the gravel being brought in.

Q.—And dust flying about a little?

A.—No, I do not imagine there would be any dust.

There would be disturbance during the building of the raised portion. The length of time of the disturbance would, of course, depend upon how quickly the work was done. I imagine it could be done inside of a month.

40 Q.—If you were in Mr. Cross' place, what do you think would be a fair addition to the cost of that work to compensate him for the inconvenience?

BY THE COURT:

Q.—In other words, what would you accept?

A.—If the work was done in the winter time, I should think

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\$500 compensation would be sufficient. If it was done in the summer time, while there is more going on in shipping, \$1,000 for that month's disturbance should be sufficient.

Q.—That is just for the disturbance?

A.—Yes.

BY MR. KER (continuing):

10 Q.—In other words, you would be prepared to accept what was shown to be the cost of filling it to return it to as good or better condition, plus the figure you have just mentioned?

A.—Yes.

Q.—You honestly believe you would be prepared to accept that yourself, if you were in Mr. Cross' position, and basing yourself upon your experience?

20 A.—Yes. I feel if the water had to be brought up it would be something that would have to be put up with. The ground could be raised so that it would not be affected by the water. During the time of raising, the amounts I have mentioned should be sufficient compensation.

Q.—Of course, it is only fair to point out to you that the raising of the water would affect other properties in addition to the piling ground?

A.—I am not speaking of those. I am speaking only of the piling ground and the railroad track.

30 Q.—Would you consider there was any other prejudice suffered by the business after that piling ground had been raised? Apart from the inconvenience you speak of? Would you consider there was any other serious prejudice or serious damage caused to the business itself if the piling ground were restored?

A.—Not the operating of the business.

Q.—As a matter of fact, the mill can run just as successfully with the water there as it did before?

A.—The mill is quite elevated above it.

Q.—And the source of its motive power is intact?

A.—Yes.

40 Q.—And with the restoration of the spur, and the trestle, and the piling ground, there would be no reason for it not to operate just as successfully as it did before?

A.—Not at all.

Q.—What was the general condition of the lumber business about 1926?

A.—The general condition of the lumber business in 1926 was none too pleasant. It was beginning to fall off quite a bit.

Q.—It was beginning to slip in that year?

A.—Yes, it was beginning to slip.

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Q.—And am I right in saying it has been progressively slipping ever since?

A.—From 1926 to 1929 it about held in the same values, and started slipping worse from then on.

In 1926 lumbermen were having their troubles.

Q.—Lumbermen generally were having their troubles in 1926?

A.—Yes.

Q.—And what is the picture today?

10 A.—The picture today is that lumber is being sold for much less than it could be reproduced for with men at \$1.00 a day for logging and \$2.00 a day for sawing.

Q.—It is being sold for less than it could be reproduced even paying those wages?

A.—Yes.

Q.—How is that accounted for?

A.—There is no demand.

Cross-examination

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

20

Q.—You told us you had had about ten years' experience with Price Brothers?

A.—Yes.

Q.—And that was before the eighteen years' experience you had with the Laurentide Company?

A.—It was previous to 1904.

Q.—At that time the business of Price Brothers was mainly a lumber business, was it not?

30

A.—Yes.

Q.—And they had operations in more than one locality?

A.—No.

Q.—Were you at the Head Office, or in one of the operating localities?

A.—I was at Matane, and Amqui—in the operating localities.

Q.—And Matane and Amqui were at that time, and have remained, lumber propositions?

A.—Amqui is closed. Matane is still operating.

Q.—As a lumber proposition?

40

A.—Yes, a lumber proposition.

Q.—And that was the getting out of sawn lumber of first class Eastern Canada quality, was it not?

A.—Yes, in those days.

Q.—The market being largely an export market?

A.—The English market, yes.

Q.—At that time were there other smaller mills in operation in that locality?

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A.—Very few.

Q.—The business of sawing for the settlers had not yet developed in that part of the Province?

A.—Yes, there were some small local mills in the rear of Matane.

Q.—Were they operating on the same streams on which you were operating?

A.—No.

10 Q.—You never had the difficulty of their logs getting mixed in with yours?

A.—No, sir.

Q.—At that time was the quality of the lumber which was being turned out by those small mills comparable with that which was being turned out by your mills?

A.—It was not the same sawing altogether. They were sawing for farmers around the district, building barns, and so on.

Q.—Were they not at that time sawing lumber which your mill would not saw, or which would not have been fit for your market?

A.—I assume we would not have accepted some of it, yes.

20 Q.—I understand you went with the Laurentide Company in 1904?

A.—Yes.

Q.—Its business was pulp and paper, was it not?

A.—They also had a saw mill.

Q.—Where was it?

A.—At Grand Mere.

Q.—How long did it operate?

A.—It operated until the Laurentide Power was built, in 1915.

30 Q.—Was it an extensive mill?

A.—Yes, quite a large mill.

Q.—Was it for the purpose of sawing better material that came down with the logs?

A.—No, it was mostly for sawing pine, and the larger spruce. There was some pine that came down with the spruce.

Q.—This pine, and the larger spruce, I suppose, being material that could be disposed of to better advantage as lumber rather than by grinding it up for pulp?

40 A.—Yes. The pine could not be ground up. It could have been ground up, but it was not good for paper.

Q.—And the big spruce was more valuable as lumber than it would be if it were mixed in with the smaller material that was being ground up for pulpwood?

A.—No. I think there was not enough pine to run the mill to capacity, and the larger spruce was to help out the quantity.

Q.—But, as a matter of fact, the bulk of what was being used for the pulpwood was smaller spruce?

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A.—Yes.

Q.—With, I suppose, some scattering of other species mixed in?

A.—Some balsam.

Q.—Some fir?

A.—Yes.

Q.—And some jackpine?

A.—No, no jackpine.

Q.—Has that been a subsequent development?

A.—It came later, yes.

10 Q.—You say this mill was operated until the Laurentide Power
was developed. The Laurentide Power was developed, was it not,
as a subsidiary of the Laurentide Company?

A.—Yes.

Q.—And that meant the raising of the waters of the St. Maurice
to a considerable height and for a considerable distance behind the
dam?

A.—Yes, a considerable distance behind the dam—some seven-
teen miles.

20 Q.—What was the greatest height to which it was raised?

Witness: In elevation?

Counsel: Yes. Some seventy feet, was it not?

A.—No, twenty-nine feet, I think; at the power house.

Q.—And it involved the flooding out of the banks and lands
adjoining the banks over an extent of about seventeen miles back?

A.—Yes. The water was affected for a distance of seventeen
miles.

30 Q.—You were one of the operating officials of the Company at
that time?

A.—I was in charge of the logging and timber lands generally—
the woods department.

Q.—You were one of the executives also?

A.—Yes.

Q.—And you had a good many of those problems of settlements
with those who were flooded out?

A.—Yes.

40 Q.—I suppose you acted for the Company in a good many nego-
tiations with persons who were claiming damages for the flooding of
their properties?

A.—Yes.

I purchased some properties.

Q.—And, of course, in all those instances you made just as good
a settlement as you could for your Company?

A.—I think we were very fair. I think everybody was well satis-
fied.

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- Q.—When did you leave the Laurentide Company?
A.—In 1921, I think it was.
Q.—And you went into the sawn lumber business?
A.—Into the white pine lumber business.
Q.—Operating a mill?
A.—Operating a mill, yes.
Q.—In what section of the country?
A.—In the Province of Ontario, with timber limits in Quebec
10 and timber limits in Ontario.
Q.—What was the annual volume of that business?
A.—Twenty million feet.
Q.—For the local market, or for export?
A.—Both. The American market, the English market, and the
local market.
Q.—Would it be mostly for the American and the English
markets?
A.—Yes.
Q.—I think I understood you to say the business was carried on
20 under the name of the Pembroke Lumber Company?
A.—The Pembroke Lumber Company, Limited.
Q.—You said that since 1921 you have also done some consult-
ing work for the Bank of Montreal, or made reports for the Bank of
Montreal, on sawmill and lumber propositions?
A.—Since 1925.
Q.—If I understood you correctly, you examined those timber
lands on the west side of the Gatineau River last June?
A.—Last June, and also in October and November.
Q.—October and November of what year?
30 A.—This year.
Q.—How much time did you spend there in June?
A.—I was there four days, I think.
Q.—Four days on the west side?
A.—On both sides.
Q.—Four days in June on both sides?
A.—Yes.
Q.—Were you with Mr. Pepler?
A.—Not all the time. I was with him part of the time.
Q.—Do you remember the dates? Would it be before, or after,
40 June 4th?
A.—I could not exactly tell you. I know it was early in June.
Q.—Were you there four consecutive days, or on four different
occasions?
A.—I was there four days, I think.
Q.—Four consecutive days?
A.—Yes.

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Q.—What lots did you first visit? On the west side, or on the east side?

A.—I first went to the mill. Then I was curious to see how much timber there was, so I went back of the mill, on the first day, on Meach Creek. Later I went on the east side.

Q.—The first day you went back from the mill, up Meach Creek?

10 A.—Yes. There is a road—a highway—through into Meach Creek. That country is full of highways and roads.

Q.—On that day did you go on the lot shown in Range 14?

A.—I passed by that lot. There was made land on it.

Q.—You passed by it, but without going on it? I mean going into the bush?

A.—I went into the bush in all of them.

Q.—On the first day did you go into the bush on this lot in the 14th Range?

A.—I could not tell you whether it was the first day or not. I did not keep a diary of it. I was just travelling through the country.

20 Q.—Is that the kind of stand, or country, in which in your opinion a one per cent sampling and actual counting would give a correct basis for estimating the quantity?

A.—There have been several reports such as were made there worked up by actual cutting, and they have worked out fairly accurately.

Q.—But is this the kind of stand to which a one per cent sampling could safely be applied?

A.—I think it could be applied to any stand.

30 Q.—Would you purchase timber lands in that country on a one per cent sampling, without seeing the lots?

A.—I do not think I would purchase any without having a look at it myself.

Q.—You would want to see more than one per cent?

A.—I would want to see it, anyway.

Q.—You would want to see the whole of it?

A.—Not necessarily to touch every tree, but I would want to see it.

Q.—You would want to go through the whole of it?

A.—I would want to go through it.

40 Q.—What is your system for making up an estimate?

A.—I could not really explain it to you. I would just walk through the woods, and make up my mind what is there.

Q.—You would make up your mind as to how many acres are covered with trees, and what could be cut to the acre?

A.—I would see what it will cut in quantity—not necessarily to the acre. I would see the way it will come out, and what it looks like, and whether it is on a mountain, or down in a valley; and the log-

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ging chances on it—if there is any money to be made out of it.

Q.—With that kind of a system how do you arrive at 19,000 feet of hemlock on the lots which you consider as tributary to Mileage 12?

A.—By the percentage of hemlock which is in the quantity that is there. By the trees of hemlock you run across. Hemlock bunches, a few here, and a few there. The hardwood is also there. Wherever you run across hemlock, you will run across a stand of it; and then you will go into hardwood.

10 Q.—Neither hemlock nor hardwoods were species that were being operated by Price Brothers?

A.—No. There is no hemlock down there.

Q.—And prior to 1904 they were not operating hardwoods?

A.—No, not at that time.

Q.—And the Laurentide Company was not operating hardwoods?

A.—We did cut a little of it, yes, to try as pulp.

Q.—You tried to float it?

A.—Some we attempted to float, and some was brought by rail.

20 Q.—Did you make any of those experiments of smearing the ends of the logs?

A.—No, I did not have anything to do with floating it, or preparing it to be floated. Some of it was brought in by rail.

Q.—You have not operated for hardwoods or hemlock, have you?

A.—No. I have made hemlock square timber, but I have not sawn any.

30 Q.—So, your experience has not had to do with the estimating of the quantity of hardwood on lots, and then having it cut, and sawn up, and seeing how the actual measurement would compare with the estimate?

A.—I know hardwood logs measured by the Quebec Rule do not gain anything by sawing them. There is no gain in sawing hardwood from the log to lumber.

Q.—How do you know that? Is it from your own experience, or from the experience of others?

A.—From the experience of others; but I have inspected their mills and made reports on them.

40 Q.—You have not had the experience with hardwood that you have had with white pine and with big spruce?

A.—No. I have not sawn any.

Q.—When you were with the Laurentide Company you did some cruising for them, did you not?

A.—Yes.

Q.—For the purpose of estimating the probable quantity of pulpwood available on the lands you were cruising?

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A.—It was for cutting, yes, during the following winter. Preparing our cutting contracts, and where we would cut.

Q.—And what you were cutting was mainly pulpwood?

A.—Yes. It was log lengths, but it was pulpwood.

Q.—You were mainly concerned with the species that were going to be used for pulpwood?

A.—Yes.

10 Q.—And what white pine or big spruce there was came down at the same time because it was economical not to leave it behind?

A.—We cut it at the same time.

Q.—Did you make a personal estimate of the quantity of hemlock on those lots to which you refer as tributary to mileage 12?

A.—Not specially the hemlock. I considered the hemlock and the hardwoods—how much there was generally in the whole thing—and struck off a percentage for the hemlock. I went over it with Mr. Pepler, and I agreed that his figures were liberal.

Q.—What percentage was it? The total you mentioned was 115,000 feet, and you gave the quantity of hemlock as 19,000 feet.

20 A.—That would be about 20 per cent hemlock.

Q.—20 per cent would be 23,000?

A.—19,000 feet of hemlock, and 96,000 feet of hardwoods.

Q.—20 per cent of 115,000 would be 23,000. Did you mention the figure of 19,000 because it happens to be Mr. Pepler's figure?

A.—It might be 20,000, or it might be 18,000, or it might be 22,000.

Q.—Then, you adopted the figure of 19,000 because it was Mr. Pepler's figure, and you thought it might be approximately correct according to your views?

30 A.—Yes.

Q.—The figure of 96,000 would be arrived at by deducting the 19,000 from the 115,000, to represent the quantity of hardwood?

A.—The 96,000 might also be 105,000, or 90,000—around those figures.

Q.—115,000 feet on about 400 acres would mean there is practically nothing there?

A.—There are 400 acres, but there are only 118 acres with timber on them.

40 Q.—How is that area arrived at? Did you measure it, or is it a percentage, or what?

A.—Those are the areas of the lots. One is 100 acres, another 200, and another 100.

Q.—The 400 acres is arrived at because there are four half lots?

A.—Yes.

Q.—Which were originally laid out as of 200 acres each?

A.—Yes.

Q.—Did you measure the acreage that is timbered?

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A.—No.

Q.—From whom did you get the information that it was 118 acres?

A.—From the plan and the photographs.

Q.—You took the acreage from the plan Exhibit D-177?

A.—Partly, yes.

Q.—I think your figures for the land on which Mr. Cross claims to have the cutting rights were 556,000 feet?

A.—Yes, 556,000.

10 Q.—How was that figure actually arrived at? Why is it 556,000, and not 550,000, or 560,000?

A.—Because it is 556,000.

Q.—But, how did you make the calculation which gave you the result of 556,000—if it was just by viewing it, and a guess estimate?

A.—It is Mr. Pepler's figure of quantity, which I confirm. I have been over the country enough to confirm his figures, and I said so in my evidence.

20 Q.—So, those figures you gave were Mr. Pepler's figures; and it probably amounts to this: that you went through it and came to the conclusion that the figures were perhaps about right?

A.—I am quite satisfied they are right.

Q.—Without having made any count whatever?

A.—Just by walking through the country.

Q.—Of course, it might be 540,000, or it might be 580,000?

A.—Yes, I will admit that.

Q.—Was the wooded area on those lots on which the cutting rights exist also determined from the plan Exhibit D-177?

30 Witness: The area that is timbered?

Counsel: Yes.

A.—Yes.

Q.—Without your having made any measurements yourself?

A.—Of the land, no.

Q.—Do you remember what portion of the four days in June were spent on the west side of the river?

A.—About half and half, I think.

40 Q.—Were you going about alone, or were you accompanied by anyone?

A.—I was with Mr. Pepler part of the time.

Q.—In June, Mr. Pepler was only there on the 4th?

A.—Yes.

Q.—He was there on May 20th, May 30th and June 4th?

Witness: On both sides?

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Counsel: Yes.

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A.—I am not sure of the dates. I know I was with Mr. Pepler on the west side, and on the east side also.

Q.—You were with Mr. Pepler on both sides of the Gatineau?

A.—Yes. It would probably be on the same day. There is a crossing at Wakefield, and it takes us in a motor road. You can get inside that country in half an hour.

10 Q.—Were you with Mr. Pepler when you went through the bush?

A.—Yes.

Q.—So the only going about in the bush you did was in company of Mr. Pepler?

A.—I think I was up on the west side at one time without Mr. Pepler.

Q.—During the summer season?

A.—During the summer season, yes. I was in again in November, with Mr. Pepler.

20 Q.—In the summer were you in the bush with Mr. Pepler?

A.—Yes.

Q.—So that we may clearly understand each other. In the summer you were with Mr. Pepler in the bush on both sides of the river, and you are not sure you did not visit some of the land on the west side without Mr. Pepler?

A.—I think I did. I had my own car up there, and I drove up by myself one day.

Q.—Did you go into the bush that day?

30 A.—Yes, I walked around. This country is all farms and summer residences. It is not all bush.

Q.—I understand that.

What is the depth of a half lot? Half a mile?

A.—No.

Q.—The scale on the plan Exhibit D-177 is two inches to the mile?

A.—There would be 100 acres.

Q.—The depth of each half lot is about half a mile, is it not?

A.—About half a mile.

Q.—And there are seventeen of those?

40 A.—Not all together in one block.

Q.—Did you walk the whole length of those half lots?

A.—No, I would not say I covered every spot on the lots.

Q.—I do not mean that you covered every spot, but did you walk at least once the length of each lot?

A.—Well, you would get up on a high hill, and you could see the neighbouring lot without walking on to it. It is a very hilly country.

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Q.—I am just enquiring as to what you did.

A.—I would not want to say I walked every half lot.

Q.—You would get up on a hill, and would form your impression of what the adjoining territory was like?

A.—There are hills up there that will give you a view of the whole country.

Q.—I suppose an aeroplane will give you a better view?

A.—You have not as good a view from an aeroplane. You get a better view from a hill than you do from an aeroplane.

10 Q.—In any event, what you did was to go where you felt it was possible to get a general view of the country?

A.—And what was there.

Q.—And from that you came to the conclusion that you could agree with Mr. Pepler's figures?

A.—Yes—and it will not cut out more either.

BY MR. KER:

20 Q.—It will not cut out more wood than you say?

A.—It will not cut out more wood than I say.

BY MR. ST. LAURENT (continuing):

Q.—You have spoken of the regulations with respect to Crown lands. What proportion of the wood cut off Crown limits is, in fact, below 12 inches in diameter?

Witness: You are speaking of hardwood?

30 Counsel: No, I am speaking of the general cut.

A.—Spruce is allowed to be cut undersize by Order-in-Council, but I do not know of any hardwood.

Q.—As a matter of fact, is there not more than half of what is cut cut below the 12 inches?

A.—In spruce, but not hardwood.

Q.—I mean of the total trees cut from Crown lands?

A.—In spruce, yes; I will admit that.

40 Q.—And is not spruce practically 90 per cent of what is cut from Crown lands?

A.—The Government only allows the cutting of spruce under twelve inches in swampy country, or where it is not grown. They will not allow you to cut it under twelve inches on mountains.

Q.—For the last ten or fifteen years has there not been more than half the spruce cut that was under twelve inches in diameter?

A.—No, I would not say that.

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Q.—On the Upper St. Maurice, for example?

A.—Unless it is swampy country that is finished growing; and there is a terrible lot of that country on the St. Maurice. There is also some on the Ottawa. I do not think you will find any mountain spruce cut under twelve inches.

Q.—You think there would not be as much as one-half cut under twelve inches, by virtue of those special Orders-in-Council?

A.—In districts, yes; but in districts like Matane, there would not be.

10 Q.—There is not much made into pulpwood there?

A.—No. We are speaking of lumber; we are not speaking of pulpwood.

Q.—When you went back to this district on the Gatineau, what lots did you visit?

A.—I went back to those lots on the west side that came out to Mileage 12. I also went up to the lots over the River Blanche, and over on the east side.

Q.—You went back to the lots in Ranges 6 and 7 of Wakefield?

20 A.—Yes, and lots 23, 24 and 25 of Range 5 of Wakefield.

Q.—Did you go to both those places on the same day?

A.—No. I went on the east side on Friday, November 4th.

Q.—At that time you went up to lots 23, 24 and 25 of Range 5?

A.—23, 24 and 25 of Range 5 of Wakefield.

Q.—Did you go into the bush there?

A.—Yes.

Q.—And you walked about?

A.—Yes.

Q.—Right through?

30 A.—Right to the extreme end of them. There are some small lakes in there. We had photographs which showed the lakes quite well.

Q.—And that was on November 4th?

A.—Yes.

Q.—When did you visit the lots tributary to Farm Point, down in the Township of Hull?

A.—The next day; November 5th.

Q.—Did you go on the land itself, and through the bush?

A.—Yes.

40 Q.—Then you did considerably more on those two visits on November 4th and 5th than you did in June?

A.—The sight was much better. There were no leaves and you could see much better than you could in June.

Q.—I presume you did more walking about on the land of those lots in November than you had done in June?

A.—There was a bigger stretch to go through, yes. There was more walking, because there were more lots.

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Q.—Did you also go up into the 6th and 7th Ranges on November 4th?

A.—Yes. There is a road right up to the edge, and there are farmers' roads in there.

Q.—You do not want to leave me with the impression that you remained on the road, do you?

A.—No.

Q.—But you say there is a road?

A.—There is a road to get there.

10 Q.—How much time were you out of your car and in the bush?

A.—From ten o'clock in the morning until about two o'clock in Range 5, and from two o'clock until dusk in Ranges 6 and 7.

Q.—There would be some time lost between the two, because they are probably three or four miles apart, are they not?

A.—Yes. There is about a mile and a half walk.

Q.—A mile and a half walk from the highway before you reached the lots you were going to examine?

A.—From where we left our car, yes.

20 Q.—I understood you to say you examined the sawmill at Farm Point?

A.—Yes.

Q.—And I think you told us it was not equipped for winter run?

A.—It is not heated, or closed in.

Q.—Would you be surprised to learn that it has been run through the winter? That sawing has been done there during the winter season?

Witness: This present mill, or the one that was burned?

Counsel: Both.

30 A.—It is possible.

Q.—You spoke of there being two saws, one a circular saw used for getting out lumber, and the other for getting out ties. Is not the circular saw that is used for getting out ties also adaptable to the getting out of lumber—2 x 4's, and so on?

A.—It could be.

Q.—You do not know whether or not it has, in fact, been so used?

A.—No. The mill was not operating.

40 Q.—But there would not be anything to prevent using that saw for getting out lumber as well as ties?

A.—No.

Q.—Did I understand you to say that you fix the earning power of a mill at about \$2.50 per thousand feet, in 1926?

A.—Yes.

Q.—And that this would include the timber?

A.—Yes.

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Q.—All the operator would get out of timber cut from his own lands would be \$2.50 a thousand feet?

A.—Allowing stumpage on the timber lands, of course—depletion and stumpage.

Q.—And allowing overhead?

A.—Yes. I was figuring the net profit.

Q.—Were you including interest in your overhead?

A.—Yes, I was including interest on the money for operating the lumber, but not the interest on the property.

10 Q.—Not the interest on the capital investment?

A.—Not the interest on the capital invested.

Q.—What might be called bank interest on the working capital?

A.—On the working capital, yes.

Q.—You also said you would figure a profit of about six cents per tie on ties?

A.—Yes.

Q.—What were ties worth at that time?

A.—I think No. 1 were worth around 70 cents and No. 2 around 20 60 cents. I am not quite sure of the price.

Q.—Did you ever do any tie business yourself?

A.—We did a lot of tie business in Matane. We did a lot of cedar tie business when I was there.

Q.—That was prior to 1904?

A.—Yes.

Q.—Conditions then were considerably^s different from what they were in 1926?

A.—Since that time hardwood ties have come in.

Q.—You have not had any tie experience since 1904?

A.—No, except that I know of ties manufactured under the 30 same condition as this place, within one hundred miles of that location.

Q.—And you think ties would be saleable only about one year in three on the average?

A.—On the average, yes.

Q.—And that applied from 1920 to 1926 or 1927?

A.—Yes, at that time—1926-27.

Q.—And you would be surprised if anyone were to tell you that they had made a substantial quantity of ties and disposed of them 40 regularly every year during that period?

A.—Yes, I would.

Q.—When you spoke of six cents as the possible profit, you were treating it as about 10 per cent?

A.—I was also allowing the stumpage to the owner of the lots. The stumpage by the Quebec Government on ties is 15 cents a tie.

Q.—Were you looking at your six cents net profit as being about 10 per cent?

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A.—There are about 35 feet of timber in a tie, and I was figuring it on the thousand foot basis. It is less trouble to make a tie than it is to make lumber.

Q.—You think there are about 35 feet in a tie?

A.—Yes. At six cents, that would be about \$2.00 a thousand feet; \$2.07 a thousand feet would give 7 cents.

Q.—If it involves less work to make a tie than to make lumber, why should your profit per thousand feet be less?

A.—Because it is less work to make it than it is to make lumber.

10 You have to pile your lumber, you have to cut it, and you have to ship it. With the tie it is just a matter of taking a slab off, and it is just sent out. So it would logically not be as much as your lumber.

Q.—So it is by comparing it with the lumber that you arrive at the 6 cents?

A.—Yes, and the value of them.

The measurement and scaling on hardwood ties by the railroad is very severe.

Q.—Did you ever sell them any?

20 A.—No, but I know quite well about it.

Q.—You have heard the tales of woe of others who have sold them?

A.—Yes.

Q.—Do you think there has been any inconvenience to this mill by the effect of the water on the piling ground and the railway spur from 1927 to the present time?

30 A.—There were 700,000 feet of lumber there in June. It was not affected. The railroad siding was affected by being wet. I understand the locomotives are not allowed to pull cars in or out any more, and they have to move them with horses. For the quantity of lumber that is there so far the only effect is on the shipping.

Q.—Did that 700,000 feet occupy practically all the available space above elevation 321.5?

A.—No.

Q.—Were you shown where the contours were?

A.—I know where the contours are.

Q.—What was the elevation of the water when you were there?

A.—I think it was around 317, or a little over.

Q.—You never saw it higher than that?

40 A.—I would not have noticed.

Q.—When you went back in November did you go to the mill property, or only to the lots?

A.—I went to the mill property.

Q.—Do you know what was the elevation of the water at that time?

A.—I did not notice.

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There was not much change from what it was on my previous visit.

Q.—Would you consider that having to move cars with horses was inconvenient?

A.—Yes, it would be an inconvenience.

Q.—Would it be covered by this figure of \$500 you have mentioned? I understood you to say you would be prepared to allow \$500 for inconvenience if the work had been done during the winter, and \$1,000 if it was done during the summer?

10 A.—The question was put to me with regard to 1927, if the Power Company had come to me and told me they were going to raise the water. I was not asked about 1931. I was asked about 1927, and I answered about 1927.

Q.—If it had been done, you think it could have been so arranged that there would not be more than one month's inconvenience?

A.—At the time, yes.

Q.—But it has not been done yet?

20 A.—No, it has not been done.

Q.—And there has been inconvenience up to the present time?

A.—In so far as shipping is concerned.

Q.—And you have not put that in your estimate? You were not asked to do it?

A.—I was not asked to put that in.

Q.—You said that at the present time lumber is being sold at prices less than it would cost to reproduce it even with bush wages at \$1.00 a day and saw mill wages at \$2.00 a day?

A.—Yes.

30 Q.—Was that not brought about by quite a substantial volume of distress sales—lumber piles that had to be realized to satisfy the owners' creditors?

A.—There are many reasons. That is one of the reasons.

Q.—Is not that one of the main reasons?

A.—Yes, one of the main reasons.

Q.—The depression has affected the lumber business, as it has affected a great many other businesses?

A.—Quite.

40 Q.—Consumption has decreased?

A.—The demand has decreased, yes.

Q.—And there was a large quantity of lumber held by persons who had to realize to satisfy their banks and their other creditors?

A.—Yes, but the quantity was not abnormal for normal conditions.

Q.—The quantity might not have been abnormal for normal conditions, but when the abnormal conditions came about the de-

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mand decreased, and this lumber had to be converted into cash to satisfy banks and other creditors, even though it was being done at less than it would cost to reproduce it?

A.—Yes.

Q.—Just what did you mean when you said that the lumber business had commenced to slip in 1926, but had held at about the same level from 1926 to 1929? Was it any worse in 1926 than it was in 1925?

10 A.—Yes. 1926 was quite an uneasy year for the lumber business and lumbermen.

Q.—My instructions are that 1923 and 1924 were hard years for the lumber business?

A.—1923 and 1924 were very good. Your information on that is not right. 1923 and 1924 were very good.

Q.—At the end of 1921 was there not a very sharp drop, which carried through 1922 and 1923?

A.—Not in the lumber business. The best years in the lumber business between 1920 and 1930 were 1923 and 1924.

20 Q.—The whole lumber business, or the white pine business?

A.—They all follow together. The hardwood may have lasted six months later than the pine, but it slipped in 1926 also.

Q.—What do you mean when you say it slipped?

A.—The price, and the demand.

Q.—The price and the demand fell?

A.—Yes.

Q.—To what extent: comparing 1926 with 1925?

A.—Prices in 1925 reached 25 per cent as compared with 1924.

Q.—In 1925 prices were 25 per cent below the 1924 prices?

30 A.—Yes.

Q.—How did 1926 prices compare with 1925 prices?

A.—1926 remained about the same as 1925, and it went on that level until about 1930.

Q.—So the 1925 prices carried through until about 1930?

A.—Yes. Until 1929.

Re-examination

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

40 Q.—Is there any sign of revival?

A.—There are periods of revival, and there are waves of revival, and depression again.

Q.—There is no sign of getting back to real stability?

A.—Not yet.

Q.—You spoke of your estimate of the price of ties. Ties do not require piling ground, to any extent? They are shipped out practically as they are made?

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A.—Yes, I would imagine so. In this location they are on the C.P.R. line, and the C.P.R. would probably be buying those ties and would move them out.

Q.—Normally in the ordinary course of business, would they require the same piling facilities as lumber?

A.—I should not think so.

10 Q.—In answer to the question I put you with respect to the compensation which Mr. Cross might reasonably expect to get for his piling ground, you said that was estimated as if the settlement were made at the time—1926—or before the water was raised. You also said that in your opinion there had been inconvenience through the fact of having to pull the cars back and forth on the siding by horses. Applying the same theory of compensation to the present time, and assuming that interest were allowed upon any sum given to the Plaintiff from the time you made your estimate, 1926, or before the water was raised would you or would you not consider that the interest he would get for that time would compensate him for the inconvenience during the same time?

20 Witness: You mean interest on the cost of refilling, and disturbance also?

Counsel: Yes. Assuming that cost to be \$10,000. The interest would be practically \$500 a year.

A.—Yes, I would consider that fairly generous for the moving of the cars by horses.

30 Q.—You would consider that a generous recompense for the inconvenience necessarily caused in the meantime?

A.—Yes.

Q.—And if you were in Mr. Cross' place, and received the compensation you have mentioned, to which was added the interest we have just spoken of, you would consider you had been reasonably and generously treated for the inconvenience you had suffered?

A.—Yes. It would be more than I had made it in 1927—the \$1,000.

Q.—I think you said the carriage used for the tie making in the mill could be adapted to the cutting of lumber?

40 A.—I imagine if it was sawn lumber the lumber would be on the wrong side of the mill for going through the carriage. I really think it was put in there for sawing ties.

Q.—It is a short carriage?

A.—Yes.

Q.—If it were used for lumber, it would have to be short lumber?

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A.—It would cut twelve-foot lumber. The tie carriage could also cut twelve-foot logs, but not comfortably.

Mr. Ker: I forgot to question the witness in chief about the mill at mileage 12. The fact has just been drawn to my attention. With your Lordship's permission I would like to ask Mr. Small a question or two about the value of the mileage 12 property.

10 BY MR. KER (continuing):

Q.—Did you examine the property of the Plaintiff referred to in these proceedings as the mileage 12 property?

A.—Yes.

Q.—When did you make that examination?

A.—On November 5th.

Q.—Of this year?

A.—Yes.

20 Q.—At that time the water was up to a certain level in the Gatineau River—to a higher elevation than normal?

A.—Yes.

Q.—The portable mill, of course, was not there?

A.—No, it had been dismantled.

Q.—Did you examine the photographs of the mill which have been filed in this case?

A.—Yes, I have seen the photographs.

Q.—Were you on the property itself?

A.—Yes.

30 Q.—In a general way what was the type of construction of this mill? What would its capacity be? I know you did not have a very good opportunity of judging, because the mill has been taken away since 1926, but perhaps you might give us the benefit of your opinion.

Mr. St. Laurent: I do not think we should have the opinion of the witness, based on information he has obtained without seeing the actual mill. I do not think it would benefit us at all by having him tell us what he heard about it.

40 Mr. Ker: The property is still there.

Mr. Scott: Only part of it.

Mr. Ker: The witness has been on the property claimed for in this case.

BY MR. KER (continuing):

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Q.—Are there any constructions on the property at the present time?

A.—There are two buildings.

Q.—Is the frame of the old mill still there?

A.—No. The site of it is there.

Q.—Have you seen the photographs which have been produced here as photographs of the shed which housed the mill when it was running?

10 A.—Yes, I saw a photograph of it taken in the winter time.

Q.—While the mill was still in operation?

A.—I do not think it was.

Q.—In any event, it was still standing?

A.—Yes.

Q.—Do you know what type of mill was used there?

A.—It would be a portable type of mill.

Q.—Electrically driven?

BY THE COURT:

20 Q.—You did not see it?

A.—No, nothing except the site.

Q.—You never examined it?

A.—No. I just saw the picture of it.

Mr. St. Laurent: With the machinery out.

Mr. Ker: I am informed the machinery was in.

30 BY MR. KER (continuing):

Q.—In any event, you did not see the machinery?

A.—No.

Q.—There are three acres of land involved in connection with that mill. What would you consider those three acres to be worth, as a mill site—or what would your opinion of the site be as a mill site for a portable mill? And I think you can speak from actual examination.

40 A.—The actual site was fairly advantageous. It was connected with the old C.P.R. right-of-way, and the highway, at that time. I surmise its construction was to cut the timber falling to the Gatineau from those lots in Range 12 of the Township of Hull.

Q.—Those are the lots to which you have referred as being appurtenant to that site?

A.—Yes.

Q.—And, the function of that mill apparently was to cut the wood from those lots?

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A.—Yes, and any timber that could be purchased from farmers in the surrounding district falling to that mill.

Q.—There was a siding into it?

A.—From the old C.P.R. right-of-way.

Q.—And there were some other little accessory buildings on the site?

A.—There was a lodging house for the workmen, and there were a couple of sheds.

10 Q.—Are the lodging house and the sheds still there?

A.—Yes.

Q.—You have seen them, and examined them?

A.—Yes.

Q.—What would you estimate to be the value of that site, with the siding, the lodging house, and the sheds, as a lumber mill site?

Witness: Altogether?

Counsel: Yes, and how would you split it up.

20 A.—The land, approximately three acres, I valued at \$500.00.

Q.—You thought the land would be worth \$500.00?

A.—For a mill site.

The mill building I put at \$400.00. That is, without the machinery—just the building.

The siding I put at \$600.00.

The lodging house and sheds I put at \$700.00.

A total of \$2,200.00.

BY THE COURT:

30 Q.—What is the distance between mileage 12 and Farm Point?

A.—It is about four miles nearer Hull than Farm Point.

BY MR. KER:

Q.—About four miles down the highway?

A.—Towards Hull.

BY THE COURT:

40 Q.—Is it close to Cascades?

A.—Your Lordship will see it on the map Exhibit D-177. It is farther down.

BY MR. KER (continuing):

Q.—You said, in your opinion, the siding was worth \$600.00?

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A.—The siding, \$600.00; and the lodging house and sheds, \$700.00.

The total is \$2,200.00.

Q.—Will you look at Exhibit D-165, and state what your opinion would be, from such examination as you can make of that Exhibit, of the nature of the portable mill that was used in that shed?

Mr. Scott: When was that photograph taken?

10 Mr. Ker: I think about January, 1926.

Witness: It is a portable type mill.

BY MR. KER (continuing):

Q.—Can you give us any estimate of the value of a mill of that kind?

A.—I think you could buy another mill like that for around \$1,300.00.

20 Q.—It was a portable mill and it was taken away by the Plaintiff before the flooding, so it is a question whether it could be a fair charge against the Defendant.

A.—Of course, I do not know anything about that part of it.

BY THE COURT:

Q.—Do you think you could buy one for \$1,300.00?

A.—Yes, your Lordship. That is, the machinery.

30 BY MR. KER (continuing):

Q.—What would be the capacity of a mill like that?

A.—I estimate a mill like that would cut 4,000 feet a day of ten hours, or 200 ties. It did not have a tie machine also. It either had to saw lumber, or ties.

Q.—It could not do both?

A.—No.

40 Q.—In lumber, its capacities would be about five hundred thousand feet a year?

A.—Of 150 days, yes.

Q.—Would there be any relation between the value of this site as a mill site and the quantity of standing timber behind available for it?

A.—Yes. It would come under the same category as any other mill. If it had no timber behind it it would have no value as a mill—no value except as scrap.

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Q.—As a man of experience, what would you estimate to be a proper compensation to the Plaintiff for the disruption of that little portable saw mill industry at Mileage 12?

A.—I think for the disturbance of having to remove the mill from that location to another location in the vicinity—and there are plenty of other locations nearby to put a mill—\$1,000.00 would be fair compensation for disturbance and the value of the land and buildings.

10 Q.—Of course, not including the value of the mill itself?

A.—No, because that had been removed.

Q.—And your estimate of land, buildings and so on was \$2,200.00?

A.—That is right.

Q.—And your allowance for compensation would be practically 50 per cent more, or \$1,000.00?

A.—I was figuring more on the quantity of feet of the year's production—half a million feet, at \$2.00 a thousand: \$1,000.00.

20 BY THE COURT:

Q.—Which would bring it up to \$3,200.00?

A.—\$1,000.00 for the disturbance.

Q.—Plus the \$2,200.00 you have already mentioned?

A.—Yes.

Q.—\$3,200.00 altogether?

(And further for the present deponent saith not.)

30 Witness: I would like to correct a statement I made this morning in reference to the lumber that was on hand in the yard when I went there in June.

BY MR. SCOTT:

Q.—June, 1932?

A.—Yes.

BY MR. KER:

40 Q.—As to the lumber that was on hand when you went there in June of this year?

A.—In June of this year. I said there were 700,000 feet, and there are 412,000 feet. I would like to correct that.

Q.—You stated your estimate of the lumber that was there in June, which you mentioned this morning, was 700,000 feet?

A.—Yes. I want to correct it to 412,000 feet.

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Q.—You have, then, seen this piling ground in its condition now?

A.—Yes.

Q.—Supposing there was no filling in done at all, and the portion that is shown red on this plan D-160, was not filled in, what would your opinion be as to the available space for piling lumber, even at that?

A.—The present piling space is not the only location that lumber can be piled at the present piling ground. There is a space at the
10 back of it, but the yard would have to be relocated.

BY THE COURT:

Q.—That would be north of the place?

A.—It would be northeast. It would be further away from the mill.

BY THE COURT:

20 Q.—And on the other side of the road, on the west side of that same piece—it would be east of the road?

A.—Between the 324 and east of the road.

BY MR. KER:

Q.—Between 324 and the road, practically?

A.—Between 324 and the road.

30 Q.—Could you give any idea of what available space there would be, in your opinion, for how much timber?

A.—There would be space there for 1,200,000 feet.

Q.—Without any filling in the red portion?

A.—Leaving the red portion vacant.

Q.—Do you know what insurance rate this mill pays?

A.—I know the published rate of the Canadian Fire Underwriters.

Q.—That is for the sawmill?

A.—That is for the sawmill.

Q.—What is it?

40 A.—It is \$5.10 per year for \$100 value of the mill.

Q.—What is the same Fire Underwriters rate on the lumber apart from the mill?

A.—It is \$3.50 per hundred dollars, with no co-insurance; with 90 per cent co-insurance, the figures are small, \$2.85.

Q.—That is with 90 per cent co-insurance it is \$2.85, and without co-insurance it is \$3.50?

A.—Yes.

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Q.—You personally have a sawmill in your company at the present time?

A.—Yes.

Q.—What is the rate that you pay for your sawmill?

A.—Our sawmill is a steam sawmill, and we pay \$2.70 per \$100.

Q.—And what do you pay for lumber?

A.—Our rate on lumber is 80 cents per \$100.

10 Q.—How do you account for that? What would you suggest as the insurance rate on Mr. Cross' mill, and the very much lower rate on your own?

A.—Our yard is completely installed with hydrants and proper protection, and also our mill and our lumber is 400 feet clearance space from the mill.

Q.—So the further away you get from the mill the rate is better?

A.—The more advantageous.

Q.—That is, with your piling ground?

A.—Yes.

20 Q.—Would the use of the land that you spoke of without any reference to this red portion mean any readjustment of the conditions existing at the present time in the balance of the piling ground that is left?

A.—The piling ground would be relocated, and it would be cleared from the mill in a different manner. The trestle would not be used. The mill would be cleared on the ground by truck or by horse drawn vehicle.

Q.—Could you give any estimate of what the cost of relocating that ground would be, in order to make it available for that 1,200,000 feet?

30 A.—The spur siding would also have to be brought over closer to the new piling space. I am not sure what that would cost, but relocating the ground would cost approximately \$3,000, not including the spur. I have not estimated that.

Q.—That is an engineering job?

A.—Well, I could figure it out, I imagine.

Q.—What would your opinion be, even though no filling and no reclaiming of the piling ground up to the level 324.5 were done? Would the industry, in your opinion, be able to still function as an industry with that piling ground you speak of above the 324.5 level?

40 A.—With the water at 321.5?

Q.—Yes.

A.—Yes.

Q.—That is, with the relocation you speak of?

A.—With the relocation.

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Q.—Would there be sufficient space to pile slabs?

A.—Yes. Slabs do not take very much room. There are some slabs at that location at present, a small quantity.

BY MR. KER:

Q.—I presume the relocation would take care of the space for the slabs as well as the lumber?

A.—I think so.

10

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

Q.—Have you made any calculations as to what area of rock might have to be blasted away to relocate this piling ground as you suggest?

A.—I did not include the area where the rock is. I did not figure on piling it. There is rock in this corner here, but I did not include it.

20 Q.—How large an area were you calculating upon for the 1,200,-
000 feet?

A.—About an acre and a third.

Q.—Which would be

A.—This space between the road and this elevation 324.5.

Q.—It would be this space where the elevations are shown as 333.2, 331.9 up to 337.8, 334.9, etc.?

A.—Yes, excluding the rock ledge that is in here.

Q.—Excluding the rock ledge?

A.—Back of the church.

30 Q.—And extending back how far?

A.—That does not extend over 75 or 80 feet.

Q.—So the space you plan using is that between the 324.5 line and the roadway, excluding about seventy-five feet back from the church property?

A.—And the width of this ledge also likely to be piled on there. It is not a terrible elevation above the other land, the rock that is there. It is about two to three feet higher than the elevation below it, this rock, and it is uneven.

Q.—Would it require to be evened off to pile lumber?

40 A.—If lumber had to be put on it, the sills under the lumber could be adjusted to even up.

Q.—With respect to the rest of the ground, what would the \$3,000 be for? Levelling off?

A.—No, it is fairly level. There is sawdust in that fill, but roads would be put through it and alleys for the lumber, and probably tracked, with a small lorry to carry the lumber. At present the lumber comes out on the trestle. It is piled with the trestle, and the

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trestle would probably be dismantled and the lumber would be brought and put on this space, instead of here.

Q.—It would require to be hauled from the ground level over to the piling ground?

A.—Yes. The insurance rate at that location would be more advantageous than where it is at present.

BY THE COURT:

10 Q.—How would a spur be built up to that point as far as the roadway on the west side?

A.—The elevation between that point and the present spur is not very serious. The spur would be brought nearer to there. Of course, that is an engineering proposition, but I am quite sure it could be done, or the siding alone could be raised.

BY MR. ST. LAURENT:

20 Q.—What is the area of that siding?

A.—One and a third excluding the rock ledge. That is approximate.

Q.—Where did you get this figure of 412,000 feet as being the lumber on hand in June, 1932?

A.—I estimate the piles that were there.

Q.—It is by referring to a note that you noticed you had made a mistake in your statement?

30 A.—Well, there is some available space between where the lumber is piled now, some piled abutments there is no lumber on, and I included the space with the quantity that is there. There is space for 388,000 feet in the same piling ground that there is no lumber on at present.

Q.—And that is piled up to what height.

A.—Some piles are thirty feet high and some are less.

Q.—When you say there is space for 388,000 feet, to what height would that be?

A.—Twenty-five feet.

40 Q.—The other point that was brought up as not having been covered was at Mileage 12. You stated there were several places where the Mileage 12 mill could be put. Did you select any, or is that just a general statement without having any special location in view?

A.—No. I selected a piece.

Q.—Where would it be?

A.—In the same lot that the present part of the property is in the rear of it. It would be on a higher elevation.

Q.—In rear of the present site?

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A.—About five or six hundred feet in rear.

Q.—Five or six hundred feet immediately in rear of the present site?

A.—Yes.

Q.—And what size area would it be possible to get there?

A.—Oh, three to four acres.

Q.—A siding could be put in?

A.—The siding would be below the hill. This is on top of the hill near the highway.

10 Q.—And the siding would be below the hill?

A.—Below the hill.

Q.—Would that require some mechanical instrument in order to get the lumber down to the siding?

A.—The lumber would have to be carried down the hill to the siding, but it would be near the highway or truck shipping.

Q.—It would be carried down the hill, hauled down?

A.—Hauled down.

Q.—That would involve loading it on carts, and hauling it down to the lower level to load it on the cars?

20 A.—Yes, to load it on the cars.

Q.—Under ordinary normal labour conditions, what would that be worth per thousand?

A.—To move it from the mill to the siding?

Q.—Yes.

A.—40 cents a thousand.

Q.—The two handlings and the hauling would be worth about 40 cents a thousand?

30 A.—It would either be piled to dry on top of the hill or it would be piled to dry below the hill, one or the other. It would have to be piled, anyway. Just the difference of hauling it to the railway.

Q.—That, in your opinion, would be worth about 40 cents a thousand?

A.—Forty cents a thousand.

Q.—Have you ever bought or sold any land along the Gatineau in that section?

A.—I took an option on a timber limit on the Gatineau, but I did not buy it.

Q.—Where was this limit?

40 A.—It was in rear of Gracefield, on the Gatineau River, a forty-mile limit.

Q.—How far from Mileage 12 and Farm Point would it be?

A.—About forty-three miles north of there.

Q.—Bordering on the Gatineau River, or back from the Gatineau River?

A.—Not far back; on Thirty-one Mile Lake.

Q.—And how far would that be from the river? Just tell us ap-

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proximately how far from the river it is?

A.—Some of it borders on the river, and some of it is two miles from the river. It is in two blocks. There was also a mill there that I took an option on, too, and I purchased the mill and dismantled it.

Q.—That was Government property under license?

A.—Yes.

Q.—And that is your only experience of buying or selling in that part of the country?

A.—Yes.

10 Q.—You never purchased or sold any lots along the highway and the Gatineau between Hull and Wakefield?

A.—No.

Q.—I understand this photograph D-165 is the one you were looking at this morning in connection with the Mileage 12 mill?

A.—Yes.

Q.—Does that show enough to enable you to determine what kind of machinery was in there?

A.—It shows the end of the carriage, that is, near the end of the building. That is all I can recognize in it.

20 Q.—When you mentioned this price of \$1,300 for the machinery, that would be the price of machinery capable of cutting about 4,000 feet per day?

A.—Yes.

Q.—So that you were going by that in saying that that meant about \$1,300 worth of machinery?

A.—Yes.

Q.—And you do not know whether that was the kind of machinery that was here or not?

30 A.—You could not lodge much more machinery than the carriage in that size of mill, as shown by the photograph.

Q.—And that is what you were going by?

A.—Yes, and the size of the lodging house that the workmen were in, and the number of men that were used.

BY THE COURT:

Q.—You don't know what date that was taken?

A.—No.

40

BY MR. ST. LAURENT:

Q.—What would the machinery of a portable mill capable of handling 300 logs a day be worth?

A.—That would be 9,000 feet. What size would the logs be—small?

Q.—Logs that would run twenty or twenty-five to the thousand?

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A.—That would be 6,000 feet—a few hundred dollars more.

Q.—Twenty-five to the thousand?

A.—It would be 7,500 feet if they averaged twenty-five.

Q.—That would be how much more for the value of the machinery?

A.—It would not be double the value of that machinery.

Q.—Something a little less than double the \$1,300?

A.—The larger saw and speedier carriage.

10 Q.—What did you go by to put a valuation of \$500 on what you said about three acres for the mill site there?

A.—Well, I went by around \$150 an acre for land. I thought it was a fair value—a little over \$150 an acre. It was taken off a piece of farm land.

Q.—But without having any personal knowledge as to prices at which lots sold in that locality?

A.—No, I did not know that.

Q.—Did you value the mill building from what you see on this photograph D-165?

20 A.—Yes.

Q.—That is all you had to go by?

A.—And the site—the size of the site that was there.

Q.—I understand the site was about three acres?

A.—The saw mill was not on three acres. The saw mill is on a piece of land in the three acres.

Q.—Could you see just exactly where the saw mill rested?

A.—The sawdust is there, and some of the frames that was on it.

Q.—How much of the three acres or thereabouts were still above water when you were there?

30 A.—I did not make any special note, but I imagine about half of it.

Q.—About half of what you looked upon as the mill site?

A.—Three acres or approximately. There may have been a little more or little less.

Q.—Did you know that the waters had been raised there between twenty and twenty-five feet?

A.—Yes. I knew the railway had been drowned out, and the highway.

Q.—And the siding?

40 A.—Oh, yes—I did not see the siding.

Q.—Did you take any measurements of this lodging house?

A.—Just eye measurements. I did not measure it with a rule; I just looked at it.

Q.—Were you inside.

A.—No. It has become more or less a wreck. It is not intact.

Q.—It has become more or less of a wreck?

A.—Yes, it is all lobsided.

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Q.—Was it a log or a frame building?

A.—No, it is sheeted with boards.

Q.—A frame sheeted with boards?

A.—Yes.

Q.—Shingled or metal cover?

A.—I could not tell you.

Q.—Appearing according to your judgment to be sufficient to house how many men?

10 A.—Oh, I think eight or ten men would have been comfortable there and no more.

Q.—If this mill was only a 4,000 feet per day mill it would hardly be possible, would it, to keep a team there to haul the stuff to the lower level at 40 cents a thousand; that would be only \$1.60 a day?

20 A.—Well, if he was piling above on the hill, he would only pile when he was sawing, and when he was piling below he could accumulate wood there. He would need a team around the mill to approach his logs. A team would be kept busy at other work. The logs would have to be approached.

Q.—What is your recollection of the distance between the highway and the railway at the present time?

A.—Around 1,100 to 1,200 feet at that location; 400 feet from the railroad to the hill, and about 700 or 800 feet from the hill to the highway.

Q.—Then, your new location would be between the highway and the river?

A.—Between the highway and the present railroad track on top of the hill.

30 Q.—And you would have there about three acres?

A.—More than three acres.

Q.—Would that require the construction of a road to get down to the railway?

A.—There is a road there at present. It is fairly good.

Q.—And a highway, a public road?

A.—No, it is not a public road. There are three or four summer cottages there that they seem to use for motor cars to get down through.

40 Q.—And that, in your opinion, could be used for hauling this lumber down to the railway?

A.—It is down hill, yes.

BY THE COURT:

Q.—Where is that road?

A.—I don't know that it shows on the map.

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(continued)

Re-re-
examination

BY THE COURT:

Q.—It is south of Mileage 12?

A.—It is south of Mileage 12.

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

10 Q.—In answer to a question of my learned friend, you stated that you had certain experience of purchases on the Gatineau, and you referred to a limit which you had had under option. What was the mileage of that limit?

A.—It was forty miles.

Q.—Near Gracefield?

A.—Yes. Gracefield was the shipping station.

Q.—And there was a mill with it?

A.—There was a mill with it.

20 Q.—And what was the amount at which you had the whole business, mill and limits under option?

A.—The limits were for \$10,000 and the mill was for \$5,000. It was a fifty thousand feet mill.

Q.—Fifty thousand feet per day?

A.—Yes.

Q.—It was considerably larger than Mr. Cross Farm Point Mill?

A.—It was a band mill.

Q.—What is a band mill?

30 A.—A circular mill is a round saw, and a band mill is a saw that makes better sawn lumber. It turns on a large wheel. It takes a finer cut in the log and makes better lumber.

Q.—I think you said you had purchased the mill for \$5,000?

A.—Yes, I did.

Q.—Complete?

A.—Yes.

Q.—And you did not take up your option on the limits?

A.—No. I looked over the limits and did not buy the limits.

BY MR. ST. LAURENT:

40 Q.—You purchased the mill and dismantled it?

A.—I dismantled it.

Q.—When was that?

A.—That was in 1919.

(And further deponent saith not.)

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F. T. Cross,
(Recalled)
Examination
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DEPOSITION OF FREEMAN T. CROSS, A WITNESS
RECALLED ON BEHALF OF THE DEFENDANT.

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

FREEMAN T. CROSS,

10

the plaintiff in the present cause, now recalled on behalf of the Defendant, who, being duly sworn, doth depose and say as follows:

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

Q.—Mr. Cross, there were a few items in the statements that were produced by your auditor Mr. Milne which I will be very glad if you could assist us with your knowledge: the first is in the statement for 1920, Exhibit D-144—I notice an item reading: “ Paugan Falls, \$75,000 ”, which appears for the first time, that is, it was not in the statement for the preceding year for 1919. Will you tell us what that represents?

A.—This is 1920?

Q.—1920—you will notice the item, “ Paugan Falls, \$75,000 ”. In the list of the assets you list for the first time an item of Paugan Falls, \$75,000?

A.—As to those figures I don't think I could give you any explanation. There is one thing, since ever I started in business I never had anything to do with figures. I could not go into details as to how figures were placed, or what they were put there for. I could not help you in that way.

Q.—I am simply asking you about that item?

A.—Even that item I would not know it. It might be \$100,000 it might be \$1,000, as far as I would remember about items or figures.

Q.—Surely you can give us some assistance as to what an item as large as \$75,000 referring to Paugan Falls represented. That is all I am asking you?

A.—I could not.

Q.—And you do not know why it appears in the statement for 1920 when it was not there for 1919?

A.—No. I never was around even when these statements were made up.

Q.—Your auditor certified the information was furnished by you?

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A.—At that time each year, he might have asked me out in the yard.

Q.—Now Mr. Cross, I would like to draw your attention that these statements bear your signature?

A.—When they were made up

Q.—And the auditor in his explanation of the statement for the following years, said they were made up on information prepared by you?

A.—At the time.

10 Q.—Surely your memory is not so short as all that. You will notice \$75,000 is the very largest item on that statement, the largest single asset on that statement. Now surely you can tax your memory sufficiently to tell us what that item represented?

A.—No, I would not, because it is not even finished yet, the Paugan Falls. The figures, as far as the Paugan Falls property are concerned was the figures you put down in consideration of one dollar. They might have put it down there for \$100,000.

20 Q.—I am not asking you particularly whether it was \$1 or \$100,000, I am just asking you to tell us what the figure of \$75,000—it happens to be \$75,000—was intended to represent?

A.—I don't know.

Q.—You don't know whether it was property or receivables or the profit you expected to get, or what it was? You can give us no idea at all?

A.—No, I don't know what the figure was put there for, or what it was used for, or where the figure arrived from.

30 Q.—Let us take it step by step. Let us assume you cannot tell us why it was put down at \$75,000 instead of \$80,000 or \$70,000, but you can surely tell us what the figure, whatever it may be, was intended to represent?

A.—Well, it represented—you say Paugan—I used to call the spare land as the Paugan up there, from the winding up of the Paugan, the purchase of the Paugan probably or something like that, and it is not wound up yet.

Q.—Now, Mr. Cross, try and be frank with the Court. That is the largest item on that statement, and surely your memory is not so poor that you cannot at least give us some idea as to what that represented?

40 A.—Well, I have already replied it is the lands of the Paugan, the Paugan transaction right through—well, all I can say is that it remains there yet, those lands.

Q.—Your \$75,000 item does not remain there yet, it has disappeared?

A.—Well, that might quite be. As I say, how it disappeared, I don't know. I cannot answer you because I don't know.

Q.—Well, then, what do you want us to understand about that

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item? Do you want us to understand that it is \$75,000 that became an asset in some way as a result of the Paugan deal?

A.—Well, I might explain it this way: the asset of the Paugan is the lands which remain there yet, and you can put them as I say at a dollar or one hundred thousand dollars. They are used for that purpose. I could not say about figures; I am not going to give evidence on something I don't know, Mr. Montgomery, because I don't know how those figures were closed. I don't know when they disappeared. I don't know how they came there at the time, that is, 1920; that is twelve years ago.

Q.—Well, Mr. Cross, we want to know just one thing, how accurate your memory is. You have been testifying to a whole lot of things of twelve years ago and here is the very largest item of your assets and you profess you cannot tell us whether they were lands, or whether it represented a profit, or what it represented. Now, if your memory is as poor as that

A.—My memory is quite good as to that. I call it the spare land of the Paugan.

20 BY MR. SCOTT:

Q.—It is arising out of the litigation between you.

A.—Well, it is not settled yet. You might say \$100 and it might be \$100,000. I could not say. To make it very clear, I think those lands were under agreement by the Hull Electric, which the Gatineau Power have taken over, and they have not been paid yet by their signature. My signature to the Gatineau Power is the signature on the same land that has been taken and not paid for.

30 BY MR. MONTGOMERY:

Q.—Before you work yourself up into a fury, I would like you to

A.—It is the facts.

Q.—I would like you to be sure that the \$75,000

A.—It is something the Gatineau Power has.

Q.—Will you allow me to finish my question, please? I would like you to be sure that the \$75,000 item has nothing to do with those spare lands. If you will look at the statement for 1921 you will see
40 your \$75,000, which is at that time reduced to \$65,000, opposite Paugan Falls, and you will see, "Low, 1,300 acres at \$15, \$19,500"—I would like to ask you whether that is not the land to which you are now referring as the spare land?

A.—At Low?

Q.—Yes.

A.—I have other properties at Low below Paugan Falls, Stag Creek.

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Q.—In your 1921 statement for the first time appears an item of 1,300 acres of land at \$15, \$19,500, besides other properties there?

A.—That is 13 square miles of timber limits.

Q.—It is not 13 square miles of timber limits. It is 13 hundred acres of land at \$15 which I understand to be the spare lands to which you are referring now. If I am not correct tell me?

A.—It might possibly be, but for the figures or what they were put in there for I don't know.

10 Q.—We won't concern ourselves whether the figure happens to be \$19,500 or what it may be. I am asking you whether those 1,300 acres of land which appear for the first time in the 1921 statement were not the left over lands at Paugan?

A.—No, I do not think so.

Q.—What were they then?

A.—As I said, the other bush property we bought, there is one 600-acre farm. There is another put down at 40. I don't think they were ever put into acres. I would not even know the 1,300 acres you are speaking about.

20 Q.—If you will look at the form, you will see that is listed separately. It is right there in a separate item. Now, my information is (and I think it is reasonable to believe it is correct) that the 1,300 acres is the left over Paugan lands about which you are in litigation now?

A.—I don't know the acreage even yet, what is left over.

Q.—I am not asking you that. I don't know whether 1,300 was the correct figure, but what I am asking you is whether that item, correct or incorrect, did not represent the left over lands?

A.—I could not say whether it did or not.

30 Q.—Then, if it did, obviously the item of \$75,000 which in that same statement of two years later has come down to \$65,000, represented something else than 1,300 acres. Try and tell us what it is, because I am sure your first explanation is incorrect.

A.—If \$75,000 is used in the statement, it is used for the purposes put down there at the time it was put down. If it disappeared, it disappeared for the purpose the same as it went in.

40 Q.—That does not help us very much. You have \$75,000 which has been written down in 1921 to \$65,000, and which is written down in the subsequent statements in reducing amounts until it finally disappears. That obviously was not the left over lands, because you tell us they are still there, they have not been settled for: if they were not the left-over lands tell us what it was?

A.—The left over lands are still there.

Q.—Precisely, they are still there, but the \$75,000 has disappeared?

A.—If the figures disappeared the land did not disappear.

Q.—But your land value remains in the statements?

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A.—Those statements were not made up by me. They came in one year and out another year for the purpose of one dollar or other consideration. I could not say what they are put in now.

Q.—You are not as ignorant as all that. I am asking you again; I am asking in reference to the largest single item in your balance sheet of that year, and I am drawing your attention to the fact that the left over lands apparently appear as a separate item. I am talking about the \$75,000. Now surely you can tell us. Give us some idea.

10 A.—If it represents those lands, the same item is there yet. I have never made away with any of those lands. The figure still remains there or the land remains there. What the figure is used for I cannot say.

Q.—Let us see if we can get rid of this left-over land so you can clear your mind of that. If you care to verify those statements

A.—I cannot verify them, because I don't know about the statements.

20 Q.—Please let me finish my question. If you look at the following statements you will see the left-over lands of 1,300 acres appears year after year; it is still there as an asset, so forget that for a minute and tell us what the \$75,000 represented?

A.—The land that remains there yet probably.

Q.—But surely if the land remains there yet, the valuation has not been written down year by year until it finally disappears. It is something else. Please try and tell us?

30 A.—How the figure disappears—I have not got the drift of your question. It appears here and disappears and the land still remains, the assets still remain now, the asset becomes part of the Gatineau Power Company, still remains for whatever value it may come in such figure, and the figure was never put down in those sheets by me from year to year. The question might be asked, what will I put the spare lands at, and they might be put in for that purpose, as I say, the consideration was a dollar or more.

Q.—Mr. Cross, now please try and help us and do not be suspicious that we are trying to trap you at all, because we are not?

A.—Experts must have made those, but I cannot help you in figures.

Q.—I will try and help you, then.

40 A.—All right.

Q.—To clear up this question of spare lands, you will see, if you will notice in the statement I am showing you, the following year's statement of 1922 and then you have jumped to 1926, because they are the same in each statement; the 1,300 acres of land are still carried as an asset at the same value of \$19,500; I suggest to you that that represents the left-over land at Low at whatever figure you

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choose to put them in—it happens to be \$19,500, but we are not tying them down to that. Now, that is quite clear, is it not.

Mr. Scott: Would you help me, Mr. Montgomery? What do you mean by the left-over land?

Mr. Montgomery: I am using the witness' expression.

10 Mr. Scott: It means nothing to me.

Mr. Montgomery: I think Mr. Cross can help me. As I understand it, Mr. Cross was to get the residue of the purchased land, and he was to get the residue over and above certain elevation.

BY MR. MONTGOMERY:

Q.—That is correct, is it not, Mr. Cross?

A.—Yes.

20 Mr. Scott: When did it become left over?

Mr. Montgomery: I could not tell you.

Witness: That is what I am trying to explain to you. This became your asset.

Mr. Montgomery: The arbitrary figure of \$19,500 appears for these left-over lots. We are not tying you down to that figure.

30 Mr. Scott: When did they become left over?

Mr. Montgomery: I am not really interested in that, Mr. Scott.

Mr. Scott: Mr. Cross does not understand you.

His Lordship: Is there any litigation concerning this left-over land?

40 Mr. Montgomery: There is, in which we are not at all interested in this case. That has to do with Paugan Falls higher up the river.

His Lordship: Does the Gatineau Power Company claim it?

Mr. Scott: Mr. Cross procured certain lands from the Gatineau Power Company in connection with the Paugan development,

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and the Gatineau Power Company were under contract to return those lands to him. They decided to go to a certain extra elevation, and instead of returning them to him they have not done so, and that is what the litigation is over.

Mr. Montgomery: That is not a correct explanation. However, that is another law suit and has nothing to do with this case, and as long as your Lordship does not take Mr. Scott's explanation it does not matter.

10

His Lordship: Has it any bearing on this case?

Mr. Montgomery: The \$19,500 has no bearing.

His Lordship: Then why not leave it out.

Mr. Montgomery: I am asking the witness about something else, about the \$75,000 item.

20

His Lordship: He does not seem to be able to give any reason why it is there or how it is there. He says he does not know.

Mr. Montgomery: His suggestion there was that it represented the left-over lands, and I was pointing out to him there is another item there which apparently represents the left-over lands, namely, the \$75,000 represents something else.

His Lordship: Is that \$75,000 mentioned in this case? Does
30 he know that, if not, then why examine the witness on that?

Mr. Montgomery: Mr. Milne, his auditor, was examined to show that inasmuch as he had not kept books showing his earnings, to show the increase in his surplus between certain periods of seven years, which he divided by seven—these are the statements, and those figures which Mr. Milne produced are audited figures. The auditor's certificate at the bottom says the figures were obtained from Mr. Cross, consequently he could not tell us about them, and Mr. Cross is the only one who can. Now either that was a profit or
40 it was not, and we have to test that out to see whether it was a profit, because this statement is produced for the purpose of seeing what those profits were in those years.

Mr. St. Laurent: Those were produced because we had not anything else. We merely said, all we have got are those papers, you can look at them. You looked at them and we said we would like to have them of record, we are not relying upon them as evidence.

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His Lordship: And you are not claiming anything in that connection?

10 Mr. St. Laurent: We are not claiming anything in that connection at all. We thought, in order to show our good faith we ought to make available everything we had. It is not that we attempted to use this as evidence, but we said this is all we have, you can look at it, and then, my learned friends who had cross-examined, put it into the record.

Mr. Montgomery: Your Lordship may remember the discussion that took place as to whether it could be asked at all about his income tax figures, and your Lordship was of opinion that he could not be asked, then, my learned friends put these in.

Mr. St. Laurent: We did not put them in. We said we would make them available to you.

20 His Lordship: That is filed as D-144?

30 Mr. Montgomery: D-144 and so on. The reason why my learned friend says he does not rest his case on that is, that he has been attempting to make proof from much higher figures than those income tax figures consequently it does not rest on this income tax statement or the statement of his auditor, because he is clearly trying to produce figures above what those statements show. We, on the other hand, put them in because they show very much lower than the figures he is now claiming and our suggestion is that readjusted they show lower still.

His Lordship: Suppose it is struck out of the record. Suppose the Court takes no notice of it, how would that affect the position of the parties?

40 Mr. Montgomery: Those statements are, at least, a partial answer to his claim as to his earnings. They were statements he made up himself which purported to show his earnings which are very much less than they are now.

His Lordship: If you cannot get any explanation from the witness, the Court will not take notice of it at all.

BY MR. MONTGOMERY:

Q.—Let me ask another question, when was your Paugan Falls land deal made? You can tell us that?

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Mr. Scott: That is all in the record.

Mr. Montgomery: If it is, it does not do any harm to tell it over again.

Witness: I saw it only a couple of weeks ago—since the year 1917.

10 BY MR. MONTGOMERY:

Q.—And you cannot give us any further assistance as to that figure?

A.—Nothing about figures. I can give dates and that, but on figures I cannot give you very much information.

Q.—And you cannot tell us if the item of left over lands appears under another item—you cannot tell us what the \$75,000 represented?

20 A.—Not just now. They were put in for a purpose at the time being as a figure.

Q.—Perhaps you could help us with another item which appears for the first time in the 1920 statement, which is, Boarding House at Cascades, \$3,000?

A.—What date was that?

Q.—That is in the 1920 statement. It does not appear in the 1919 statement.

30 A.—They are just the same. Each one of those statements is put in for figures right through from start to finish, and were not made up by me. They were given to me at the time for the purpose they were given for.

Q.—I am not asking you that at all. Let me put it this way. You tell us you can remember dates: when did you acquire the boarding house at Cascades?

A.—The boarding house at Cascades was after the Pagan Falls deal, 1918.

Q.—Did you get it about the same time as you bought Cascades? The boarding house was on the property?

A.—Yes.

Q.—That would be 1916, would it not?

40 A.—I could not just say.

Q.—Anyway, it would be at the same time you bought Cascades?

A.—The deed would show.

Q.—The deed is of record?

A.—Yes.

Q.—Then, one other item in that year, the Quyon Power, \$2,800. Could you tell us when you acquired that?

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A.—It would be before that date.

Q.—You held it prior to 1919?

A.—Yes.

Q.—As to 1921, do you happen to know at Farm Point, what the fifty acres of land which are put down at \$40 an acre, \$2,000, what they were when you acquired them?

A.—They were put down at \$40 an acre.

10 Q.—Never mind that. It might be \$40 or \$80, I am not particular about that. Do you happen to know what fifty acres of land it is, and if so, when you acquired them?

A.—Does it not say here the lot number?

Q.—All it reads is " Fifty acres of land at \$40, \$2,000 " ?

A.—No, I cannot recall those fifty acres.

Q.—It appears in the statement. You apparently still have it?

A.—Those figures and property. . . .

Q.—Don't bother about the properties?

A.—They were virtually bought at so much, what I paid for them for the time being.

20 Q.—Never mind about figures; I am not concerned about that. I just wanted to know whether you can tell us when you acquired it. You still have it. The same item appears in your 1926 statement, fifty acres of land at \$40, \$2,000. I think perhaps I can help you. Can you tell us whether or not those fifty acres are fifty acres you acquired from your father?

A.—No.

Q.—Not knowing what it is, you cannot assist us as to when you acquired it?

A.—I never got fifty acres from my father.

30 Q.—Then, the fifty acres is not that?

A.—No.

Q.—Perhaps you could tell us then what it is? I am not so much interested as to what it is, as when you got it?

A.—I cannot even help you on that. On the real estate end I could not help you, because I did not pay much attention to it. The fifty acres of land I cannot help you on as to where that fifty acres would be, or what it was put down at, whether \$40. . . .

Q.—Never mind the \$40?

40 Mr. Scott: If my friend would show him the deed.

BY MR. MONTGOMERY:

Q.—Perhaps, if you cannot identify those fifty acres, you can tell us about the Cascades. When I refer to Cascades, it is listed under Cascades in your 1921 assets as lots 16-A, 17-B, 15-A, 21-A, 23-B, etc., 600 acres, \$15,000. Do you know when you got those?

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Perhaps I can assist you. This happens to be the deed under Deed of Donation from your father?

A.—Yes, those are the 600 acres.

Q.—So those were, as the deed says, a donation?

A.—Yes.

Q.—While we are on the Cascades, the Cascades water power \$5,000 which is put down. It happens to be put down at \$5,000. In what year did you acquire that? Was it 1916?

A.—Somewhere then, when the Deed was passed.

10 Q.—Before 1919?

A.—Yes.

Q.—The workmen's cottages I see, for 1920; there were twenty-six workmen's cottages which were valued at \$13,000?

His Lordship: Where are those?

Mr. Montgomery: I assume those are the workmen's cottages at Farm Point.

20 BY MR. MONTGOMERY:

Q.—In the 1919 statement, and which appear in the 1921 statement at \$15,600; in other words, there was a write-up of \$100 a cottage; \$2,600 was added?

A.—Those were put in as I stated before.

Q.—You know of no reason for their having gone from \$13,000 to \$15,600?

30 A.—I did not bother with any figures since ever I started in business, and when they were put on they were put on by a man I had for that purpose.

Q.—So the increase of \$2,600 is simply as you describe, for one reason or another \$100 was added to the value of each cottage?

A.—I put on no value to the cottages. It may have been put on by whoever puts down the figures. Perhaps it was taken off, depreciation one year, and left alone the next year.

40 Q.—There is one question I would like to ask you about your 1926 statement which your auditor was not able to answer and which perhaps you will know. It reads: "The Bank also holds notes to the amount of \$27,000 signed by Mr. Cross against which no property is held at this time." Do you recall what those notes were?

A.—Yes, I can help you out on that.

Q.—All right, tell us.

A.—I owed the Bank something like \$180,000 at times and paid them completely off in 1926, and did not owe them a dollar, and I guess then that my assets were not quite enough for what I was borrowing and they took on that mortgage. When I paid them off I

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said, "Well, I want to discharge that"—well, he said, "Now, you will be borrowing again very shortly and you might just as well leave it on and save the expense", so that is the reason the mortgage was still left on.

Q.—It was not the mortgage I was talking about, it was the note?

A.—It was a lien as I understood the Bank put on.

10 Q.—Perhaps we are confusing things again. I am not asking about the mortgage. I did not read the whole paragraph to you. Perhaps I misled you in that way, because I did not think the first part had anything to do with it:

"The Dominion Bank holds a chattel mortgage as collateral security on all property belonging to Mr. Cross."

That is what you are referring to now.

A.—Yes.

Q.—Then it goes on:

20 "The Bank also holds notes to the amount of \$27,000 signed by Mr. Cross against which no property is held at this time."

You have just explained to us what the chattel mortgage was. Would you be good enough to tell us what the notes of \$27,000 were?

30 A.—No, I don't think I can help you out. I did not owe them anything, only the mortgage. They were paid off, and if anything should happen to me, well, that would be against me, I should be discharged—well, he said, "Our books of record will show you have been all cleaned up."

Q.—And they did not give you back your notes?

A.—No, they said it is just a matter of a month or so, in a couple of months I will be borrowing again going to the Bank, to take out timber.

Q.—Your notes then would not be for \$27,000, they would be for whatever your new loan was?

40 A.—Probably that would be the way of doing business with the Bank. I cannot help you out on that. Probably they took a note as well as a mortgage. I could not help you there, but I know, as a matter of fact, I had them paid off, and still they had security and my signature to the amount that is probably shown there.

Q.—I would just like to ask you a question with regard to your evidence given before the Quebec Public Service Commission. You remember being examined in 1927?

A.—Yes.

Q.—I will just ask you whether this is your evidence

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Mr. St. Laurent: How does that arise here? This is the Plaintiff being examined as a witness for the Defendant. If he denies having said something, I submit he could be confronted with evidence made elsewhere, but I do not see how otherwise evidence made elsewhere can be brought into this record.

10 Mr. Montgomery: Why not? Supposing I put it to the party and ask him whether those are his answers. I do not see why that is not perfectly good evidence.

Mr. St. Laurent: I submit my learned friend may put the same questions that were put then, and if he gets different answers he can ask the witness if he did not on another occasion give a different answer and call his attention to the circumstance when he was examined, but I do not think the evidence given in another case can be introduced into this record otherwise.

20 Mr. Montgomery: I could not put the deposition in as a deposition, but I can ask him whether this was his evidence in regard to a certain point in another case. That is a perfectly legitimate question, and he can say if he wants to correct it.

His Lordship: What fact do you want to prove, Mr. Montgomery?

Mr. Montgomery: This is with reference to the piling ground.

30 His Lordship: Ask him the question as far as that fact is concerned, and if he makes a statement that is contrary to what he has already stated in another case you can confront him then with his deposition and ask him if he did not say the contrary in another case.

Mr. St. Laurent: I would submit even that would not make evidence in this case. It might destroy the value of the witness' testimony, but it would not be affirmative evidence.

His Lordship: The evidence would not be made.

40 Mr. St. Laurent: It would not be made. It would destroy the value of the witness' testimony.

BY MR. MONTGOMERY:

Q.—Do you remember being examined as to your piling ground in that case before the Quebec Public Service Commission?

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Witness: When was this evidence taken?

Counsel: On the 9th March, 1927.

A.—I don't know as I could. Probably I might be a little bit out on the evidence given so far back word for word. What is the question? Probably I could come near to it.

Q.—I understand you had a trestle running out from your mills to the piling ground?

10 A.—Yes.

Q.—Can you tell us whether or not that trestle remained at its original length so as to make it available for the whole piling ground, or, if not, when it was shortened.

A.—I can explain that very nicely. I can remember that. That is part of my business. I can explain that very nicely, Mr. Montgomery. I had two trestles right out to the main highway, the C.P.R. track, complete trestles, and they were up; the second trestle I built there and was on the way for the third trestle when the flooding started. They were decaying. They don't last forever. They are
20 wooden trestles all up above ground. I have been there over thirty years, and they don't stand thirty years, but the two were jammed up on the south side of my piling ground and on the north side two loads of clean lumber right up to the mill.

Q.—That is a long explanation. Will you be good enough to answer my question as to whether these trestles were removed or shortened?

A.—Around the year 1924 or 1925, somewhere around there.

Q.—You said in your answer, until the flood came.

A.—They were shortened up some time. A piece would fall down
30 one year. I was never without a trestle. There is a short trestle there as far as that is concerned.

Q.—Please give us one explanation or the other. Was it due to the flooding, as you first suggested, or did it fall down?

A.—The flooding did not rot my trestle.

Q.—Or were your trestles rotted, and not replaced, is that your answer?

A.—They were not replaced at the time being, that is correct. In fact, there are cedars taken out there to renew the trestle. They are piled up at the mill. If you wish to go and see them you can do
40 so. There is no use putting them in the water.

Q.—I will ask you, then, with my learned friend's permission, as to whether or not you were not asked those same questions in 1927, and whether your answer was not as follows? I will read you the last part:

“ Q.—So, since 1919 and 1920 there has not been a trestle to convey this lumber to this so-called piling ground?

*In the
Superior Court*
—
No. 128.
Defendant's
Evidence.
(Supp. Hearing)
F. T. Cross,
(Recalled)
Examination
Nov. 9th, 1932.
(continued)

A.—Only on a small section, shipping out, selling the lumber to avoid taking it out with horses, or renewing my trestle, and last year we had teams on there taking out my slab board, and the lumber as well, outside of my short trestle.”

Witness: That is 1927.

Counsel: In 1920.

10 A.—Well, I must be mistaken in the dates. That is in 1919, I stated that.

Q.—Mr. Cross, I will read your evidence at the top of the page:

“ Q.—Is that your potential piling ground?

A.—No. According as you go out across the track I have used it, and the potential is north at No. 4 on the plan.

Q.—When did you have this wonderful lumber pile you are telling us about?

20 A.—In 1919 and 1920, and the trestle was there in 1913 or so, and it was taken down.

Q.—And it has never been replaced?

A.—And I have been running heavy on ties these last years, because lumber was dull, and we shipped as soon as it is sawed, so, therefore, we did not require the trestles put up in the yard, as we were going into the ties chiefly and shipped them direct as they came from the saw.”

And then we come to the question I asked you before:

30 “ Q.—So, since 1919 and 1920 there has not been a trestle to convey this lumber to this so-called piling ground?

A.—Only a small section, shipping out, selling the lumber to avoid taking it out with horses, or renewing my trestle, and last year we had teams on there taking out my slab board and the lumber as well, outside of my short trestle.”

Do you recall that evidence?

40 A.—Well, now, as I said before, talking right from memory, I said I built my trestle three times since I have been in business. If you speak about 1913, the trestle was replaced again, and to my knowledge the trestle was there, running into 1920 and probably 1921.

Q.—We are getting it back from 1926 to 1925 and to 1921?

A.—We are getting it there—as I said before, it is taken down for repairs and it was put up three times, at least, going on the third time, even.

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Defendant's
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F. T. Cross,
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Q.—Let us say 1921, instead of 1919 and 1920, as you said, in your evidence in 1927 when you were examined, the trestle was not replaced subsequent to that time?

A.—I worked heavier at other mills and probably heavier production of ties.

Q.—I am asking you a perfectly simple question. The trestle was not replaced subsequent to that time?

A.—No, the trestle has not been completely replaced since 1921—in fact, since 1920 to 1921 it has not been completely replaced. It has only been a short trestle I have used since that time.

Q.—And whatever lumber you have piled since that time down there has been drawn with horses?

A.—Yes. I went heavier into ties, as the market called for some years. I went as far as 100,000 ties. Some years I would only have a small contract.

Q.—Do you recall having furnished any information to the Dominion Government as to the capital invested in your Meach Creek plant? Do you know what was the capital invested mentioned in the report?

A.—No, I do not. It was only for a figure. It has no bearing.

Q.—I know from personal experience that most of these figures are obtained by letter from the proprietor of the particular plant by the statistical branch, and I was asking you whether you recall having given the figure which appears in their different reports?

A.—No, I do not.

Q.—Let me help you by drawing your attention to the item. You will notice, “Farm Point Electric Light System”, and there is quite a description of the plant. It is given at page 411 of the Water Resources Paper, No. 55, Central Electric Stations in Canada, issued by the Dominion Water Powers Branch.

The item to which I refer is as follows:

FARM POINT ELECTRIC LIGHT SYSTEM. (Hydro Power Plant No. 2LH₄). Address,—Farm Point, Que. Owner,—F. T. Cross. Capital invested in Plant and Equipment,—\$27,500.

Witness: That is in the electrical end.

Q.—It includes eight miles of wooden pole lines transmitting power from Farm Point to Cascades, Wakefield and North Wakefield at 4,400 volts. Distribution system, fourteen miles of wooden pole lines; primaries, 4,400 volts; secondaries, 110 volts and 550 volts single and 3-phase.

That is a description of the property. I have not read it all.

The turbines are also listed. The description looks fairly familiar to you?

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(continued)

A.—Yes.

Q.—It is more or less a description of the plant? I will read the rest of it to you and perhaps you can locate it from that?

“ Plant. Location—On Meach Creek, in Farm Point, Que.
History—Plant installed in 1912 in connection with the owner's sawmill.”

That is correct, is it not?

10

A.—Yes.

Q.—“ Installation—Plant operates under an average head of seventy-five feet.”

Subject to any little discussion we may have had that would be correct?

A.—Yes.

Q.—“ Water is conveyed from dam to power house through a 30-inch steel conduit 500 feet long.”

That is approximately, is it not?

20

A.—Yes.

Q.—“ Turbines—2 Chas. Barber 20-inch horizontal, 600 r.p.m., 157 h.p. and 140 h.p. respectively.”

One of those is in the sawmill, is it not?

A.—It is not a Barber turbine that is in the sawmill.

Q.—Whether it is a Barber or not, that gives the approximate horsepower of those two turbines:

“ 2 Chas. Barber 20-inch horizontal, 600 r.p.m., 157 h.p. and 140 h.p. respectively.”

30

I suppose one, whether a Barber or not, is in the sawmill and the other is in the Electric Light Plant?

A.—Yes.

“ Generator—1 A.C., 3-phase, 60-cycle, 4,400 volt, 125 k.w.”

A.—297 horsepower.

Q.—Adding the two turbines together?

40 A.—There is something wrong there. There is some horsepower in the giant wheels of the mill.

Q.—That rating of the wheels I take it is 157 and 140, whatever you get out of them?

A.—Yes.

Q.—Do you recall from where that information was obtained?

A.—No, not now. There may have been some man came around the power house fifteen or twenty years ago.

Q.—No, this is in 1929?

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Defendant's
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(continued)

A.—I gave no information in 1929. It must have been from past records.

Q.—You recognize all the information, including value of the equipment, etc., capital invested, as far as the description of the plant goes, and its history, etc. That appears to be correct?

A.—Well, it was not given by me since 1929.

Q.—I draw your attention particularly to capital invested in plant and equipment, \$27,500. Do you recall having given that figure?

10 A.—No, I never kept any figures of my assets, so I don't know how they could get that asset from me.

Q.—I draw your attention to the item in your balance sheet, electric plant and power house, \$25,000, less a certain sum for depreciation. What I am drawing your attention to, is your balance sheet for October 30th, 1926?

A.—Yes. They are put down for the purpose of the balance sheet as I explained before. All those balance sheets are put down for the auditor in making up his balance sheet.

20 Q.—As regards your 1926 balance sheet, D-142, it is suggested I just ask you one more question about it. There is an item in the inventory under water powers, of your assets as at September 30th, 1926, Cascades, \$5,000; is that the same water power for which you are today claiming \$600,000?

A.—Yes, the same as Paugan Falls. I bought for land value and bought the Cascades for land value.

(No cross-examination.)

30 (And further deponent saith not.)

*In the
Superior Court*

No. 129.
Defendant's
Evidence.
(Supp. Hearing)
Michael Boyle,
Examination
Nov. 9th, 1932.

DEPOSITION OF MICHAEL BOYLE, A WITNESS PRO-
DUCED ON BEHALF OF THE DEFENDANT.

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

10

MICHAEL BOYLE,

of the City of Ottawa, lumber superintendent, aged 76 years, a witness produced on behalf of the Defendant, who, being duly sworn, doth depose and say as follows:

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

20

Q.—You are a lumber superintendent by occupation?

A.—Yes.

Q.—How long have you been occupying yourself in the lumber business during your career?

A.—About fifty years—over fifty years.

Q.—Would you tell me some of the lumber firms or industries with which you have been identified during that time?

A.—I worked for my father for about nine years. He had a limit on Eagle River, a tributary of the Gatineau, and a mill at East Templeton.

30

Q.—That is, your father operated this mill at East Templeton with limits on the Eagle River?

A.—Yes.

Q.—That is not far from the Gatineau?

A.—No.

Q.—It is in that district anyway?

A.—Yes.

Q.—And then, after that?

A.—After that I was five years with the Logue estate.

Q.—In the same business?

A.—In the same business.

40

Q.—And then?

A.—And then I joined the Edwards Company in 1903.

Q.—You joined the W. C. Edwards Company in 1903?

A.—Yes. I continued with them.

Q.—That Company was absorbed by the Riordan Lumber Company later?

A.—Yes.

*In the
Superior Court*

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Michael Boyle,
Examination
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(continued)

Q.—And eventually absorbed by the International Paper Company?

A.—It was eventually absorbed by the International Paper Company. I worked for them until 1931.

Q.—And since 1931?

A.—I have been doing a little business in lumber myself.

Q.—Are you familiar with the Gatineau Valley and the wood and timber conditions in the Valley?

A.—Yes.

10 Q.—And have been all your life?

A.—I have worked all my life there.

Q.—I would like to have you give us an idea of what, in your opinion, would be a reasonable price on a foot board measure basis of standing timber on let us say, Government timber limits.

Witness: What kind of timber?

20 Counsel: Hardwood. I am not speaking of pulp wood, now, hardwood.

A.—The Canadian International Paper Company sold several cuts and among them was one to Mr. Cross at from an average of about between \$3 and \$3.50 a thousand standing, plus Government dues. I think Mr. Cross' price was \$3.35.

Q.—They sold to him at \$3.35 per thousand feet standing?

A.—Yes.

Q.—That was during the period about 1926?

A.—No. I think Mr. Cross was in 1929-1930.

30 Q.—Would you consider that price would have prevailed in 1926?

A.—We sold for about the same price in 1926.

Q.—That is to say, whoever purchased, be it Mr. Cross or others, paid to the seller whoever it may be, \$3 to \$3.50. per thousand feet, and then, when that is cut off the purchaser has to pay the Government dues on that wood sold per thousand?

A.—The Government dues?

Q.—How much does that amount to?

A.—For hardwood, of course, the Government dues for pine is \$5 per thousand.

40 Q.—And for hardwood?

A.—For hardwood, ash, basewood and birch, \$3.50 per thousand. It is different for the other different hardwoods.

Q.—And would the hardwoods run around \$3 a thousand?

A.—About \$3.25; spruce, balsam and jack \$3.70.

Q.—How much for hemlock? Does that come in under the \$3.50 rate?

A.—Yes, it comes under the \$3.50 rate.

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Superior Court*

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(continued)

Q.—On limits under license from the Government, taking up the question of what would be the value of standing timber on freehold limits, could you give us an idea of what that would be in 1926 per thousand feet board measure?

A.—It would be worth about the price of standing timber on the limit plus the Government dues.

Q.—That is to say, not having to pay any dues, you just merely value it?

A.—More.

10 Q.—So that, in your opinion, would be \$6.50 a thousand?

A.—Yes, \$6.50 or \$6.75.

Q.—That is standing, of course?

A.—Standing.

Q.—And then, on property which might be in its essence freehold, but on which the purchaser would want to buy the cutting rights from another individual, a freehold holder, how would that work out from the point of view of price?

A.—That would be clear of duties too.

20 Q.—Unless the lessor stipulated for a certain cutting amount on it?

A.—I suppose it would be worth the difference between \$6.75, and it would, of course, depend on what he would have to pay for the cut.

Q.—In other words if a freehold limit was worth \$6.50 and he is using from another man and having to pay him \$5 that would leave him the balance of \$1.50?

A.—No, not if he paid him \$6 it would not?

Q.—If he paid him \$5?

30 A.—Yes.

Q.—Have you examined the lumber plant of Mr. Cross at Farm Point?

A.—Yes, I was up there.

Q.—As an experienced lumber man, I would like to ask you what, if you were the owner of that mill, knowing the water was going to be put up to the level of 321.5—do you know where that line is on the property?

A.—Yes.

40 Q.—I would like to ask you what you would think you would be entitled to get as reasonable, just and fair compensation from the people who were responsible for putting that water up on your property, how would you go about it, if you were putting yourself in Mr. Cross' position, and how would you start to figure it out in your mind as to how you should be compensated?

A.—I suppose it is worth whatever it would cost to put the yard up to above highwater level. I don't know what that cost would be.

*In the
Superior Court*

No. 129.
Defendant's
Evidence.
(Supp. Hearing)
Michael Boyle,
Examination
Nov. 9th, 1932.
(continued)

Q.—You think the first thing should be to restore him?

A.—Well, bring him back to where he was.

Q.—Whatever the cost of that would be, you have not figured out that cost?

A.—No, I don't know what the cost would be.

Q.—Would that, in your opinion, compensate him fully for all the damage he suffered?

A.—I think so.

10 BY THE COURT:

Q.—What would you expect to get if you were in Mr. Cross' position, for the damage that has been suffered by him so far?

A.—It is pretty hard to say. I don't know what it would cost to put the place back into the position again that it was.

BY THE COURT:

20 Q.—Is that your evidence, that you cannot say?

A.—What I would expect to get?

BY THE COURT:

Q.—Yes.

A.—I would get as much as I possibly could.

BY THE COURT:

30 Q.—Talk about a fair and just and equitable compensation?

A.—\$9,000 or \$10,000.

BY THE COURT:

Q.—For what?

A.—To put my piling ground in the same position. I am not an engineer, and cannot say what it would cost, but I would fancy it could be replaced back in shape for that amount.

40 BY THE COURT:

Q.—Just to put it back into the original position?

A.—Into the original position.

BY THE COURT:

Q.—As if there had not been any flood there?

*In the
Superior Court*

No. 129.
Defendant's
Evidence.
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Examination
Nov. 9th, 1932.
(continued)

A.—As if there had not been any flood there.

BY MR. KER:

Q.—You are speaking now about the piling ground?

A.—Yes.

Q.—The industry which would be affected?

A.—The piling ground and the railway spur.

Cross-examination 10

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

Q.—Mr. Boyle, you were for some years in the employ of the
Canadian International Paper Company?

A.—Yes.

Q.—And you retired in 1931?

A.—1931.

Q.—Do they retire old employees with or without pension?

20 A.—Without a pension, I don't know. I was retired without
one.

Q.—And while you were in their employ you saw the Cross
property?

A.—No.

Q.—Since then?

A.—Since then.

Q.—You went back specially to see it?

A.—I visited the Cross property three times.

Q.—When?

30 A.—In March, last May and June.

Q.—March, May and June, 1932?

A.—1932.

Q.—Just out of curiosity, or for the purpose of preparing your-
self to give evidence?

A.—I was asked to go there.

Q.—You were asked to go to make up your opinion as to what
the situation was?

A.—Yes.

40 Q.—Did you, or did you not, figure out how large an area would
have to be filled in to get above the water level?

A.—No, I did not figure out. I walked over it, but I did not
figure out the area.

Q.—Had you seen the property before the water was raised?

A.—Well, I have been passing there for over fifty years.

Q.—Up and down the highway?

A.—Up and down—well, it was not a highway when I first
passed over it. It was far from a highway.

*In the
Superior Court*

No. 129.
Defendant's
Evidence.
(Supp. Hearing)
Michael Boyle,
Cross-examination
Nov. 9th, 1932.
(continued)

Q.—Ever since there has been a highway there?

A.—Yes.

Q.—Were you in that locality when the water was raised in March, 1927?

A.—Yes.

Q.—Did you notice at that time what effect it had on this low land of Mr. Cross'?

A.—No, I did not notice.

10 Q.—At what elevation was the water when you visited the Cross property in March, May and June, 1932?

A.—I cannot exactly say. I was told at the time.

Q.—Was it up to the rails of the spur?

A.—No.

Q.—It was lower than that?

A.—It was lower than that.

Q.—Much lower than that?

A.—Quite a little bit.

Q.—You never saw it up that high?

20 A.—Before?

Q.—You never saw the water on it up to the rails of the spur?

A.—Well, I did before ever there was a power plant built there.

Q.—That would be in the spring floods?

A.—In the spring floods.

Q.—But I mean since the raising of the water by the Company, have you ever seen the water backed up by the Chelsea Dam to a height that would be level with the rails of the spur?

A.—No, I did not.

30 Q.—Have you any knowledge of where the water would go at 321.5?

A.—Well, I was shown.

Q.—By whom were you shown?

A.—It went up to a little further than the end of the trestle.

Q.—You know where Mr. Cross' power house is?

A.—Yes.

Q.—What you were shown, would that be above or below the level of the floor of the power house?

A.—Well, I can hardly say that. I don't know. I did not take any levels there.

40 Q.—You could not say?

A.—No. The trestle was quite a piece from the power house, but I cannot say the distance in height between the floor of the power house and the trestle.

Q.—Who was it showed you where the water would go?

A.—Mr. Woolcombe and Mr. Ralph.

Q.—And you cannot say with respect to the floor of the power house whether it would be above or below that level?

*In the
Superior Court*
No. 129.
Defendant's
Evidence.
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Michael Boyle,
Cross-examination
Nov. 9th, 1932.
(continued)

- A.—I know nothing about the power house.
Q.—Where was this hardwood cut that the Canadian International Paper Company sold Mr. Cross?
A.—On the Picanock River.
Q.—About how many miles would that be from Farm Point?
A.—Quite a long piece from Farm Point, sixty miles.
Q.—Sixty miles further up the Gatineau than Farm Point?
A.—Oh, I would say you can go up fifty miles.
Q.—Fifty miles higher up than Farm Point?
10 A.—Yes.
Q.—Where was it the other cuts were sold at \$3 and \$3.50?
A.—Part of it in Wakefield.
Q.—Where would that be in Wakefield?
A.—It would be a little north of Mr. Cross' property.
Q.—On what side of the river?
A.—On the east side.
Q.—A little north of Farm Point?
A.—North of Farm Point.
20 Q.—We have a plan filed by Mr. Pepler which gives it to the 8th Range of Wakefield inclusively. Would it be anything shown on this plan, or would it be something still further north than the 8th Range?
A.—I guess it is further north. It would be further north.

BY MR. KER:

- Q.—It would be further north than the top of that plan?
A.—Yes. There were two parties who bought timber in Wake-
30 field. One is a man in Chelsea. I don't remember his name.

BY MR. ST. LAURENT:

- Q.—You need not bother about the name.
A.—But we sold to other parties further north than the Mulvi-
hill Road.
Q.—In Wakefield you sold to two parties?
A.—Yes.
Q.—On one lot or several lots?
40 A.—Several lots.
Q.—A large quantity?
A.—It was on the limit.
Q.—Was there a large quantity?
A.—No, it was only—oh, perhaps about half a million feet.
Q.—Half a million feet for both of them?
A.—For both.
Q.—Do you remember when that was?

*In the
Superior Court*
No. 129.
Defendant's
Evidence.
(Supp. Hearing)
Michael Boyle,
Cross-examination
Nov. 9th, 1932.
(continued)

A.—In 1929-1930.

Q.—And that was ash, basswood and birch?

A.—Principally birch and maple. There was some hemlock, too.

Q.—That would be in the \$3.50 stumpage?

A.—Yes, it would be in the \$3.50 stumpage.

Q.—That was the only year while you were with the Canadian International Paper Company that there was hardwood stumpage sold in that vicinity?

A.—No, I think we sold to the same parties previous to that.

10 Q.—How far back?

A.—I think in 1924 or 1925.

Q.—Four or five or six years back?

A.—Yes.

Q.—Do you remember what quantity?

A.—A couple of hundred thousand feet.

Q.—From the same limits?

A.—From the same limits.

Q.—Near the same place?

20 A.—Near the same place.

Q.—And none in between?

A.—Not that I remember of.

Q.—Those limits are still being held by the Company?

A.—Yes.

Q.—Do you know of any sales in that section of the country of timber lands by the acre?

A.—No.

(And further deponent saith not.)

30

40

*In the
Superior Court*

No. 130.

Defendant's
Evidence.

(Supp. Hearing)
James R. Bissett,
Examination
Nov. 10th, 1932.

DEPOSITION OF JAMES R. BISSETT, A WITNESS
PRODUCED ON BEHALF OF THE DEFENDANT.

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

JAMES R. BISSETT,

10 of the City of Ottawa, Ontario, Civil Engineer, aged 44 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. Bissett, would you look at Exhibit D-122, at page 178, in which a certain record is given of the discharge at the Gatineau River in second feet on the 9th May, 1925, and the discharge is given in this publication produced as D-122 as 3,651 cubic feet per second. Will you state what was the actual discharge on that date, and as measured by you personally, so that this may be made accurate and correct?

A.—The actual discharge was 43,651 cubic feet per second.

BY THE COURT:

Q.—Instead of?

30 A.—Instead of 3,651 as given in the book, which is clearly a typographical error.

BY MR. KER:

Q.—That was taken by yourself, by metering in the river?

A.—Yes.

Cross-examination

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

40 Q.—Where was this metering done?

A.—At Alcove.

Q.—And how is that done? It is a certain portion of the stream?

A.—The whole section straight across the stream is taken, divided into sections, and metering was taken at these sections.

Q.—The whole stream is divided into sections. That does not mean that there are physical marks of division places, does it?

*In the
Superior Court*
No. 130.
Defendant's
Evidence.
(Supp. Hearing)
James R. Bissett,
Cross-examination
Nov. 10th, 1932.
(continued)

A.—No. We have a line across the river divided into certain distances, and we measured the depth, then take the velocity of each of those sections.

Q.—Does that metering depth mean you do it by sounding or you need the elevation on the gauge?

A.—We need the elevation on the gauge, and then we sound that.

Q.—And that was done on the 9th May, 1925?

A.—Yes.

10 Q.—Did you frequently have to make metering of the water at that time, or does it just happen that you made it on that day?

A.—We have taken considerable measurements there. We just happened to take a measurement on that day.

Q.—In printing it, apparently the figure 4 which you have added to the 3 was accidentally dropped?

A.—Yes.

(And further deponent saith not.)

20

*In the
Superior Court*
No. 123.
Defendant's
Evidence.
(Supp. Hearing)
Stuart S. Scovil,
(Recalled)
Examination
Nov. 10th, 1932.

DEPOSITION OF STUART S. SCOVIL, A WITNESS
RECALLED ON BEHALF OF THE DEFENDANT.

30 On this tenth day of November, in the year of our Lord one thousand nine hundred and thirty-two, personally came and re-appeared

STUART S. SCOVIL,

a witness already examined, now recalled on behalf of Defendant, who, being duly sworn, doth depose and say as follows:

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

40 Q.—Mr. Scovil, you have already been examined in this case?

A.—Yes.

Q.—You were asked by Mr. St. Laurent, Counsel for Plaintiff, to produce a record of certain discharges on the Gatineau River?

Mr. St. Laurent: Oh, no.

Witness: I was asked to produce discharge measurements at various stages.

*In the
Superior Court*

No. 123.
Defendant's
Evidence.
(Supp. Hearing)
Stuart S. Scovil,
(Recalled)
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(continued)

BY MR. ST. LAURENT:

Q.—To show what actual measurements had been made?

A.—I have them here.

BY MR. KER:

10 Q.—Will you produce what you have, and explain them to Mr. St. Laurent?

A.—I have first of all a discharge curve at the Gatineau River as related to the Alcove gauge, showing discharge measurements from 2,300 second feet to 43,700 second feet.

In addition I have (which I must admit are uncertified) the Department of Public Works records of discharge measurements from 1920 to 1923 inclusive as referred to the Alcove gauge.

In addition to that there are records of the Dominion Water Power Branch as included in Water Resource Paper No. 58.

Q.—That is Exhibit D-122 already filed?

20 A.—It is already filed. I don't know the number of the exhibit.

Q.—Well, it was the exhibit we were examining the last witness upon, D-122?

A.—Yes, wherein there is a correction to be made for the high measurement of May 9th, 1925, instead of 3,651 second feet it should be 43,651 second feet, entirely a typographical error in the printing.

Cross-examination

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

30 Q.—This Exhibit D-122, at page 178, purports to show certain elevations and certain second feet discharges at Alcove for the years 1925, 1926 and 1927?

A.—Quite right.

Q.—You spoke of a discharge curve, and you now show me a sheet which bears date January 10th, 1926; is that a document prepared by you?

A.—It was originally. It was later adopted by the Dominion Water Power Branch as being the best determination of the Alcove discharge.

40 To verify that, there was filed as Exhibit D-77 a certified copy of the discharge rating of the Gatineau River at Alcove by the Department of the Interior, which is in absolute agreement with that curve.

Q.—You understand these things a good deal better than we do. Can you tell me just what period the D-77 exhibit would refer to? I do not see the date.

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A.—That would refer to natural conditions entirely at Alcove before Chelsea Pond was raised.

Q.—Here I do not see any date on this. Is there anything on it which would enable us to relate it to a special date?

A.—It would relate to any elevation at Alcove previous to the raising of the Chelsea Pond.

Q.—When, it does not purport to be a record of observations. It is a record of calculations?

10 A.—It is based on observations. Here are the observations, if I might explain. You asked me the other day why frequent measurements were not taken. I stated that with a permanent rock control which fixes the relation under natural conditions as between the elevation of the water surface and the discharge, no measurements are taken of the discharge to establish that relationship; then, they do not have to be repeated each year.

Mr. St. Laurent: Are you going to produce that, Mr. Ker?

20 Mr. Ker: You asked for it. I don't mind producing it.

30 Witness: These points, my Lord, on the line show measurement of discharge where at the same time the water elevation is taken. There is a definite relation throughout; for any given elevation of Alcove, this is the water elevation at Alcove, 324, the figures on the left. We have discharge measurements showing plotted on this diagram. Similarly, at any other elevation. There is a rigid rock control below Alcove, and with any given flow in the river there is a definite water level for it. This more or less proves itself in the relationship. It shows that there is that definite relationship. It is recognized. It is the only basis of deriving stream flow.

Mr. St. Laurent: Did I understand you to say, Mr. Ker, you were filing this.

Mr. Ker: I have not the least objection to filing it. It was a verification which you asked of Mr. Scovil's work. You have examined it, and I do not in the least mind producing it as an exhibit.

40 Mr. St. Laurent: I have not examined, but if you produce it I will put some questions to Mr. Scovil.

BY MR. KER:

Q.—Will you produce it as Exhibit D-180?

A.—Yes.

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BY MR. ST. LAURENT:

- Q.—I understand on this Exhibit D-180 the little circles are supposed to represent observations?
- A.—Circles, triangles and squares are actual discharge measurements.
- Q.—And they are not related to any specific date?
- A.—I have here the Department of Public Works measurements of discharge from 1920 to 1923.
- 10 Q.—I am talking about D-180. On D-180, these circles, squares and triangles were set down opposite the appropriate level without any reference to the date of the observation?
- A.—Without any reference to the date of the observation, but the date of the observation is given in the measurements sent to the Department of Public Works with the level of the corresponding discharge as in document Water Resource Paper No. 58, of the Water Power Department.
- Q.—Some of these circles, squares and triangles represent the information page 178 of D-122?
- 20 A.—Yes.
- Q.—And others represent information you got from other sources in the Department of Public Works.
- A.—The Department of Public Works.
- Q.—And you put those down opposite the corresponding level of the day on which they were taken?
- A.—Quite right.
- Q.—The solid line ascending from left to right on D-180 is to direct the average between these points?
- 30 A.—Yes, that is correct.
- Q.—How does it happen if there is this definite relation that in this square where the ascending line crosses the 319 to 320—these triangles are considerably distant?
- A.—In certain cases the work may not have been as accurate as one would wish for.
- Q.—That is, the work either of metering or of determining the elevation may not have been as accurate as one would wish for?
- A.—Possibly the metering.
- Q.—And that same explanation would apply to whether there is a variation from the line?
- 40 A.—Quite so, that is proper practice though, in the determination of a discharge.
- Q.—It is the best that can be done?
- A.—It is the best that can be got.
- Q.—And, of course, in practice this is not done for the purpose of exhibiting evidence in Court?
- A.—Never.

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Q.—It is done for the purpose of getting information for developing purposes or control purposes?

A.—The best information possible for development throughout the country.

(And further deponent saith not.)

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10 DEPOSITION OF EDGAR BEDARD, A WITNESS PRODUCED ON BEHALF OF THE DEFENDANT

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

EDGAR BEDARD,

20 of the city of Hull, Quebec, assistant Commissioner for the city of Hull, aged 51 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. Bedard, you are the Chief Assessor of the city of Hull?

A.—I am.

30 Q.—Have you acted in that capacity for some time?

A.—For eight years.

Q.—Consequently, you have had a considerable experience in the valuation of properties in that locality?

A.—I have.

Q.—You are not in anyway connected with the Company Defendant?

A.—No.

Q.—Have you had occasion to examine the properties of Mr. Freeman T. Cross, the Plaintiff in this case, at Farm Point?

40 A.—I have.

Q.—Will you refer to the plan D-160, and state if you have examined the property contained in parcel A of that plan, leaving out for the moment the portion coloured in red, but including all of that parcel up to the 324.5 level?

A.—I have.

Q.—You have made a written estimate of these valuations?

A.—I have.

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Q.—Together with the acreage involved?

A.—I have.

Q.—As taken from this plan?

A.—As taken from that plan.

Q.—Will you produce this as D-181?

A.—Yes. I may say there has been a little clerical error on that table, and I am getting a new one made.

Q.—But it is right as it stands?

A.—I have corrected that one.

10 Q.—Taking the parcel A on plan D-160, you have estimated separately the acreage and values of the land below the elevation 314, the land between 314 and 316, between 316 and 318, between 318 and 321.5 and between 321.5 and 324.5?

A.—I have.

Q.—And you have given those varying valuations per acre?

A.—Per acre.

Q.—What is your total estimate of the entire parcel A and the value, leaving out this red, piling ground?

A.—\$1,977.25.

20 Q.—That is value as at what date?

A.—As it was before any water was over.

Q.—At that time?

A.—At that time.

Q.—What do you consider the present value of the same property with the water over it up to 324.5?

A.—\$69. That is all that is left, being covered with water.

Q.—So the damageable amount of parcel A with land other than piling ground is, in your opinion, \$1,908.25?

A.—Exactly.

30 Q.—The \$69 being the salvage value of land which may not be flooded, but would be affected?

A.—It may not be flooded. That is what it is. That is at 321.5 and 324.5.

Q.—Turning to parcel B, you have given, tabulated, the acreages between the various levels to which I referred, and have given various values per acre for these levels. Will you state what you find as the value before the flooding and the salvage value, and the damage?

40 A.—The original value was \$875.65. The present value is \$147, and the damage by so doing is \$665.15.

Q.—I see there are 5.30 acres involved in that parcel?

A.—Involved in parcel B.

Q.—Coming, then, to parcel C, that is, a very small piece of land, just a little corner coloured in green. Parcel C in your report, between the levels 321.5 and 324.5, has an area of .050 acres?

A.—Right.

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Q.—Which I observed you valued at the original price per acre of \$400?

A.—\$400 per acre.

Q.—What is the actual value before the flooding of this .05 acres at that rate?

A.—\$20.

Q.—And what is the salvage on it?

A.—\$7.50.

10 Q.—And the damageable difference?

A.—\$12.50.

Q.—Will you take parcel D. The acreage in parcel D is 3.6 acres?

Q.—Yes.

BY THE COURT:

Q.—Is that line inside the green?

20 Mr. Ker: That is the line inside the green.

BY MR. KER:

Q.—How many acres have you in that parcel D?

A.—3.64 acres.

Q.—And the previous value?

A.—\$1,059.50.

Q.—The salvage?

A.—\$175.

30 Q.—The damageable difference?

A.—\$884.50.

Q.—We then go to parcel E-1, which is a small parcel lying immediately below parcel B, between the road and the river; what is the area of that?

A.—It is 0.92 acres.

Q.—And the original value?

A.—\$138.

Q.—There is no salvage.

A.—No salvage at that point.

40 Q.—The damage is, therefore, \$138?

A.—\$138.

Q.—Will you take parcel E-2, that is, the little parcel between the road and the river lying generally below parcel D; what is the acreage involved in that parcel?

A.—1.37 acres.

Q.—And the previous value?

A.—\$596—no salvage.

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- Q.—Just summing that up, you have a total area of all the parcels of how much?
A.—28.67 acres.
Q.—Having a previous value of?
A.—\$4,666.40.
Q.—Having a salvage or present value of?
A.—Of \$398.50.
Q.—And having a difference representing the damage caused of?
A.—\$4,267.90.
- 10 Q.—Evidence has been made by the Defendant, by the witness Farley, who prepared this plan, that these water elevations to 324.5, that is, three feet above the water as regulated, or as provided in the Act, that it will affect certain groups of buildings, group No. 5, group No. 6, group No. 9, group 10 and group 30. Have you examined those buildings?
A.—I have.
Q.—Would you, then, take first of all group 5 buildings at the top of parcel A within the green line, a square with the figure 5 on it; what sort of buildings are included in group 5? Would you give me an idea of what kind of building construction that is?
20 A.—No. 5 is a single frame dwelling with an extension on that building, and there is also a shed, a stable, a pig house, an ice house and out house.
Q.—What sort of construction is it? What is the general character of them as buildings?
A.—A very commonly built building. It is not built with the finest material. Of course, it is made mostly for the working class. According to my estimation of it, it is what we call the lowest class of building.
- 30 Q.—Of course, it is wood?
A.—It is wood.
Q.—What value did you give to that group, including the buildings? The original value, I am speaking of?
A.—\$1,321.26 as the original value.
Q.—What was the value, in your opinion, in 1926?
A.—\$924.88.
Q.—In other words, your original value was a replacement value?
40 A.—What it would cost to build it new.
Q.—And it is depreciated, in your opinion, in 1926 to \$924.88?
A.—That is it.
Q.—And that, I take it, is the amount of the damage that you set for that building?
A.—That is what it is.
Q.—Would you refer to group No. 6?
A.—6-A is a shed and stable.

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Q.—But they are all included under the group 6?

A.—Yes, in this exhibit.

Q.—The group includes the A's and everything else?

Q.—Yes.

Q.—What sort of building is that?

A.—Like the other one, about the same kind of building as group 5.

Q.—It is a single dwelling house?

10 A.—It is a single frame house with an extension on it, and there is a shed and stable and little out house.

Q.—And what did you assess as the original replacement value of that group?

A.—\$1,295.12.

Q.—And as the depreciated value in 1926?

A.—\$906.58.

Q.—Which sum represents the damage?

A.—The damage, because the house is worthless today.

20 Q.—Would you look at group 9 which is again to the right of group 6—I think No. 10 intervenes, but No. 9 is here first? Will you tell us what sort of construction that is?

A.—It is a single frame building, mostly like the others with an extension on it, a verandah, shed and stable, and an out house.

Q.—What sort of things are these stables you speak of?

A.—They are not of very great value, especially when I examined them, they were mostly in ruins.

Q.—What did you give, in your opinion, as the original replacement value of group No. 9?

A.—\$1,027.96.

30 Q.—And the value in 1926?

A.—\$719.57.

Q.—Which was the amount of the damage?

A.—Which was the amount of the damage.

Q.—Would you refer to the group 10 which is in the same locality again and indicate what kind of place that is? What was the nature of that construction?

A.—It is a single frame dwelling with an extension verandah. There was an open shed and an out house. I may say they are a little bit better finished in that house. There is plaster in that house.

40 Q.—At what did you assess the original value of that group?

A.—\$1,623.86.

Q.—And the value in 1926?

A.—\$1,136.70.

Q.—The last of these houses is group No. 30?

A.—That is right on the road.

Mr. Ker: It is in parcel B, my Lord.

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BY MR. KER:

Q.—What is the nature of group 30?

A.—It is a double frame dwelling with an extension on it, a verandah, a shed and a double out house, because it is a double frame building.

Q.—These are all wood constructions?

A.—Yes, of wood construction.

10 Q.—And what do you consider the replacement or original value of that?

A.—\$1,941.48.

Q.—And the value in 1926?

A.—\$1,359.04.

Q.—That is the damage?

A.—That is the damage.

Q.—What, therefore, is the total of the damage of all these houses, because they are a total damage, I understand?

A.—\$5,046.77.

20 BY THE COURT:

Q.—That is the total damage?

A.—The total for the damage.

BY MR. KER:

Q.—That is for the houses?

A.—That is for the houses.

30 Q.—What would, therefore, your total of land and houses be?

A.—\$9,314.67.

Q.—That is, total damage to land and buildings?

A.—To land and buildings.

Q.—That does not refer in any way to the piling ground?

A.—No, that is exclusive.

Q.—Exclusive of the piling ground marked in red on the plan D-162?

A.—Yes.

40 Mr. Ker: Again, my Lord, we have alleged that we should not be charged with all the rest of these forty buildings because they are in no way affected. The damage is too remote as against us, but under reserve of that I would like to ask Mr. Bedard whether he has made a general estimate of the balance of the workmen's houses there, and perhaps he may give us a detail of what he considers them to be worth apart from the ones he has mentioned.

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Witness: Do you want the original value, or just the present value?

BY MR. KER:

Q.—You might give the value that they had in 1926, or even, I suppose now, because we have no concern with them?

10 A.—This amount I am just going to mention is already comprised in the ones I have been examined on.

Q.—It does include those?

A.—Yes, it includes those. This total I have in this report is \$35,681.39 value as at 1926.

Q.—That is for how many groups?

A.—Thirty-one groups of buildings.

Q.—Which include the value you have just given in your previous testimony. It includes those five groups?

A.—Yes, those five groups.

20 BY THE COURT:

Q.—Do you say \$35,000?

A.—\$35,681.39.

BY MR. KER:

Q.—The only groups that are actually affected by an elevation of 324.5 in No. 30 are the ones of which you have given your previous estimate?

30 A.—Those five groups.

Q.—Would you just give me quickly the particulars of all the groups that are included in your \$35,000 estimate you have just given?

A.—1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 21, 22, 23, 24, 25, 27, 28, 30, 31, 34, 36, 37 and 40.

Q.—Your experience in the City of Hull—has that included experience in the value of all classes of property and land?

A.—According to my experience I have done so already, because there is all kinds that we may find at Farm Point in the City of Hull.

40 Cross-examination

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

Q.—Mr. Bedard, for the purposes of assessing values in the City of Hull, do you keep a record of the sales?

A.—No, I do not keep a record.

Q.—What is it that you go by? Is it your good judgment?

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A.—By my judgment and what I find from the sales that have been made, but I do not keep a record.

Q.—When you hear incidentally of a sale, you mentally compare it with your opinion?

A.—That is the extent. I get a report of some sales from the Registry Office. This I have indexed and I have it for reference if I want to look at it.

10 Q.—That is not really what you go by. You go by your own opinion of what a thing should be worth?

A.—That is right.

Q.—I suppose it sometimes happens that sales are made at prices which you think are excessive?

A.—Excessive, and sometimes too low.

Q.—But here you made these valuations from your own good judgment, on what, in your opinion, it should be worth?

A.—That is what I did.

20 Q.—With respect to the land values, and follow the order in Exhibit D-181, first of all, there is parcel A. In parcel A you have a certain portion below elevation 314?

A.—I have.

Q.—That would be the immediate banks of Meach Creek?

A.—Yes.

Q.—You put that in at \$50 an acre?

A.—Yes, \$50 an acre.

Q.—What could it be used for?

A.—I do not think it could be used for much, unless they want to restore it. There is a certain value as it is, but to make it usable for other things they would have to restore it.

30 Q.—Of course, we are talking about the values prior to the raising of the water of the Gatineau?

A.—Prior to the raising of the water of the Gatineau.

Q.—At that time you value it at \$50 an acre?

A.—That is what I did.

Q.—But what could it be used for? Could any revenue be derived from it?

A.—There might be a little revenue according to the price I put on there.

Q.—What possible revenue could there be?

40 A.—I have not made any possible estimate of what the revenue could be made on that. I only thought the price of the land which is submerged a considerable time in the year would not be worth any more than that.

Q.—I am not talking about it being worth more, but I am talking about it being worth even that much.

A.—I may just explain how I arrive at my conclusion to say it was worth \$50. You are asking me how I arrived at that, so that

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is what I am trying to explain. I have arrived at that conclusion, saying that that land where it is situated, that the value of that land is only worth \$50 for any revenue that may be derived from it, for any use it may be taken for.

Q.—What possible revenue could be derived from it?

A.—I don't think they could use it for much.

Q.—You do not think they could use it for anything?

A.—Not that portion there.

10 Q.—Did you put \$50 because you felt you had to put something, and that was small enough?

A.—No. I thought there was still a salvage there, although it was in a bad position, that there still was a certain value attached to it, I estimated it at \$50.

Q.—And if it was in Hull the owner would have to pay taxes on \$50?

A.—He would.

Q.—Whether he got anything from it or not?

A.—Whether he got anything from it or not.

20 Q.—We will now pass from the 314 and 316; that is a rather narrow strip bordering the 314 contour. What could that be used for?

A.—Just the same as the other one, as I said, for the other parcel, only it has a better chance because it is not submerged so much during the year. It has a higher elevation.

BY MR. KER:

Q.—You are speaking now of natural conditions?

30 A.—Natural conditions before 1926.

BY MR. ST. LAURENT:

Q.—The portion between 316 and 318, at \$150 an acre, what is that based on?

A.—On the same provision again, as the elevation of water.

Q.—Is that because you think it is about three times as valuable as the lowest portion?

40 A.—Because if it was wanted to be used for anything, the person owning it could use it longer in the year and would derive more revenue from it, because it is better land.

Q.—What use can it be put to, even the portion between 316 and 318, what could it be used for?

A.—It all depends on the man who owns it and what he wants to use it for. You want me to say what it could be used for at the present time? I have not given it that thought.

Q.—But when you put a value of \$150 an acre on it, you must

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envisage it as land susceptible of a certain use. I understand you value some as farm buildings?

A.—Yes.

Q.—But valuator sometimes value land as farm land?

A.—Yes.

Q.—Some other land as building lots?

A.—Yes. It may be used for pasture.

10 Q.—And is it looking at it as land that possibly could be used as pasture, you value it at \$150 an acre?

A.—Pasture, yes.

Q.—What do you consider the strip 318 to 321.5? In what class? Is it building lot land or what?

A.—I consider it as building lot land because there are buildings on it.

Q.—To 321.5 you consider as building lots?

A.—Yes.

Q.—And as building lots you would value it at \$200 an acre?

A.—At \$200 an acre.

20 Q.—I suppose there would be about eight lots in that acre?

A.—In that acre? Well, what size lots, 66 x 99?

Q.—Ordinary lots?

A.—Ordinary lots are 66 x 99. There are six and a half in the acre.

Q.—So that would make those building lots worth about \$60 a piece?

A.—A lot.

Q.—In your opinion, is that a fair price for a building lot there?

A.—At that place, yes.

30 Q.—That would be \$30 for the building?

A.—\$30.

Q.—In your opinion, that would be a fair price for building lots there?

A.—That is what I think.

Q.—And if anyone paid a couple of hundred dollars

A.—I think he would be paying too much.

Q.—And it would not affect your opinion as to what the value was?

A.—Not a bit.

40 Q.—Well, then, the portion 321.5 to 324.5, that is \$300 an acre, is that of the same class as the other building lots?

A.—It is building lots. It is better land, more elevated.

Q.—And lots might be worth as much as \$45 there?

A.—Yes, they might be worth \$50.

Q.—Even \$50?

A.—Yes.

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Q.—What is the difference between the value of the land 321.5 in parcel A and the land above 321.5 in parcel C?

A.—Parcel C is in a better location on the property than parcel A. It is on the main road. It is closer to the main road. That is why I am giving it more value.

Q.—What could that parcel C be used for? Is it valued as a building lot?

A.—Yes.

10 Q.—Is there enough of it there to be of value as a building lot?

A.—I am taking that part there as parcel C, not only the portion coloured green. I am giving that value there because I would say a portion of parcel C to a certain depth would be worth \$400, having the influence of the road and being close to the main highway.

BY THE COURT:

Q.—That is, that part marked in green?

A.—In green.

20 BY THE COURT:

Q.—What is the length of that part?

A.—I have not the length, only it is .05 of an acre.

BY MR. ST. LAURENT:

Q.—One-twentieth of an acre?

A.—One-twentieth of an acre.

30 BY THE COURT:

Q.—You have no idea at all?

A.—No.

BY THE COURT:

Q.—What would be the depth of that road?

A.—I am sorry, I have not got that.

40 BY MR. KER:

Q.—It is about 100 feet to the inch?

A.—About 100 feet long by 15 or 20 feet deep. It is 110 feet long by 22 feet deep. That is not all of the length because it comes to nothing on the west part of the lot. It narrows down. This is at the widest part.

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BY MR. ST. LAURENT:

Q.—With respect to parcel D, this portion which is above the word “ Parcel D ” is of the 314 to 315 elevation, is it not?

A.—Yes.

Q.—And that comes around to the highway, and you have inside that where the word, “ Parcel D ” is, something which is between the 316 and the 318 elevation?

A.—I have.

10 Q.—That which is between the 316 and the 318 elevation does not touch the highway?

A.—It does not touch the highway.

Q.—It merely touches the Canadian Pacific Railway?

A.—It does, that is a certain portion of it.

Q.—Nevertheless, in your opinion, it is more valuable than the 314 to 316 which touches on the highway?

A.—Yes, for the same reason that I have given before of parcel A, for the different prices.

20 Q.—And that is considering it as pasture land? That is not even a pasture land?

A.—This part here?

Q.—Yes.

A.—This could be used for a building lot on the highway. There is already one building there.

Q.—So that as a building lot it would be worth about \$7 a lot?

A.—Well, as I said, if there was no water it could be used there, but on account of the water there is only a certain part of parcel B that could be used as a building lot.

30 Q.—And this building which you have just pointed out to me is below the 316 elevation?

A.—Yes.

Q.—And it was put there before the raising of the water?

A.—Yes.

Q.—So that that induces you to look upon the whole of it as possibly a building lot, does it?

40 A.—After thinking it over I say the person may have put the building there, but he never thought the water was going to come up. I suppose there has been evidence given there is water there at certain times of the year at that elevation, but the water must have been affecting those houses.

Mr. Ker: That building is about 321, I am told, Mr. St. Laurent.

Mr. St. Laurent: That building is down below the 316 eleva-

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(continued)

tion. The floor of the house is 321. The ground is below the 316 elevation.

BY MR. ST. LAURENT:

Q.—Here it is, “ Floor 321.79 ”?

A.—Yes.

10 Q.—If we go to E-2, that is a strip of a width, I suppose, varying from 15 or 20 to about 50 feet?

A.—Yes.

Q.—Between the Gatineau Road and the Gatineau River?

A.—The widest part there is 60 feet.

Q.—You put three different values on that?

A.—I did.

Q.—Some of it would be worth as much as \$600 an acre?

A.—Well, some of it would.

Q.—For what purposes?

A.—For summer cottages.

20 Q.—That would be as much as \$90 a lot?

A.—\$90 or \$95.

Q.—And the rest of it, that which is below the elevation 321.5?

A.—It is on account of what I said, on account of the water raising.

Q.—What could it be valuable for? Building also?

A.—It could also be built on, on posts, if they raise it, but there is a certain value there still.

Q.—And the portion between 316 and 318 could also be used for building purposes?

30 A.—It could be used for building purposes.

Q.—Is it possible as a building lot you valued it at \$150 an acre?

A.—As the situation is, with the value given to it on account of the obstacles, on account of the damage, that could be taken from a person building a house on that,—what he would have to do to put his building on there, so as to get away from the water damage. Of course, if he had to put it on posts he could not use it in the winter. He could only use it for a couple of months in the summer, which lessens the price of the land, when you have to do those things.

Q.—Then, building lots there might be worth about \$50?

40 A.—Yes.

Q.—And it is as possible building lots that you valued them at these prices?

A.—Well, it is.

Q.—Without any reference to any sale whatsoever, but just forming your opinion?

A.—Forming my own opinion.

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Q.—With respect to the buildings of which you gave a total of \$35,631.39, you did not file that as an exhibit?

A.—I did not.

Q.—You said in that there was a group that you called group

11. What does that consist of?

A.—The power house.

Q.—What is your valuation for that?

A.—Original value \$1,065 valued at 1926 at \$745.50.

10 Q.—Is that like the others, a wooden building?

A.—No, this is a cement concrete building.

Q.—How do you arrive at the \$1,065?

A.—I arrive at that price by seeing how many yards of concrete there were in the building.

Q.—Is that the method you used for valuing the other buildings as well?

A.—Cubic feet for the frame dwelling.

Q.—You used the cubicle content for the frame dwelling?

A.—Yes.

20 Q.—In order to get at that more sensibly, I suppose we have to split it up. You gave the particulars for the whole of the group 30 and, of course, there are three buildings there, so it is not the same. What portion of the \$1,941.48 in group 30 goes to the house?

A.—That is the original?

Q.—Yes.

A.—\$1,896.48.

Q.—And then, for the shed?

A.—There is a shed at \$25.

Q.—That is the original, the replacement value?

30 A.—Yes.

Q.—And then, the double out house?

A.—\$5.

Q.—That is replacement value?

A.—Yes, and then there is a verandah of \$15.

Q.—How do you get at the \$1,896.48 for the frame dwelling?

A.—By cubing the building and multiplying by 9 cents a cubic foot.

Q.—That is the replacement value?

A.—The replacement value.

40 Q.—And then, how much do you take off for depreciation?

A.—Thirty per cent.

Q.—Is that uniform throughout the whole thing?

A.—Yes, I took that as a basis.

Q.—You took thirty per cent?

A.—Thirty per cent.

Q.—And used the same over the whole thing?

A.—Yes.

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Q.—Did you use that over the power house too?

A.—Over the power house too.

Q.—You did not feel there was less depreciation on the concrete building than on the wooden buildings?

10 A.—I may say this, that this being for 1926, which is six years ago, I felt I was justified in using thirty per cent as a basis for the whole of them. Some of them might have gone down to forty or fifty per cent. Others might have gone to twenty per cent. In making it for six years ago I considered in my opinion that thirty per cent was a fair and equitable way of arriving at those present values, that is, at 1926.

Q.—Of course, you did not examine those buildings in 1926?

A.—I did not.

Q.—When did you first examine them?

A.—I examined those buildings in the month of June.

Q.—June, 1932?

A.—June, 1932.

20 Q.—What, in your opinion, would be the amount of depreciation to the power house when you saw it in June, 1932?

A.—It would be about twenty-five per cent.

Q.—From the replacement value in June, 1932?

A.—Yes.

Q.—Still, in order to get the valuation of those years before, you took off thirty per cent?

A.—Yes.

Q.—So that it had improved between 1926 and 1932?

30 A.—It looks that way. As I explained before, I said some might have got less in 1926, and that one might have only got about fifteen per cent, but as I said, some were forty per cent and fifty per cent. It was only to arrive at a figure for all of them.

Q.—From your examination, when did you consider this power house as having been built? How old a building did you take it to be?

A.—Fifteen years.

Q.—And, in your opinion, there would be twenty-five per cent depreciation off a concrete building after fifteen years?

A.—Yes.

Q.—And how much, in your opinion, would there be after nine years on that kind of concrete building?

40 A.—Twenty per cent.

Q.—When you said you arrived at it by the cubic measurements of the concrete in the walls, etc. . . .

A.—That is the cubic yards in the concrete and in the walls and roof and floors.

Q.—What height did you use for arriving at your cubical content of this frame building, group 30?

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A.—Twenty-four feet for the building itself and ten feet for the extension.

Q.—What price per cubic foot did you use on group 5?

A.—Nine cents for the house.

Q.—And group 6?

A.—The same, nine cents.

Q.—Group 9?

A.—Nine cents.

Q.—Group 10?

10 A.—Nine cents.

Q.—You used the same?

A.—The same, as I believe them to be the same quality of building.

Q.—Still, when you were giving your evidence, you said one was a little better than the other, because it was finished with plaster inside?

A.—Well, this one, I may add, I have allowed \$257.50 for the plaster in house, group No. 10.

20 Q.—How do you arrive at \$257.50?

A.—By the size of the building, and taking it by the yardage of plaster.

Q.—So that you added to the price you otherwise would have obtained, \$257.50?

A.—My first figure was \$257.50 less than the one I have just given in my evidence.

Q.—As to these verandahs, sheds and outhouses, did you measure those, or did you just put down a figure, which, in your opinion, was enough?

30 A.—I had the measurement of these.

Q.—You had the measurement from the exhibit that has already been filed in the case?

A.—That is, the exhibit from whom?

Q.—Did you have a copy of the document which has been filed as P-96?

A.—Yes, it seems to be similar.

Q.—That was not something you had made up yourself? You had that before you went to make the examination?

A.—I used that to verify.

40 Q.—Those who had asked you to go and make the examination gave you that list of measurements?

A.—Yes.

Q.—And you had that with you when you went to make your examination?

A.—Yes, and I verified them.

Q.—And for these sheds and outhouses and verandahs, did you make up your price by measurement or just by lump sum?

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- A.—By measurement also of the contents.
Q.—Take group 30, \$25, how did you get at the \$25?
A.—The contents are there. They were not worth very much.
They only had one board, but I had the size, but that one I did not
take the trouble to count up, but I had the size.
Q.—You had the size on the copy of the document which is
Plaintiff's Exhibit P-96?
A.—Yes, but I did not take that.
Q.—You just put down \$25?
10 A.—\$25 for that one.
Q.—And \$5 for the outhouse?
A.—Yes.
Q.—How much for the outhouse in group 5?
A.—\$5.
Q.—Is not the outhouse in group 5 a single outhouse, while the
other is a double one?
A.—Yes.
Q.—Are both not the same?
20 A.—It seems to be better built.
Q.—How much for the outhouse in group 9?
A.—\$2.
Q.—That is the replacement value?
A.—That is the replacement value.
Q.—What is it built of?
A.—Rough boards.
Q.—How much for the open shed in group 10?
A.—\$47.80.
Q.—How is the \$47.80 arrived at?
30 A.—By having 2,390 cubic feet in the shed at two cents.
Q.—When you were out there, did you see the property Mr.
Cross occupies with the queer shaped building, the comet?
A.—I did.
Q.—And you also saw Mrs. Cross' property down on the corner
of Mulvihill Road and the Main Highway?
A.—Yes.
Q.—How much per acre would you value the portion of Mrs.
Cross' property below 321.5?
A.—This was a long distance; I imagine, from what I could see
40 there, that I would put that at about \$600.
Q.—\$600 an acre?
A.—Yes.
Q.—The portion even below 321.5?
A.—No, I am talking about the good land. I am not talking
about the ones affected by water.
Q.—That portion which is below the 321.5 contour, which would
be the 318 and the 321 contour?

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A.—I would take that if it was not affected, but if it is affected, as I said, I have not studied that part there to find out whether there is any damage being caused there that would depreciate the value of that land.

Q.—If it is below 321.5?

A.—It would not be worth \$600.

Q.—How much would it be worth?

A.—According to the estimate I have made of the building proper, that I have made around there, it would work the same way
10 for the same reason.

Q.—By looking at your figures, perhaps you can give us a figure?

A.—I would estimate that below 321 it would be worth about
\$400.

Q.—You would estimate it would be worth about \$400 an acre?

A.—Yes.

Q.—Were you at all familiar with conditions up there before the Chelsea Dam was built?

A.—I was not personally, but from knowing the place, because
20 I have been going up in that direction.

Q.—You had no personal knowledge as to where the flood waters went in the spring, or how long they stayed, or anything of that kind?

A.—Not personally. I did not take the levels. What I got was from a report that was handed to me, and it was on that I formed my opinion those were flooded that way in 1926, and left the land to be worth that.

Q.—What amount of flooding did you take into account as happening between elevations 318 and 321?

A.—About a month or a month and a half every year.
30

BY MR. KER:

Q.—You might refer to Exhibit D-173.

A.—As this exhibit shows, I used this form to make my assessment on the land taken. I used this report to make my assessment on those lands, and it was through the number of days that those parcels were flooded that I have lowered, or augmented, the value of the land.

Q.—What you used was Exhibit D-173?
40

A.—I did.

BY MR. ST. LAURENT (continuing):

Q.—That shows the days of each year from 1912 to 1926 that lands below elevation 318 were affected?

A.—Yes.

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Q.—It does not show what lands above 318 and below 321.5 were affected. So where did you get the information you used to make a difference between the lands lying above 318 and below 321.5, on the one hand, and the lands lying above elevation 321.5, on the other hand?

A.—I had the report. I did not need all this to make it up. I just gave it according to what was affected, or damaged by water.

10 Q.—But how did you make the difference between the value of the land between elevation 318 and elevation 321, on the one hand, and the land between elevation 321 and 324, on the other hand?

A.—Just as I have told you.

Q.—You did make a difference?

A.—Yes.

Q.—On what was that based?

A.—If the water went up there, there would be a certain amount of seepage that would go to 324—that affected it.

Q.—And that affected your judgment?

A.—Yes, it affected my judgment.

20 Q.—If the prices at which sales may have been made did not agree with what you thought was proper, it would not have affected your judgment?

A.—No, sir, it would not.

Re-examination

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

30 Q.—Looking at the plan Exhibit D-160: from the summer cottage point of view, the high land being at the back, what would you expect the values to do as the land went back—for summer cottage purposes? What would be the value of the higher land, as compared with this land that is likely to be flooded?

A.—If I went back that way, and being on the mountain, the value would rise. If I go up on the part in the back of parcel "C", it is away up on the hill, and I would say that land there was worth more for building lot purposes, or for summer cottages. It is a more healthy place than down below where the water would submerge the house.

Q.—So there would be no reason to be surprised that sales were made on the higher level at higher prices per acre than down below?

40 A.—No, certainly not, and I would not think it was excessive at that price. It might be that the price of a piece of land would look high, but still there are people who would like to get a lot for their health, and you are liable to find people who are willing to pay a little more than it is really worth, sometimes.

Q.—And you are liable to find people who are willing to buy the parts between the road and the river, although they may be very narrow—people who might want them for summer purposes?

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A.—Yes. We have some of that sort in our city. They build them on piers, just as if it was a boathouse.

Q.—They like to be by the water?

A.—Yes.

Q.—And there are always people to whom you can sell lots at some price?

A.—Yes.

10 (And further deponent saith not.)

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DEPOSITION OF JAMES GILLESPIE, A WITNESS EXAMINED ON BEHALF OF THE DEFENDANT

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

JAMES GILLESPIE,

of the City of Ottawa, in the Province of Ontario, contractor, aged 50 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:

30 Q.—You are a building contractor by occupation?

A.—Yes.

Q.—Have you had considerable experience in that trade?

A.—Yes.

Q.—How many years?

A.—Fourteen or fifteen years.

Q.—Where have you been operating?

A.—Around Ottawa, on the Gatineau, and around Hull.

40 Q.—Have you constructed buildings, cottages and various things of that kind on the Gatineau?

A.—I have.

Q.—Over a period of years?

A.—Yes.

Q.—You are familiar with the Farm Point locality of Mr. Cross' property?

A.—I am.

Q.—Have you had occasion to examine the buildings which are referred to on the plan Exhibit D-160 as groups 5, 6, 9, 10 and 30?

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A.—Yes.

Q.—Being the groups which are actually adversely affected by the water up to elevation 324, that is three feet higher than the 321.5 level.

Mr. St. Laurent: I object to the latter part of the question, as not being a complete representation of what the evidence shows.

Mr. Ker: Does not the evidence show that?

10 Mr. St. Laurent: In my view the evidence shows those are affected, but it does not show those are the only ones.

Mr. Ker: Then, I will put it this way:

BY MR. KER (continuing):

20 Q.—Being the groups of buildings alleged by the Defendant to be the only ones which are affected, directly or indirectly, by a water level of 321.5, up to an elevation of 324.5, as indicated on Defendant's Plan Exhibit D-160?

A.—Yes.

Q.—Have you made an estimate of the replacement value of those buildings?

A.—Yes, I have.

Q.—Would you give us your idea of the replacement cost of group 5?

A.—\$1,265.54.

30 Q.—Would you tell his Lordship in a general way what group 5 is like as it is now constructed, and what would the reconstruction be like under your tender or estimate?

A.—It is a frame house, with three or four different sheds. I have it on a plan.

Q.—It is a frame house, with some sheds to it?

A.—Yes.

Q.—What is the nature of the material?

A.—Rough cull lumber, mostly.

Q.—What do you mean by that?

A.—Undressed lumber.

40 Q.—What sort of material would your estimate of replacement cover?

A.—It would be, I should say, much better than what is in the buildings now.

Q.—That would be replacing not only the house but the sheds and everything?

A.—Yes.

Q.—With new material?

A.—Yes.

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Q.—And you would be prepared to undertake to do it for that price?

A.—I would.

Q.—Would you tell his Lordship what sort of place group 6 is?

A.—It is something similar, with one large shed. It is a similar kind of house.

Q.—The same sort of material?

A.—The same sort of material, and the same construction.

10 Q.—Have you made an estimate of what you would be prepared to replace that house for new, with the sort of material you speak of?

A.—Yes.

Q.—What would be the kind of material with which you would replace it? Better material, or the same kind?

A.—I should say it would be quite a lot better.

Q.—It would not be cull material?

A.—It would not be nearly as bad as what is in the present building.

20 Q.—What would you be prepared to undertake to replace group 6, with all its outhouses and various lean-to's for?

A.—\$1,520.80.

Q.—Would you tell me now with regard to Group 9. Is it the same class of lumber, and construction?

A.—The same class of rough lumber, but it is a little better construction. There is a little plaster in it. It seems to be a little better built.

Q.—Are you sure it is No. 9 that has the plastering in it?

A.—Yes.

30 Q.—What would be the replacement of that, new?

A.—\$1,159.70.

Q.—For which figure you would be prepared to take a contract to do it?

A.—I would.

Q.—What have you to say about Group 10?

A.—It is the same kind of construction, as 5 and 6.

Q.—What is your figure in regard to that?

A.—\$1,353.96.

Q.—Your replacement estimate for that would be \$1,353.96?

40 A.—Yes.

Q.—And, with regard to No. 30, in Parcel "B"?

A.—\$1,628.03.

Q.—New?

A.—Yes.

Q.—What would be the total for which you would be prepared to reconstruct all the buildings the Defendant alleges have been

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- actually affected by the water, as indicated on the plan Exhibit D-160?
- A.—\$6,928.03.
- Q.—I understand those are today's prices?
- A.—Yes. Any time around now. I made this around the first of May.
- Q.—Would it be an equal sum if it were referring back to 1926 prices?
- 10 A.—It would be slightly higher in 1926.
- Q.—It would be higher in 1926?
- A.—Yes, it would be a little higher.
- Q.—That is, the replacement cost would be higher?
- A.—Yes.
- Q.—How much higher?
- A.—I should say the maximum would be about 10 per cent.
- Q.—That would make the 1926 total approximately \$7,600 or \$7,700?
- A.—Yes.
- 20 Q.—That compares with Mr. Bédard's figure of \$7,209.68 as replacement value at the same time?
- A.—Yes.
- Q.—Of course, that would mean giving credit for entirely new houses at that time?
- A.—Yes.
- Q.—Can you give me any idea of the depreciation allowable on them? I do not suppose you saw them in 1926?
- A.—No, I could not give you any figure, because I did not see them.
- 30 Q.—And you would not care to give any opinion as to them?
- A.—No.
- Q.—Assuming those houses to have been constructed for a considerable length of time previous to 1926, there would be depreciation on them, would there not?
- A.—Yes.
- Q.—Is it heavy?
- A.—It all depends on how they are kept, with regard to painting, and so on.
- 40 Q.—Mr. Bedard suggested something of the nature of 30 per cent depreciation all around. Would you think that was within reason?
- A.—Yes, I would think it was.
- Q.—For that class of construction?
- A.—For that class of building; not being taken care of—which I do not think they were. There was no paint on them.

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Q.—What kind of boards were they?

A.—The interior boards were rough one-inch sawn lumber and the outside was clapboard—dressed lumber. The roofs were shingles.

Q.—On the inside it was just the rough board?

A.—In some cases there was some dressed lumber on the inside, but very little.

Q.—The boards were just as they came from the sawmill?

A.—Just the rough lumber.

10 BY MR. KER (continuing):

Q.—And in one instance you said plaster had been put in, and you allowed an increased valuation for that?

A.—Yes. In every case I took the total quantities of what was in them.

BY THE COURT:

20 Q.—Do you know the population of Farm Point?

A.—No, sir, I do not.

Q.—Are there many buildings?

A.—No, there are not very many.

Q.—There is a church there?

A.—A little church.

Q.—And a school?

A.—And a school, and a store. There are very few other buildings.

30 Mr. Ker: I think there are about thirty buildings located in around the mill property.

His Lordship: I suppose some of those properties are indicated on Exhibit D-160?

Mr. Ker: Yes.

I think there is quite a considerable summer population along the river.

40 His Lordship: There are buildings above the piling ground?

Mr. Ker: Yes, which we say are not affected.

His Lordship: They form part of the village?

Mr. Ker: Part of the general community, I take it, because most of the buildings are occupied by people engaged in the lumber industry, and there appears to be some settlement there.

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His Lordship: A permanent settlement?

Mr. Ker: I think so. I see the little church, and the school, for instance, but I do not know if they are in use.

BY MR. KER (continuing):

10 Q.—I do not suppose you know very much about that, Mr. Gillespie?

A.—I would not say how many buildings there are, but I know there are a number of summer buildings, or summer cottages.

Cross-examination

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

Q.—Have you done any work for the Gatineau Company, moving cottages or buildings along the river?

A.—Yes, sir.

20 Q.—Before, or after, the raising of the water by the Chelsea dam?

A.—Before.

Q.—None since?

A.—Yes, we have moved some since.

Q.—Then it was before, and after?

A.—Yes.

Q.—Were you making new buildings for them, or were you just moving the existing buildings out of the flooded area?

A.—We have done some new work too.

30 Q.—To any considerable extent?

A.—No, not new work.

Q.—Has the moving been at all substantial?

A.—No, there has not been very much since the flooding.

Q.—It was principally done before the water was raised?

A.—Before the water was raised.

BY MR. KER:

40 Q.—Is the paper I show you a summary of your evidence as to the figures of valuations?

A.—Yes.

Q.—Will you file it as Exhibit D-182?

A.—Yes.

BY MR. ST. LAURENT:

Q.—I see in your summary Exhibit D-182 that the replacement value of group 6 is greater than that of group 10?

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A.—Yes, that is right.

Q.—And that was arrived at by actually taking off the quantities, and making up your estimate?

A.—Yes.

Q.—And in your opinion group 6 had greater original value than group 10?

A.—It must have had. There must have been more material in it. That was the way I figured—what was in it.

10 Q.—Did I correctly understand from you that the difference between the building costs of 1932 and those of 1926 would be only about 10 per cent?

A.—As far as I am concerned. There would not be that much to us.

Q.—Is there not more than a 10 per cent difference in the cost of timber?

A.—Not that class of lumber, no.

Q.—Is there not more than a 10 per cent difference in the cost of labour?

20 A.—No, not with the men I employ. We are paying them practically the same as we did in 1926.

Q.—The wages, then, are practically the same?

A.—Practically the same, yes.

Q.—And this class of lumber is practically the same price as it was in 1926?

A.—Practically the same, yes.

Q.—What would that be, per thousand feet?

A.—I figured this at \$25.00 per thousand feet.

Q.—Even for the 1932 prices?

30 A.—Yes.

Q.—And in those replacement costs you have allowed \$25.00 per thousand feet for lumber?

A.—That is for the rough lumber. For clapboards it is \$45.00 per thousand.

Q.—And for the dressed lumber—such quantity as there may be?

A.—\$45.00.

Q.—\$25.00 for rough lumber, and \$45.00 for dressed lumber?

A.—Yes.

40 (And further deponent saith not.)

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the Plaintiff for use at his Farm Point mill from the year 1916 to the year 1931?

A.—Yes, I have reports.

Q.—Of what do those reports consist?

A.—I have here two letters, signed by J. E. Garon, on the letter-heads of the Minister of Colonization, Game and Fisheries Service, Lands and Colonization. One is dated October 24th, 1932, and the other is dated May 13th, 1932. Those letters forward printed forms which are copies of the reports on file with that Department of the
10 Provincial Government, showing timber reported as cut by Mr. Cross. These forms cover from the years 1916-17 to 1930-31. There are thirteen of them.

Q.—They are on the form of the Department provided for that purpose?

A.—Yes. They are certified by Mr. Guertin, and, I think, Mr. Garon.

Q.—And they contain an affidavit signed by Mr. Cross?

A.—The affidavit is in the lower left hand corner of each.

20 His Lordship: Are these originals?

Mr. Ker: They are copies, certified by the Department. I think the originals would probably have to remain of record in the Department. The documents we have here are on the forms of the Department, and are certified by the Department.

Mr. St. Laurent: I object to this evidence as irrelevant, and because the documents of which the witness speaks are not authentic.
30 I also object on the ground that the witness is not competent to produce them, and cannot be cross-examined with respect to them.

Mr. Ker: Would my learned friend like us to bring somebody from Quebec to prove them?

Mr. St. Laurent: Even if you did, I do not think it would prove anything.

Mr. Ker: The affidavit is in the following words:

40 “ I, Freeman Cross, residing at Farm Point, County of Ottawa, swear solemnly that this report is an exact statement of my various operations during the years 1916 and 1917, and that I have not made, or caused to be made, purchased, or caused to be purchased, any other timber during the said year.”

We are very short of any direct evidence the Plaintiff has been able to make, or that we have been able to get from him, as to the

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magnitude of his operations, and I submit these reports are very pertinent. I take it my learned friend is objecting because these are not original documents, but they are certified. The certificate says: " Copie certifiée du rapport a notre dossier. Vérifié: Vincent Guertin —approuvé, J.-A. Garon, Chef des Services ".

This is clearly a return made on the departmental forms, covering exactly what is set forth. It is not a question of colonization or patented lands. These documents represent the wood operations of the Plaintiff for the years 1917 to 1931.

10 If my learned friend objects on the ground that the person who certified them should be here, I suppose we will have to bring him from Quebec, but I take it for granted we will not be put to that trouble.

Mr. St. Laurent: I am afraid you will, and that you will have to bring the originals, because I object to the filing of these copies in their present form.

20 Mr. Ker: Of course, there is the technical question of having the person who is in possession of those records. He is a gentleman whom my learned friend knows.

Mr. St. Laurent: I know the gentleman, but I do not know his signature, and I do not know of any provision in the Act under which these documents could be called for.

30 Mr. Montgomery: I am not at all certain that a document certified as these documents are is not authentic. The official records, bluebooks, etc., are authentic documents, and I am not at all certain that the documents now before us are not.

His Lordship: Of course, the only evidence that could be made would be to the effect that the document was received. Mr. St. Laurent is objecting to the production of the documents, and I think he is right.

Mr. Montgomery: The only question is whether the certificates make the documents authentic.

40 Mr. St. Laurent: If they are records that are required by law, it might be a different matter. I do not know of any law which requires reports to be made to the Colonization Department; and the Colonization Department does not administer the lands and forests of the Crown.

Mr. Ker: It certainly administers something which requires the affidavit set forth.

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Mr. Montgomery: Those two Departments were formerly in one.

I would not like to say offhand whether they are or are not authentic documents, but that is something which could easily be verified.

Mr. St. Laurent: I do not know whether there is anything which requires those documents to be filed with the Department.

10 Mr. Ker: Clearly, there is some sanction for them.

Mr. Montgomery: I am quite sure they would not be filed unless their filing was required.

Mr. St. Laurent: They might ask for them; but they have nothing to do with any lots but the lots which are under location tickets.

20 Mr. Montgomery: They have more than that. There is something that requires those returns to be made on private lands and fee-simple lands distinct from the returns made on license lands.

Mr. St. Laurent: The only thing they could do would be to say: "We will treat as being cut on colonization lands anything you do not show as from somewhere else".

Mr. Ker: We have a different set of returns for the Crown Lands.

30 Mr. Montgomery: Of course, all an officer from Quebec could testify to would be that those are the affidavits he received.

Mr. Ker: The documents are headed: "Formule pour toute le bois provenant des lots".

Mr. St. Laurent: Without further information, I cannot withdraw the objection.

40 Mr. Ker: In this case we are unfortunately in the presence of an extraordinary condition, inasmuch as Mr. Cross admits he kept no books. He is claiming a tremendous sum from the Company Defendant in connection with his business, but he does not produce any books to justify his figures. My learned friend has only been able to produce certain accounts, audited once a year, which do not indicate anything in regard to lumber. This being so, I think every latitude should be given to the Defendant to show by such docu-

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ments as it may have just exactly what was the magnitude of Mr. Cross' business each year on lumber.

These documents refer only to the freehold land, and we have another set for the Crown Land.

Surely there must be some sanction for the affidavits.

His Lordship: How does Article 1207 of the Civil Code apply, or would it apply?

10 Mr. Montgomery: Article 1610 of the Act says:

20 " Every sawmill owner or other person carrying on a lumber business in this province, other than holders of licenses to cut timber from the Crown, may be required by the Minister or his representative to declare under oath whence they have obtained the timber owned by them or in their possession, and to give all necessary information to prove that such timber is exempt from Crown dues. Refusal to give such information shall empower the Minister's representative to seize such timber as has been wrongfully cut on Crown Lands, and deal with it accordingly "

Mr. St. Laurent: That is the Minister of Lands and Forests.

Mr. Montgomery: I have not before me the Act regarding the Department of Colonization, but I have no doubt there is a similar provision in it.

30 These documents are obviously archives within the meaning of the Code. They are drawn from the archives of the province, and are certified by the proper officer.

Mr. St. Laurent: The proper officer would be the Minister, or the Deputy Minister. They are the only ones who have any official signature.

40 Mr. Montgomery: The records of registers we receive are never signed by the Minister: they are always certified by the particular Deputy who is in charge of the particular branch of the Ministry.

It seems unfortunate to have to bring an officer from the Department of Crown Lands and from the Department of Colonization. Those gentlemen will have to come here from Quebec, and, as I understand it, the only thing they can do would be to exhibit the originals and prove that the documents we now have here are certified copies of the originals. Of course, they could not go further than that. Unless my friend has doubts that these are copies, it

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seems a useless expense and inconvenience to have to bring those gentlemen from Quebec.

His Lordship: You might ascertain if the Minister or Deputy Minister are the only officers who can certify to the authenticity of the documents, and in virtue of what authority that is the case. This is a public document, and I think it falls within the provisions of Article 1203.

10 Mr. Ker: It is obviously a public document, and on a public form.

Mr. St. Laurent: The best that can be said for it is it is on a public form.

His Lordship: Article 1207 refers to "les écrits authentiques". Of course, it is a question whether the gentleman who signs these documents had authority to sign.

20 Mr. Ker: Perhaps your Lordship might see fit to allow the documents in under reserve, with the understanding that they be withdrawn if we are not able to show they have been attested by the proper officer.

His Lordship: I think I could do that.
Are these the only ones you have to offer?

Mr. Ker: They are from 1916 to 1931.

30 His Lordship: You do not intend to offer any others?

Mr. Ker: These apply to wood taken from freehold lots.

We also have a letter from the Department, signed by the Chief of Forest Service, Mr. Piché, giving a return for timber taken off Crown Timber License Limits. I suppose my learned friend would object to it because it is in the form of a letter.

40 I would respectfully suggest that your Lordship might admit both sets of documents under reserve, on the understanding that unless before the case closes the Defendant is able to show they have been certified by the proper authorized officer in so far as the freehold is concerned, and unless we are able to produce a return in form which would comply with the Act in respect of the Crown Lands, they should not be admitted.

His Lordship: In other words, you want to have the right to prove the authenticity of those documents?

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Mr. Ker: Yes, your Lordship; if my learned friend insists.

His Lordship: I would be inclined to allow you to do that, Mr. Ker, with the understanding you have mentioned: that if the authenticity of the documents is not established they will be withdrawn from the Record.

10 Mr. Ker: In that case, I take it we will have to ascertain that these gentlemen are the proper certifying officers, and establish the fact before your Lordship.

His Lordship: Is there anything in the Statutes with reference to it?

20 Mr. Ker: I could not find anything in the Lands and Forests Act, or in the Colonization Act. There is a general statement in the Act to the effect that the Minister may make such rules and regulations as he may think proper respecting returns. No doubt these returns have been made under that general authority, but I have not yet been able to find exactly where the Rule is. I have examined the Colonization Act, Chapter 77 of the Revised Statutes, but I cannot find the definite authority. I am sure it exists in the Rules and Regulations of the Department.

Mr. St. Laurent: I would like to have my friend tender whatever documents he proposes to put in, and I will submit my objection.

30 Mr. Ker: Then I tender these affidavits made by the Plaintiff, certified by Mr. Vincent Guertin and Mr. G. E. Garon, showing reports for the years 1916-17, 1917-18, 1918-19, 1919-20, 1923-24, 1925-26, 1928-29, 1928-29, 1929-30 and 1930-31.

Mr. St. Laurent: I object to the filing and use of those documents as they do not appear to be authentic, or to make proof under the Code.

40 Mr. Ker: It is suggested to me that instead of putting the documents in, as we intended to do, we have for the next session of the Court copies certified by the Deputy Minister of Crown Lands or by the proper authenticating officer.

His Lordship: Then you withdraw them for the present?

Mr. Ker: And if I am unable to do this before I close my case I would like to have the opportunity of bringing the copies forward

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later. In other words I would not like to close my case without covering this point.

His Lordship: Supposing Mr. Ker is not in a position to do it before he closes his case, have you any objection to his doing it afterwards, Mr. St. Laurent?

10 Mr. St. Laurent: I presume we could not have any valid objection to my friend tendering the documents at any time, even after his enquete is closed. We do, however, object to their relevancy.

His Lordship: Then I take it the question is withdrawn, and I will allow the Defendant to prove the authenticity of the documents offered this afternoon.

Mr. Ker: And we will do it at the earliest possible moment. This was the only point upon which I wanted to question the witness.

Cross-examination

20

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

Q.—You say the photographs Exhibits D-183, D-184, D-185 and D-186 were taken in your presence?

A.—Yes.

Q.—You did not say when they were taken. Have you any recollection of when they were made?

A.—Early in the year 1926.

30 Q.—Would that be in January or February of 1926?

A.—Yes. There was snow on the ground. It was some time before the snow left.

Q.—This mill was not in operation at that time?

A.—It was not running at any time I saw it then.

Q.—Do you know whether the portable machinery was in it or not?

A.—In Exhibit D-183 there is a machine showing underneath the doors.

Q.—Is that a sawmill machine?

40 A.—Yes. With my little knowledge of sawmill machinery, it looks like one to me.

Q.—It looks to you like a sawing machine?

A.—Yes.

Q.—You never saw it in operation?

A.—I saw it in operation the previous year; when it was in its natural state, so to speak.

Q.—Was that during the summer, or the spring, or the fall?

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A.—As I remember, it was the fall of 1925.

Q.—Were those four photographs all made on the same day?

A.—Yes.

Q.—I notice they do not show any lumber piles. Do you remember if there were any lumber piles around there at that time?

A.—There may have been a few. I cannot recall. There looks to be some slabwood piled, according to Exhibit D-183. That is the only lumber I see there.

10 Q.—You have not any personal recollection, apart from what you find on the photographs?

A.—No.

BY MR. KER:

Q.—I understand you to say those photographs were taken in the year 1926?

A.—Yes.

Q.—Would that be at least a year before the water was raised?

20 A.—The water came up in March, 1927.

Q.—So those photographs were taken under natural conditions, so far as the Gatineau Power Company was concerned?

A.—Yes.

(And further deponent saith not.)

30 Mr. Ker: My attention is called to the fact that at page 483 of the evidence of Mr. Ralph apparently a point was left open in connection with a question put by your Lordship. Mr. Ralph is here this afternoon, and I think it would be as well to complete his evidence in that connection now.

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DEPOSITION OF CLAUDE E. RALPH, A WITNESS
RECALLED ON BEHALF OF THE DEFENDANT.

On this tenth day of November, in the year of our Lord one thousand nine hundred and thirty-two, personally came and reappeared the said witness,

10

CLAUDE E. RALPH,

already sworn, who, being recalled on behalf of the Defendant, deposes as follows:

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

20 Q.—At page 484 of your testimony you were asked certain questions by his Lordship, with respect to your ideas of the damage Mr. Cross has suffered. Will you please refer to that page of your testimony, and will you state what you believe to be the facts in connection with Mr. Cross' damages on his piling ground?

A.—In the first place, I verified nearly all my instrumental measurements and levels that bore on the piling ground, and they checked out with the figures I had before.

30 I next thought of what piling ground he had that was affected. We have it before the Court delineated in red on Exhibit D-160, the southerly side—that is the side now under water—is shown at contour 318. That line is taken because Mr. Cross states in his Declaration that no piling ground was affected below that elevation. He also repeats that statement in his evidence on Discovery. That, however, does not convince me that that was the actual piling ground. It is evidently the maximum piling ground.

The parts out of water—up to elevation 324.5—are definite.

40 I was through the property quite a number of times in 1926. I tried to relocate the highway road past the power house door, and I tried to relocate the railway down the Meach Creek Valley, and every time coming out of there I used to walk along the spur, and my recollection is there was no lumber piled to the south side of the spur, but there was cordwood.

BY THE COURT:

Q.—That is, on the south side of 318?

A.—Yes. Towards the part that is now flooded.

The question as to fair compensation that the Plaintiff should

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receive, of course, depends, as far as that year is concerned, on the actual size of the piling ground. I found in our office a photograph supplied to us by the Plaintiff to indicate the buildings on the property. This is a panoramic photograph, and it is marked "September 21st, 1926". It shows the piling ground as it was before the water came up, and it is the only thing I know of or could get that does show it.

Q.—Who furnished you with it?

A.—The Plaintiff. To mark the buildings.

10 This photograph is dated September 21st, 1926, which was the fall before the water was raised.

On the plan Exhibit D-160, it would be taken from near the beginning of the spur, looking towards the piling ground and the mill.

On Exhibit D-160 you will notice contour 318 gives the Plaintiff about an average of 35 or 40 feet south of the spur, which would be a line drawn from somewhere east of the base of the photograph (not shown) and running parallel to the spur.

20 BY MR. KER:

Q.—Striking the spur where?

A.—It does not strike the spur at all.

To me there appears to have been no piling down from the centre of the spur—that is where the end box car is standing—towards the main line.

I am not producing this photograph to have this area reduced any, but I want to be certain that the area we have given him is enough, and this photograph satisfies me that we have given him
30 a rather generous area.

In the foreground there is a tie loader, for which the Plaintiff claims, I think, \$210.00 physical value. This tie loader was operated by water, when the water was high enough, but it is quite evident in the photograph it could not be operated. At the same time it is quite evident the water must have come up high enough to allow the ties to go into the jack ladder before it could be put into operation. I presume the Plaintiff used it when he had water enough to do so.

Q.—Are you speaking of manufactured ties?

40 A.—I am speaking of the tie loader.

Q.—To load manufactured ties?

A.—Yes. They are shown on the photograph. They are floated down the creek to the tie loader.

The point at the moment is that at times he certainly did use this tie loader to load ties on railroad cars, and even if it was only periodically, he certainly could not pile lumber on ground affected by an elevation equal to the lower end of the tie loader.

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BY THE COURT:

Q.—Why not? If he chose to do so.

A.—The ground would be damp from time to time.

It is quite evident he had a lot of ties to load, or he would not have gone to the trouble and expense of building this jack ladder.

10 His Lordship: It is conceded, I understand, that the land for the piling ground has been circumscribed to this part bounded in red on the plan.

Mr. Ker: It is conceded, in this sense: that the Plaintiff alleges in his Declaration that below level 318 it was not affected. The southern part of that land is elevation 318. Mr. Cross' direct statement under oath is that in no way did he use any land below elevation 318 as a piling ground.

BY THE COURT:

20 Q.—Let us now come to the question I asked you, as to fair compensation.

A.—I satisfied myself by the photograph that the 318 contour in that part embraced some land that he did not use, and therefore our estimate is a generous one—not excessively generous, but certainly large enough.

Q.—That is your evidence?

A.—That is my evidence, so far.

30 Your Lordship asked me for the total compensation. I think there might be some other items; for instance, that tie ladder would have to be raised. I did not include that. He has only asked for the physical value of it. A physical value of \$210 would not be enough; it would take twice that. It would have to be completely dismantled and placed on the new fill.

40 There are a couple of other items which were not claimed in the Declaration: the hauling of cars by horses, for instance. I also know of an item mentioned by Mr. Morrison, one of the Plaintiff's foremen, in regard to demurrage charges. If those items were directly due to the water being raised over the Plaintiff's land, they should be included.

I do not believe I can think of anything else.

BY MR. KER:

Q.—You are arriving at the same conclusion, and the same figures as to the estimated cost of giving him back the piling ground?

A.—Yes, that is in already.

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Q.—What is that figure?

A.—The total was \$9,509.50, I think.

Q.—And you would add to that the item of the tie loader?

A.—Yes.

Q.—Which would represent how much?

A.—I would say \$400.00.

Q.—As I understand it, that tie loader is to bring ties up from the water?

A.—When the water was high enough.

10 Q.—To bring them up from the water and put them on the cars?

A.—It is just the same as a jack ladder in a saw mill.

Q.—Was that the purpose of it?

A.—Yes.

Q.—Consequently, the end of the jack ladder is expected to be in the water?

A.—It has to be, to operate.

Q.—You spoke of demurrage. What have you to say in regard to that?

20 A.—Demurrage on cars that were kept over forty-eight hours.

Q.—Do I understand you to say the cost of replacing the piling ground, plus the cost of this tie ladder (which has not been previously mentioned) would be a fair compensation to Mr. Cross, or would you add something to it for the possibility of inconvenience due to demurrage?

A.—I do not add the amount of demurrage, because I am not entirely convinced that the water was solely responsible for it. There might be other reasons why a car was not ready.

30 Q.—The piling ground would cost approximately \$9,500 to replace, and the tie ladder would cost another \$400?

A.—Yes.

Q.—What would be your honest estimate of the compensation Mr. Cross should receive in respect to his piling ground?

A.—I know he had to haul cars out there by horses. I saw him doing it. I do not think he ever did it before the water came up. Of course, I do not know the amount of money he expended for that item. At the same time, I would say there would be a maximum to it, and I have to be fair to the Defendant also.

40 Q.—The company has offered to pay him interest at the rate of 5 per cent from 1926. Do you think the interest on the capital sum for the piling ground (approximately \$10,000) which interest would amount to about \$500.00 a year, would compensate him for the hauling of those cars back and forth in the meantime?

A.—I am trying to figure the maximum number of cars he would haul in a year, and just how he would do it, or how I would do it myself. In most cases, when a car was loaded I do not think he

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would have to haul it until noon, or perhaps at six o'clock in the evening. What I mean by that is I do not think this hauling would at all necessitate having a team of horses doing nothing else.

Q.—Could not the cars be shunted in, or kicked in?

A.—Not necessarily. The railway men are not as obliging as all that. They will give it a kick, and it will stop possibly half way in. Even if it stops three-quarters of the way in, he would have to go after it.

10 Q.—Do you think that item would be compensated by the interest the company offers to pay on the capital?

A.—I think it would be more than compensated by the interest. As a matter of fact, I think half the amount of the interest would compensate it, because I do not think it would take a man and a team of horses every day. I think a team could be taken off other work at the noon hour, or at six o'clock, to do it.

His Lordship: Do I understand you allow that?

20 Mr. Ker: In our Plea we offer to pay interest from the date of the raising of the water. We have offered something for each of those items, with interest.

BY MR. KER (continuing):

30 Q.—Would that be your estimate of the fair and just compensation to be paid to him—the cost of the filling in of the piling ground, the rearrangement of the tie loader, plus interest, plus some inconvenience for the demurrage or the inconvenience he may have been put to generally in being put out of some place by the raising of the water?

A.—I do not think there should be any demurrage added if you pay for the horses, because if you are paying for the horses the cars should be hauled out when they are loaded.

Q.—Is there any other item you can think of?

A.—No, I cannot think of any other item: and I think the piling ground area is sufficiently large.

Q.—Will you file the photograph to which you have been referring, as Exhibit D-187?

40 A.—Yes.

Cross-examination

BY MR. ST. LAURENT:

Q.—I do not think you said this photograph had been given to you before the water was raised?

A.—No.

Q.—As I understand it, it was given to you when you were

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getting information about the buildings in respect to which damage was being claimed by the Plaintiff?

A.—As I understand it, this photograph was supplied to the Gatineau Power Company in February or March, 1932, to delineate buildings.

Q.—And what you said about the period prior to the raising of the water and reference to the fact that you see on the photograph the words “ Farm Point, Quebec, September 21, 1926 ”?

A.—I am afraid I do not quite understand your question.

10 I am satisfied this photograph represents Mr. Cross' property prior to the raising of the water—apart from the date being on it.

Q.—Had the railway track been raised at that time?

A.—It was in the process of being raised, I think. I do not believe it was completed.

Q.—Does this portion of the photograph which shows the main line show it at the new level?

A.—I would say the old elevation is shown by the shoulder.

Q.—That is, just above the words “ Farm Point, Quebec ”?

20 A.—There is a shoulder, where the old grade was I think—I am not sure of that. I think where I mark “ X ” is the old grade.

Q.—The old grade came up as far as the point you have marked “ X ”, and you think it was in process of being raised to a higher elevation?

A.—Yes.

Looking at it more closely now, I think it was completed, because it ran out at the crossing.

Q.—About how much was the grade of the main line of the railway raised there?

30 Witness: At what point?

Counsel: Opposite the spur.

A.—I would say about three and a half or four feet. I could get it for you exactly, if you wish.

Q.—What would be the length of this tie loader from the rear of the shed to the end?

A.—Say seventy feet.

40 Q.—So that from the point where it strikes the spur to the point where the ties would be brought to it when the water was up high enough would be about seventy feet?

A.—Yes.

BY THE COURT:

Q.—How long are the ties?

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A.—Eight feet.

BY MR. ST. LAURENT (continuing):

Q.—The tie loader is not shown on Exhibit D-160?

A.—The tie loader is not shown.

Q.—Can you indicate about where it would be?

10 A.—I mark it " X ", and the letters " T-L ", and a dotted line towards the creek.

Q.—I am correct in understanding, am I not, that when you speak of the filling in what you mean is that you would fill up to elevation 324.5 the portion of land shown bounded in red on Exhibit D-160?

A.—Yes.

Q.—In your opinion would it be proper to do that over the present surface?

A.—Yes.

Q.—Nothing would have to be removed to do it?

20 A.—You could do it right over the present surface.

Q.—Is the present surface the natural surface, or is there some sawdust and mill refuse there?

A.—Most of it has a layer of sawdust and slabs, but I would put my fill right on top of it.

Q.—A gravel fill right on top of it?

A.—A gravel fill right on top of it.

(And further deponent saith not.)

30

40

DEPOSITION OF PAUL BEIQUE, A WITNESS EXAMINED
ON BEHALF OF THE DEFENDANT.

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

PAUL BEIQUE,

10

of the City and District of Montreal, Civil Engineer and Quebec Land Surveyor, aged 50 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 gave testimony when this matter was before his Lord-
20 ship last fall?

A.—Yes.

Q.—And I think you then gave us an outline of your qualifica-
tions and experience in your profession?

A.—I did.

Q.—You are familiar, are you not, with the properties of Mr.
Cross which are claimed for, not only in the original Action in
respect of Cascades, but also in the Supplementary Action which is
before his Lordship at the present time?

30 A.—Yes. I read the Declaration, and I visited the properties. I
have also been in Court the greater part of the time during the
hearing of the case.

Q.—Have you made, to the best of your ability and belief, an
estimate of the total amount which in your opinion should be paid
to Mr. Cross as compensation in respect to his various claims as set
out in his two Declarations, and, if so, will you please state what is
that amount?

Mr. St. Laurent: I object to the re-opening of the evidence on
the matters involved in the first Declaration.

40

Mr. Ker: Why?

Mr. St. Laurent: Because the Act only calls for the taking of
testimony with respect to the further matters. We are not going to
reopen the first case.

Mr. Ker: I was not aware that was what the Act said. I

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thought it said that with the permission of the Court such Amended Pleadings might be filed as might be satisfactory to his Lordship.

Mr. St. Laurent: "Such further evidence with respect to the new issues as may appear proper to the said Court."

10 My friend's question is what Mr. Cross should get under the two heads, and I object to the reopening of the evidence on the first Declaration. I have no objection to the witness giving his opinion as to what Mr. Cross should get with respect to the new issues. That is what the other witnesses have testified to. I do, however, object to reopening the enquiry with regard to Cascades. This was dealt with in the first trial.

20 Mr. Ker: I can assure my learned friend I will not reopen the question of Cascades with this witness. Mr. Beique has already given his evidence with regard to Cascades. I am now asking him to concentrate the whole thing into one set of figures. I will then ask him to split it up, and he will no doubt say, "My valuation on Cascades is so much".

30 The former case was in the nature of a Petitory Action, asking that we be compelled to withdraw our water from the Cascades. Since then a Special Act has been passed by the Legislature which sets forth that the damages shall be fixed as at a certain date. Surely if Mr. Beique had made any estimates based on something which might not be exactly of the date to which this Act is applicable, he would have the right to come before the Court and say so. In Paragraph 56 of our Plea we reserve our right to do that, and it would be highly improper for us not to reserve our right to make evidence of this damage which, in view of the Special Act might be applicable, but which might not have been applicable to the situation in regard to which Mr. Beique has already given his evidence.

Mr. St. Laurent: I must press the objection. It is not open to the Defendant to adduce evidence now with respect to matters involved in the first Declaration. It is open to the Defendant to adduce evidence upon the new issues raised by the Supplementary Pleadings. That is as far as my friend can go.

40 Mr. Ker: My learned friend could have inscribed against Paragraph 56 of my Plea, in which we state we reiterate the Allegations of our original Plea, reserving our right to make such further and other proof as may be warranted.

Mr. St. Laurent: Reserving the right, if you had one, which I submit you had not.

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Mr. Ker: It is my submission I have a perfect right to make the evidence.

His Lordship: I will take the evidence under reserve of Mr. St. Laurent's objection.

BY MR. KER (continuing):

10 Q.—Have you made, to the best of your ability and belief, an estimate of the total amount which in your opinion should be paid to Mr. Cross as compensation in respect to his various claims as set out in his two Declarations, and, if so, will you please state what is that amount?

A.—I have.

I have come to an amount of \$47,797.89, with, of course, two reservations which to my mind would be questions of law, which I am not in a position to decide. One of them I mentioned for Cascades.

20 To this amount should be added the sum of \$3,000, if the property opposite the C.P.R. right of way belongs to Mr. Cross—that is, the Cascades property. Secondly, if the Company is liable for loss of customers along the transmission line, property flooded through the raising of the water and representing loss of customers, I think the sum of \$1,424 should be added to the total amount I have given.

BY THE COURT:

Q.—That is, \$4,424.00 to be added to the \$47,789.29?

30 A.—Yes.

BY MR. KER (continuing):

Q.—Your first reservation I understand to be with respect to the rights claimed by the Defendant to the property fronting on the river at Cascades?

A.—If Mr. Cross, and not the C.P.R., is the proprietor of the river bed opposite the C.P.R. right of way, then Mr. Cross should be entitled to \$3,000 additional.

40 Q.—That is at the Cascades?

A.—Yes.

Q.—That has nothing to do with the Supplementary Declaration?

A.—No. I think I fully explained that in my first testimony. It is a question of law.

Q.—The second is with respect to loss of customers brought about by the fact that the Company had purchased certain lands

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upon which those customers were resident, at Kirk's Ferry and elsewhere; and consequently the service was discontinued?

A.—Yes.

Q.—Your idea being that if his Lordship should come to the conclusion that although those lands were owned by the Company it would have to compensate Mr. Cross for the loss of those customers, you would add \$1,424?

A.—Yes.

10 Q.—My learned friend Mr. St. Laurent asks me to have you state if it is the case that in the total valuation you have just given you have taken into account against Cascades the amount you mentioned in the former case?

A.—It is exactly the same amount.

BY MR. ST. LAURENT:

Q.—You are not making any change at all in that regard?

20 A.—No. It is exactly on the same basis, and the same amounts, I have already mentioned, as far as the Cascades property is concerned.

BY MR. KER (continuing):

Q.—So anything you may now say is more particularly with reference to the matters with which we are dealing in this particular branch of the litigation, concerning Farm Point?

A.—Yes.

Q.—Have you the figures in concise form?

30 A.—Yes.

Q.—Will you produce the statement as Exhibit D-188?

A.—Yes.

His Lordship: Does it show a total of \$52,221.89?

Mr. Ker: It shows a total of \$47,797.89, with notes to the effect that if the Company is liable for loss of customers, so much is to be added; and if the property opposite the C.P.R. belongs to Mr. Cross, so much is to be added.

40

His Lordship: Those two forming the amount of \$4,424?

Mr. Ker: Yes, your Lordship.

His Lordship: Making a total sum of \$52,221.89?

Mr. Ker: I think that is correct, your Lordship.

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Witness: The grand total would be \$52,221.89.

BY MR. KER (continuing):

Q.—I also assume you have not dealt with that portion of the Plaintiff's Declaration which claims law costs, extra judicial costs, and so on?

A.—No, I have not. That is not within my province.

10 BY MR. ST. LAURENT:

Q.—Exhibit D-188 contains an item of \$8,000, your former estimate for Cascades; and the rest is for the new items?

A.—That is correct. My former testimony applies to item " G " on Exhibit D-188.

BY MR. KER (continuing):

20 Q.—The evidence you gave with respect to the Cascades property refers to item " G " on Exhibit D-188?

A.—Yes.

Q.—Coming to a particularization, or splitting up, of this total, and limiting yourself for the moment to the Supplementary Claims, would you be good enough to tell his Lordship what method you adopted, how you proceeded, and what results you obtained, in respect to the particular items?

30 A.—Taking the items as they are shown on Exhibit D-188, I will first explain the lands at Farm Point on the basis of the plan which was prepared by Mr. Farley, and which I have coloured and numbered by portions.

Referring first to the property lying to the southwest of the Canadian Pacific Railway: there is a portion which forms part of the lower flat, and I thought the different elevation of the land made it necessary to distinguish between those different parcels to arrive at a relative valuation; therefore, I have coloured the land in conformity with the contour lines. This land is shown in white, and it is marked "A-1 " and "A-2 ". It is included between the creek and contour 314, including also the bed of the creek.

40 I have coloured in blue the land comprised between contours 314 and 316, and I have numbered it "A-3 " and "A-4 ".

I have coloured in yellow the land comprised between contours 316 and 318, and I have numbered it "A-5 ", "A-6 ", "A-7 ".

I have coloured in green the portion of land comprised between contours 318 and 321.5, and I have numbered it "A-8 ", "A-9 " and "A-10 ".

I have coloured in brown the land comprised between contours

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321.5 and 324.5, and I have numbered it "A-11". To this I have added "A-12" (also coloured in brown) as representing the continuation of the land which would be comprised between the road and contour 324.5. That is on account of the exploitation as commenced by Mr. Cross. I thought this portion of land participated of the same character on which damage would be suffered.

10 Taking those parcels in order: "A-1" and "A-2", representing the land below elevation 314 (including, as I have said, the area of the creek) comprises 3.5 acres, to which I have attributed a value of \$10.00 an acre. Your Lordship will see by Exhibit D-173 that the land was flooded a maximum of 86 days, a minimum of 13 days, and an average of about 55 days.

Q.—Each year?

A.—Yes.

Q.—Under natural conditions?

20 A.—I think the flowage record starts with 1912, and extends to 1926. This land was flooded on an average of about two months per year, and in addition to that it was subject to considerable dampness during many more weeks. I consider this land has only a nominal value, which I put at \$10.00 an acre.

Q.—You are now speaking of "A-1" and "A-2"?

A.—The portion numbered "A-1" and "A-2", and shown in white. It can be put to practically no use.

Q.—And your figure as to its value is \$10.00 per acre?

A.—Yes. \$35.00 for the 3.5 acres.

BY THE COURT:

30 Q.—That starts from the bridge, and goes as far as the blue part?

A.—Yes.

Q.—Following the creek?

A.—Yes, your Lordship. With a little indentation here and there.

40 The parcels marked "A-3" and "A-4" (coloured blue) representing land comprised between elevations 316 and 314 come next. I do not think this land could have been put to any profitable use, it being flooded on an average of about one month, and sometimes longer, per year, and being subject also to dampness. I value it at \$30.00 an acre, which would represent, for the 6.23 acres the sum of \$186.90.

The land comprised between elevations 316 and 318 (marked "A-5", "A-6" and "A-7", and coloured yellow) was subject to flood on about an average of three to ten days, depending upon whether we take contour 317 or contour 318. It was also, of course, subject to dampness. I have segregated those two portions again, because

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of a certain factor. I consider the part "A-5" had more value, and represented more value to Mr. Cross, than the parts "A-6" and "A-7", and a portion has been used. For the part "A-5", representing the land which adjoins the land occupied by workmen's cottages, and which served to some extent to relieve the lots which were cramped for space, I have attributed a value of \$200.00 an acre, which would represent \$382.00 for the 1.91 acres.

10 The portion marked "A-6" and "A-7" was not put to any profitable use, and does not appear to have been used. To this I have attributed a value of \$100.00 an acre, representing the sum of \$341.00, for 3.41 acres.

The land marked "A-8" and "A-9"—small parcels of land above contour 318, which are enclosed in the portion "A-6" and "A-7" (which is land of a lower elevation) I have treated the same as "A-6" and "A-7". It is only a very small area—.32 of an acre. I have attributed a value of \$100.00 per acre to it, which represents the sum of \$32.00.

20 The portion "A-10", which is the land between contours 318 and 321.5 (coloured green) may have been somewhat damp, but it was practically free from flooding, and it was used for workmen's cottages. By reason of the fact that it was near the mill, and represented quite convenient land for that purpose, I have put a value of \$600.00 per acre on it. There are 1.44 acres, which makes a sum of \$864.00.

30 The land marked "A-11" and "A-12"—between contours 321.5 and 324.5 (coloured brown) I consider was neither flooded nor affected. It will be affected by the raising of the water in the Gatineau, and on account of the higher level I have given it a value of \$700.00 per acre. I estimate the Company's works have depreciated it by 50 per cent; in other words, through the raising of the water it loses one-half of its value. The area is 1.04 acres, which, at \$700.00 an acre, represents \$728.00. The damage I figure to be \$364.00.

Q.—Am I correct in understanding that the portion coloured brown is not submerged, but is above the water?

A.—It is above elevation 321.5, and it extends to elevation 324.5. I understand the maximum regulation will not exceed 321.5.

For the total of parcel "A", 17.85 acres, the amount is \$2,204.90, exclusive of the piling ground.

40 The piling ground is shown in red, and is marked "A-13" on the plan I now produce as Exhibit D-189, which is the plan I have used in my previous explanations.

The land between the railway and the Gatineau River, south of Mulvihill Road (marked Parcel "B"), with which I include the part marked "E-1", comprises an area of 6.22 acres. I include in this portion "E-1" the narrow strip of land comprised between the road and the river because I think it is an accessory to Parcel "B", and it

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is the two together that make the value. The land "E-1" would be used in conjunction with the land just across the road. The portion which will be flooded will represent about 75 per cent of the area. The portion "B-4" is very near elevation 324.5, so that the greater part of this land, although it will be affected, will be only slightly affected. I estimate the whole value of this parcel of land at \$1,866, representing an average value of about \$300.00 per acre, and I consider that 90 per cent of its value is gone by the raising of the water. I estimate, therefore, that the damage which will be done to that
10 parcel of land—apart from the value of the buildings—will amount to \$1,680.00.

Q.—That is building No. 30?

A.—Group 30.

With regard to the parcel north of Mulvihill Road, I see Mr. Cross has bought the land marked "Y-Z-U-V-W-X-Y" as a unit, and I have treated it as a unit in Parcel "C". This parcel of land is affected as far as portion "C-1" (coloured brown) at the front, and portions marked "C-2", "C-3", "C-4" at the rear. The portion at the
20 front measures 5/100ths of an acre, and the portion at the rear, comprising the small white portion marked "C-4", measures 11/100ths of an acre. We have, therefore, a total area of 16/100ths of an acre affected, to which I have attributed a nominal damage of \$100.00.

The part "D"—and I refer now to the whole extent of land marked "X-P-R-S-T-V-W-X", including "E-2"—was also bought by Mr. Cross as a unit, and I have taken it as a unit. According to the Deed it comprises 9.7 acres. The land flooded, or affected, represents about 5 acres—about 52 per cent of the area. It includes the property on which the hotel, or group 31, is constructed. I consider the total
30 value of this parcel of land to be \$2,910.00 and that the damage done to it by the raising of the water will be \$2,200.00, representing about 75 per cent of its value gone.

In the same way I have included in this portion "E-2" because it participates of the same character as the property across the road and it is an accessory to it. I do not think both values can be considered separately.

The addition of those amounts gives for the value of the land at Farm Point, exclusive of buildings and exclusive of piling ground, \$6,184.90. That is item "A" on Exhibit D-188.

40 BY MR. KER, K.C.:

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Q.—When Court adjourned on Thursday afternoon I think we had about completed your valuation of the lands at Farm Point, being item "A" on Exhibit D-188, and you had given a total of \$6,184.90 for land.

I would refer for a moment to parcel "D" on the plan Exhibit

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D-189, and I would ask you whether you considered any special depreciation for the part of the property on which the hotel is built—apart from the general depreciation of 75 per cent in the value of the whole?

A.—Yes.

I gave a general depreciation of 75 per cent.

10 Regarding the hotel, the date at which I had to prepare my valuation was May, 1926, and therefore any damage that would have been caused since that date—unless it would have been a necessary and direct consequence of the construction of the works and the operation—would not have been, in my mind, a proper element to include in my valuation.

20 With regard to certain deterioration which is apparent in the front wall—that is, the wall facing the public road—and the question of water in the cellar, I might say this: the cellar is at elevation 324.9, and, therefore, it is more than three feet above the level of the water, and any water in the cellar should have drained away properly if the sewer was functioning properly. This water in the cellar is certainly not a matter of seepage; it is a matter of the water coming from the surface of the land, or from land higher up, and flowing into the cellar, and not being disposed of properly. Of course, the question remains as to who is responsible for that. When I was on the ground, Mr. Farley and I tried to get into the cellar. It was very dark. We had no electric torch. It appeared to me very queer that so much water would be there, and we looked for the cellar drain. You heard the testimony of Mr. Farley to the effect that he could not find any drain.

Q.—You say seepage would not account for that water?

30 A.—No, it is not the result of seepage.

Of course, if the Company is responsible for it, it is a matter of accident that happened after the construction works. I cannot say anything about that.

Q.—I would like to ask you a question with regard to the various land valuations you have given and the basic values you have attributed to the different plots. In your opinion, what is farm land in the Gatineau district worth, and how does it compare in price with other comparable districts?

40 A.—In a district like the Gatineau, farm land is generally worth from \$30.00 to \$75.00 per acre. It depends, of course, on the nature and quality of the buildings, the area adaptable to cultivation, the proximity to a large centre, the condition of the land which makes it easy or otherwise of cultivation.

I think in Exhibits D-40, D-37 and D-36, there are certain sales enumerated appertaining to farm land value. Those work out at from \$54.00 per acre, building included, on Exhibit D-40; Exhibit

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D-37 is equivalent to \$30.00 per acre. Exhibit D-36 is equivalent to about \$27.00 per acre.

I may say in my experience those prices compare with like conditions elsewhere for a district such as this one.

Of course, the capital value of the land is in proportion to its capacity for producing an income, and farm land value is to a very large extent dependent upon the income that can be derived from it.

Q.—Why have you as a general rule used higher values than those in your evidence?

10 A.—For Parcel “ D ”, Parcel “ C ”, and Parcel “ B ” I have used higher values. It happens that farm land will sometimes gain a certain prospective or speculative value over and above its agricultural value. That is on account of possibilities of cottage sites, or country residences, which may be established on the property, or on account of certain developments which may bring it nearer to certain industrial establishments or industrial centres. The speculative values, or the subdivision possibilities, are tested by the number of sales which may happen over a certain length of time.

20 I may say that for conditions like the present those are very deceptive values, because if there is no very important or intrinsic reason to justify them they will disappear very rapidly.

Q.—You are speaking of the sale values of the lots that have been sold up there?

A.—Yes.

There are certain values. For example, the price paid by Mr. Cross for Parcel “ C ”—I think \$1,700. In my mind, that was an excessive price.

30 Q.—Parcel “ C ” being the portion within what limits on your plan?

A.—The letters “ Z-Y-X-W-V-U ”.

Q.—I understand you to say you refer to that because Mr. Cross purchased it as one piece, at one time, for a certain price?

A.—Yes.

Q.—And, it therefore offers a method of comparison?

A.—Yes.

40 When I examined the sales that Mr. MacRostie mentioned in his testimony, together with the sales which were communicated to me by the Company at my request, I wanted to test my general experience with sales which had been made in this district, and the price paid for this Parcel “ C ” appeared to me somewhat extravagant.

Q.—What was that price?

A.—\$1,700: for 3.15 acres.

Mr. MacRostie mentioned what disposition he could make of this parcel by selling it at retail prices. Your Lordship will notice on the plan I file as Exhibit D-190, Parcel “ D ” is shown by a red

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line. The lots Mr. MacRostie has given from his subdivision plan are lots 29, 28, 8 and 7. I have plotted also lots Nos. 20 and 19. I have put on Exhibit D-190 the values he gave: \$500 for lot 29; \$384 for lot 28; \$100 for lots 9, 8 and 7; \$210 for lot 19; and \$203 for lot 20.

If you add the values of lots 29, 28, 9, 8 and 7 (19 is only a very small portion, and I took \$200 for one of them)—you will arrive at a total value of \$1,384, as compared with \$1,710. \$1,384 is apparently the utmost he could make out of this parcel of land by retailing it.

There are any number of expenses he would have to incur. For instance, he would have to take off selling expenses.

Q.—Do I understand you to say the valuation as subdivided land for all the lots included in the piece, as given by Mr. MacRostie, is less than Mr. Cross actually paid for them?

A.—The wholesale value is more than what it could be retailed for.

BY THE COURT:

20

Q.—On what do those lots front?

A.—They front on a small street which is laid out, and which is marked " Proposed Street " on Exhibit D-190.

BY MR. KER (continuing):

Q.—I understand those lots you speak of are not affected by this flooding? They are not affected by a water level of 321.5, apart from at the two ends, as the plan shows?

30 A.—Except for the parcels I have mentioned, which are shown coloured brown and green on Exhibit D-189.

Of course I do not consider as unreasonable the values Mr. MacRostie places on his projected plan of subdivision, for eventual realization; although I do not consider a proposition of that nature in that district would have any chances of success. At the same time, one wishing to venture into subdivision, I do not think he could manage for lesser values than those.

Q.—Taking into consideration the various expenses of which you speak?

40

A.—Yes.

And after a deferred realization. At best lots which could be sold there could not be sold in less than five or ten years; so he has his overhead charges, his expenses connected with the lots, and so on. He has the break-up value, and he has certain notarial expenses.

Q.—And bad debts?

A.—Bad debts, yes. Lots which would have to come back to him.

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Q.—I am speaking now merely as to the theory of your valuations, because all the subdivided land Mr. MacRostie spoke of is not in any way affected by the water. You are merely referring to this as a comparison of how you have gone about making up a value?

A.—Yes.

Q.—What price per acre did you use for those valuations of land you referred to as having a certain prospective value, among the properties which are really affected or flooded?

10 A.—For the parcels of land " B ", " C " and " D ", on which Mr. Cross has claimed a prospective value based on their adaptability for subdivision purposes, I have used a basic price of \$300 per acre, implying, of course, that this land has a certain value over and above the agricultural value, and that there are certain possibilities for the establishment of scattered cottages. As I said, in my opinion it is very questionable that this would have any success, but as Mr. Cross has sold certain lots on this property I thought it was only fair to give him any benefit there might be in that fact, and take it that those lots had certain potential values for an exploitation of that sort.

20 Of course, this is an average value. It would fluctuate somewhat with the topography of the land, that is whether it was low or high. It would fluctuate with the contiguity to the river, or the fronting on the public road, or on a proposed street at the back, and whether a lot is irregular or not, or whether it would be traversed by a creek, or adjoining a creek.

Regarding the values given by Mr. MacRostie, I do not think he allowed for lots which were traversed by the creek, or which were located in the lower flat. He gave them practically the same price as the lots adjoining.

30 Q.—Do you consider there is any special factor in this district which would warrant higher prices than elsewhere for the same sort of land?

A.—No, I do not think so.

The figures that were used by Mr. MacRostie would compare with the value that could be realized over a certain number of years by breaking up a property as he suggested this should be broken up.

BY MR. SCOTT:

40 Q.—What do you mean by " breaking up " ?

A.—The subdividing of the land. Breaking up the property into different parcels.

BY MR. KER (continuing):

Q.—You spoke of having consulted certain sales in making up your valuation. What were those sales?

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A.—I had a plan of the land in the district, showing the properties purchased by the Gatineau Power Company in connection with their development. I asked for quite a number of those sales to be communicated to me, and I understand quite a number were filed in the previous case—I do not know whether this was done by Mr. Blue.

Exhibits D-39 and D-40 are in this series.

Q.—There are a number of them filed.

A.—Yes.

10 I have also consulted the sales mentioned by Mr. MacRostie.

I checked all those with my personal experience, and I think I may say I have had quite a wide experience in matters of that nature, because I have consulted any number of sales connected with the widening and improving of roads, and the opening of new roads, for the Department of Roads. In my study of titles connected with my surveying work I have had occasion to consult a great number of those farm titles. For example, in connection with the widening of the road in the Parish of Laprairie, I arrived at a settlement with
20 nine out of ten of the proprietors. That is a road about eight miles along the waterfront, and about five or six miles back of Laprairie. I have covered the Parish of St. Luc, which is next to the Parish of Laprairie. I have covered the Parish of St. John—certainly ten miles—taking one property after the other; not choosing one property or another—to arrive at a fair settlement with every contiguous proprietor. I have also covered the Parish of St. Blaise. I have covered the Parish of Lacolle. I have covered the Parish of St. Paul de l'Île aux Nois—a distance of fifty miles, from Montreal to the frontier. I have had to take up all kinds of properties and conditions.

30 I have also covered the Parish of St. Joachim de Chateauguay, near Caughnawaga, on the Valleyfield Road. I have made any number of settlements in the Parish of Huntingdon, in the Parish of Chambly, in the Parish of St. Bruno, in the Parish of St. Bazile, and in the Parish of Longueuil.

So far as farm values go, I think I may say I have a pretty good knowledge of them. And, as I have said, nine times out of ten I arrived at a fair settlement with those farmers.

Q.—This was in your professional work for the Province?

A.—Mostly for the Department of Roads. Of course I had
40 similar experience with different Companies. For instance, for the C.P.R. I prepared two quite lengthy drainage investigations, which covered three or four parishes, and in connection with that work I had to consult any number of titles.

I have also prepared right of way plans for the Canadian National Railway, the Canadian Northern Quebec Railway, and the old Grand Trunk.

Q.—And the Harbour Bridge?

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A.—Yes, but that is quite a different matter. Values in Montreal and values in the outside farming sections are quite different. I handled the plan and the approaches for the Harbour Bridge. Those I handled on the work for the Alexandre Taschereau Boulevard, a length of about ten miles. I prepared the plan, and I purchased the property.

BY THE COURT:

10 Q.—What is the nature of the soil in Parcels “ C ” and “ D ”?

A.—It would be clay, I think. Clay, with a certain amount of gravel deposits.

Q.—Could you compare that land with the land you visited in the County of Laprairie, and Huntingdon, and so on?

A.—I should say the general run of the land in the Parish of Laprairie would be much better for cultivation, and much more developed.

20 Q.—Are not those parcels “ C ” and “ D ” especially for building purposes?

A.—When I put a value such as \$300, it means I am about five or six times above the agricultural value. I do not think a man buying property in that district at \$400 an acre has any chance, even with better prospects of subdivision, of coming out on the right side.

BY MR. KER (continuing):

Q.—Paying \$400 an acre for it?

A.—Paying \$400 an acre for it.

30 I know of hundreds of cases of people who paid \$300 or \$350 or \$400 an arpent in the district around Montreal, and they are very badly off today.

Q.—You mean for subdivision purposes?

A.—For subdivision purposes.

Of course, if you are right in the vicinity of Montreal, it might be different; but you would have to pay higher figures than that. You might come out on the right side, but that is the exception.

40 Q.—Am I correct in understanding that you allowed \$300 an acre in your valuation for such of this land as you thought was susceptible of being used for subdivision?

A.—Yes, \$300 an acre.

Q.—What parcels would those be?

A.—Parcel “ B ”, parcel “ D ” and parcel “ C ”.

Q.—Included in those are “ E-1 ” and “ E-2 ”, as being naturally part of them?

A.—“ E-1 ” and “ E-2 ”, yes.

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BY THE COURT:

Q.—Is there anything in particular to induce city people to go and establish themselves on those lots?

10 A.—I would say there would be very little, if any, inducement on parcel " B ". I would say there would be about 20 or 30 per cent of the portion of parcel " C " and parcel " D " south of D-5 which could appeal to somebody to build a cottage. In the portion with which we are not concerned, up on the heights, west of the small road leading from Mulvihill Road to the Yetts property, there are, I think, sites which would justify sales of \$200 or \$300 per lot, according to the condition.

Q.—Are you referring to lot 24-C?

A.—Yes, your Lordship. I am referring to the portion which lies contiguous to the side line between lots 24 and 25. This property, of course, is high up on the hill, and it is a much more pleasant location.

Q.—It is a mountainous country, is it not?

20 A.—Yes, your Lordship. I think the panoramic view filed by Mr. Ralph gives a good idea of it.

Mr. Ker: It is suggested to me, your Lordship, that Exhibits P-29 and P-31 might also give an idea of it.

BY THE COURT:

30 Q.—What is the width of the river opposite this land of which you have been speaking—especially between the C.P.R. and the river?

Witness: Does your Lordship mean the width of the river, or the width of the land?

His Lordship: The width of the river.

A.—The width of the river opposite the Farm Point property would be about around 700 or 800 feet.

Q.—Is it a nice piece of river?

40 A.—It is a nice piece of river; especially since the water was raised, because the water is quieter now than it was before.

To answer your Lordship's previous question: your Lordship will see on Exhibit P-31 the land which is at a higher elevation on the hill. It would seem to me this would be much preferable for cottage sites, but I take the fact as if in that portion most, if not all, the subdivided lots were sold, or that the land was parcelled out for sale.

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BY MR. KER (continuing):

Q.—That, of course, is away above any water effect?

A.—Yes.

You would get a general idea on the same photograph Exhibit P-31, at the point marked " M "; and another view of parcel " C ", looking at it from Mulvihill Road.

10 BY THE COURT:

Q.—On the plan Exhibit D-160, what is the land west of the delta?

20 A.—Most of the land west of the delta on the plan Exhibit D-189 is occupied by workmen's cottages. The portion which I enclose in the pencil circle marked " N " is mostly occupied by workmen's cottages. I do not think the selling value of that would be very high. I do not think a buyer of properties of that sort would pay more than the value of the house—counting the land for nothing. Of course, it is used to great advantage by Mr. Cross for his lumber exploitation, and I have treated it as such. The same as the land I circle in pencil, and which I mark " P ".

BY MR. KER (continuing):

Q.—And to which you have given an added value in your estimate?

A.—Yes.

30 On account of its function in the lumber industry, I have given the properties affected in portion " P " a higher value even than parcels " C ", " B " and " D ".

BY MR. SCOTT:

Q.—What was the value you gave on those portions " P " and " N " ?

A.—I have not mentioned any. I have figured out values for A-1, A-2, A-4 and so on.

40 Q.—Have you made any values for the land within the circles you have just drawn on the plan?

A.—Not anything that was not coloured. Except for A-1 and A-2.

Mr. Ker: Absence of colouring indicates it is not affected.

Witness: In explaining the colouring on parcel " A " on the

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plan Exhibit D-189 I think I forgot to mention that I intended to show, for example, on A-1 and A-2 the extent of land which would be flooded when the water would be up to elevation 314. You would also have the extent of land flooded at elevation 316 by taking all the land A-1 and A-2 and all the land coloured in blue, marked A-3 and A-4.

10 I do not know if I made myself clear on that. By taking the blue, yellow and the enclosed white colour, you would have all the land flooded when the water was raised to elevation 318. So the colouring is intended to show the outline of the flooded portion when the water is at different heights.

BY MR. KER (continuing):

Q.—The next item on your summary Exhibit D-188 is your valuation of item " B ", being the buildings at Farm Point. Will you state what those buildings are, and what valuations you have given to them individually?

20 A.—Under item " B " of Exhibit D-188, I value the buildings which are affected at Farm Point at \$4,594.99. This would include group No. 5, group No. 6, group No. 9, group No. 10 and group No. 30. Those are the buildings situated in the flooded area, or in the affected area.

Q.—By " the affected area " you mean the area up to elevation 324.5?

A.—The affected area being between elevation 321.5 and elevation 324.5.

30 I file a statement as Exhibit D-191. The first page of this exhibit shows, opposite the group numbers, the respective reproduction costs, new, in 1926, according to my valuation.

For group No. 5, the cost of reproduction, new, is \$1,374.58; its value in 1926 being \$824.75.

Group No. 6, the cost of reproduction, new, is \$1,692.64. Value in 1926, \$1,015.58.

Group No. 9, cost of reproduction, new, \$1,520.24. Value in 1926, \$912.14.

Group No. 10, cost of reproduction, new, \$1,509.08. Value in 1926, \$904.45.

40 Group No. 30, cost of reproduction, new, \$1,561.78. Value in 1926, \$937.07.

The following sheets in the exhibit give the detailed figures I have used to arrive at the cost of reproduction, new, for the several groups: 5, 6, 9, 10 and 30.

Perhaps I should explain how I have proceeded to make up my estimates. I have devised the following method of valuation, which I considered left as few factors as possible open to discussion.

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First, the quantity of lumber (one of the most important items); in order that there should be no discussion on the point, I have used for my basis the quantities given by Mr. Hazelgrove, I think it was.

Q.—Who was examined for the Plaintiff?

A.—Yes.

This being a question of fact, I do not think any difference of opinion can exist in regard to it.

I take it Mr. Hazelgrove has surveyed the houses, and established the quantities he mentioned.

10 Q.—So far as the quantities of lumber in your estimates are concerned, you are using the quantities claimed by the Plaintiff's witness, Mr. Hazelgrove?

A.—Yes. Not only the quantities, but the several detailed items that are mentioned in his estimate.

For ordinary labour I have used the rate of 30 cents an hour. For carpenters I have used the rate of 50 cents an hour.

20 I may say I used this price of 50 cents an hour for carpenters for two reasons: one because I was informed that Fraser Brace & Company, the contractors, were paying that rate when they constructed large works for the Gatineau Power Company, and, secondly, because in view of the quality of the work which I saw it appeared to me to be a good price.

30 I have adopted prices ranging between \$32.00 and \$38.00 a thousand feet for the price of lumber; and I may say that considering the lumber that entered into the construction of the greater portion of those workmen's houses at Farm Point this price is exceedingly liberal. Much of the lumber which has been used would be refused as merchantable grades. To a large extent it is very likely culled wood. I do not think one would be justified in using any higher figures than I have adopted.

40 With regard to the fourth item—the amount of work a carpenter can accomplish in a day's work, I may say I have taken the figures from the tables compiled by the Quantity Survey Bureau of the Master Carpenters' Association, which are reproduced in the handbook I have before me. I thought it would be considered a very impartial basis. Those tables were not made up for the purpose of this case. They are largely used in the contracting field, and it is my experience that those prices and figures or prices and figures approximating them are very much standardized.

BY MR. SCOTT:

Q.—You mean the Carpenters' Association did not publish the book for the purposes of this case?

A.—That is my idea exactly. This is a Carpenters' Association around the district of Chicago. Through investigation and study

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they have determined the average work a carpenter would do in average circumstances during a given period of time. The amount of work is represented by the number of feet board measure he will put in place, and this amount of work that a carpenter will so accomplish is called the unit hour. The actual quantities of lumber required on a particular job being fixed, and divided by the number of unit hours applicable, gives the result.

Your Lordship will see in the table at page 1575 of the "Handbook of Construction Costs" by Gillett, published by the McGrath-Hill Book Company, the following figures: A carpenter will install in one hour an average of 32 feet board measure of 2 x 4, when he is working studding—and so on along the different classes of work. For rafters the amount will be between 37 and 39 feet, depending on the size of the lumber used—either 2 x 4 or 2 x 5. For joists 2 x 6, the unit working hour would be 26 feet.

By dividing the total lumber which enters into the construction of a house or a building by the number of unit hours, and multiplying this by the rate of wage, one will get the labour cost.

20 BY MR. KER:

Q.—And it is on that basis you have proceeded in connection with your valuation of the buildings?

A.—Yes.

This cost in 2 x 4, for example, will amount to \$15.60 per thousand feet board measure.

On that basis I have prepared the cost of reproduction, new, for the workmen's houses.

30 To arrive at the fifth main item—that is the depreciation rate—I have used the same rate as mentioned by Mr. MacRostie, namely, 40 per cent.

Those are the unit prices I have used for houses, but for sheds, stables, and outbuildings, Mr. Hazelgrove did not give any quantities. He just proceeded on the basis of lump prices, or he guessed the sizes of the buildings.

I was not satisfied that the rate per cubic foot he used was correct and represented anything else than a guess, so I took the trouble to figure approximately the lumber entering into the construction of those units, and I found the values which had been used per cubic
40 foot were not very dependable. Therefore I devised a method of my own, based on the area of the outside walls, the area of the roof, and the area of the floor, with due allowance for the lumber used in the interior, as would be the case in stables or sheds where there was a second storey. I prepared my valuation of the outbuildings accordingly. For instance, your Lordship will see the detail sheets of No. 5,

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at the bottom of page 5, for outbuildings: 864 square feet of wall and roof surface, at 16 cents per foot, making \$138.24, and so on.

To this I have added about 5 per cent for contingencies.

And I obtained the different prices which are mentioned on Exhibit D-191.

I think it is only fair to add that although I have made that valuation I do not consider Mr. Cross would be able at all to sell for that price; but as those houses were used by him in his lumber industry, I thought it was fair that I should proceed on that basis.

10 Q.—Therefore, your valuation of buildings under Paragraph “ B ” of Exhibit D-188, namely \$4,594.99, is the value which you would place upon those buildings as of 1926?

A.—Yes.

Q.—Did I understand you to say that was taking into consideration the rate of depreciation which Mr. MacRostie, a witness for the Plaintiff, had indicated?

A.—Yes: and I understood that to be 40 per cent, according to his testimony.

20 Q.—The next Paragraph in Exhibit D-188 is the damage to the lumber industry. Under that heading, what, in your opinion, would you say would be the proper indemnity to compensate Mr. Cross for the damage he has suffered in his industry itself, and particularly with reference to loss of his piling ground. The item in Exhibit D-188 is \$10,310: which includes the piling ground. Perhaps you would tell his Lordship how you arrived at that figure?

30 A.—Mr. Cross is claiming the full value of his saw mill, and most of his lumber industry—that is, timber limits, and everything. He represents that the piling ground has either been drowned out or so affected by the level of the water in the Gatineau River that it is unfit to be used any more for that purpose, unless it is reconstituted, at a prohibitive cost.

Mr. Ralph has suggested that by raising the area of the piling ground to elevation 324.5 (that is 3 feet above the level of the water in the Gatineau River, under regulation) his purpose is to restore the safe and dry area which Mr. Cross could use as a piling ground, in order to allow him to carry on the operation of his sawmill under the same conditions as formerly.

40 I do not think it would be reasonable to pay Mr. Cross the full value of his mill if there was a possibility that he might be able to carry on as before by rearranging in one way or another his exploitation on the same site.

Mr. Scott: Of course, that is a matter for his Lordship to decide. The function of the witness is to give the facts. His Lordship will decide the case.

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Mr. Montgomery: Expert evidence must necessarily be opinion evidence.

Mr. Scott: But it is not the function of the witness to decide the case, and I object to the evidence.

His Lordship: I will take the evidence under reserve of the objection. You may proceed, Mr. Beique.

10 Witness: In my opinion, this possibility no doubt exists, but there are a few points which strike me, the first of which is the practicability of the method suggested by Mr. Ralph is being demonstrated on the site itself in the construction of the old roadbed of the C.P.R. probably forty or forty-two years ago, where conditions very similar to those now under discussion existed. Secondly, the practicability of this method has again been demonstrated when the new roadbed was constructed at a higher elevation, under the control of the C.P.R., and apparently to their satisfaction. I think those are
20 facts, and to my mind they are as good as or better than any theory. The C.P.R. track has been constructed since 1890, without any weaknesses developing or becoming known, and it is entirely improbable that the C.P.R. would have allowed the Gatineau Power Company to induce vicious or manifestly bad elements into the construction of the new roadbed, or to resort to a method of construction which would have been unsafe. They had the means to specify against any of those defects, and they know enough about road construction, embankments and that class of work to protect themselves.

30 The other point which appealed to me was this: that the load superimposed on top of the original ground by the suggested gravel fill and by the piles of lumber is of a very restrictive order—something on the order of half a ton, or maybe three-quarters of a ton, per square foot of area. In my experience this is not at all an excessive load in the circumstances.

In order to measure and determine the indemnity which I thought it would be fair to allow in this case in connection with the damage done to the piling ground, I have proceeded as follows: I have allowed 9,200 cubic yards of gravel fill, at 75 cents, making \$6,900.

40 For the work connected with the raising of the spur line to make place for the filling, I have allowed \$500.

For removing the lumber pile, in order to make way for this fill, I have allowed \$600.

For re-arrangement of the wood conveyor, I have allowed \$350. I may say that in my estimation this figure is about 50 per cent, if not more, of its fair value.

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For the displacement of the tie loader I have allowed \$60. For the riprap, 300 cubic yards, at \$3, \$900.

Making a total of \$9,310.

For contingencies and trouble, I had it in mind to allow 10 per cent, \$931; but I have allowed \$1,000.

Which makes my grand total \$10,310.

Under this assumption, the sawmill, the machinery of the sawmill, the sawmill power plant, and all the appurtenances for receiving the lumber to the mill, are not affected; and, therefore, I did not
10 include anything on that score.

Q.—That makes your item " C " \$10,310?

A.—Yes.

Q.—\$1,000 of which, I think I understood you to say, you allow in respect of inconvenience and general damage?

Mr. Scott: The witness said it was for contingencies.

Witness: Contingencies and trouble to which Mr. Cross would
20 be put by having to re-arrange his area and by reason of having to suffer all those inconveniences. For these reasons I think \$1,000 should be added to my estimate, as I have outlined.

BY MR. KER (continuing):

Q.—I want to be clear, however, that those contingencies and trouble are included in the \$10,310?

A.—It is included in the \$10,310, yes.

30 BY THE COURT:

Q.—Do you allow anything for Mr. Cross' time, for instance—his personal inconvenience?

A.—Yes, your Lordship. This amount of \$1,000 I have mentioned is meant to cover all that.

Apart, of course, from the displacing of the lumber piles, the displacing of the wood conveyor, and the raising of the spur line—for which I have allowed separate items.

40 BY MR. KER (continuing):

Q.—Have you a plan showing how the lumber yard would be arranged?

A.—In order to study the matter I prepared a diagram showing the best disposition of a piling yard, with a spur line on one side, and streets or alleys for ingress and egress.

I wanted to determine what amount of lumber could be piled in

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a given area, and from this diagram I ascertained that on an acre of land you could pile 85 piles, 16 feet high, representing 1,275,000 feet of lumber. With piles 25 feet high you could pile 1,870,000 feet of lumber.

Q.—On an acre of land?

A.—Yes.

10 Of course, this would be over the mark as applied to Mr. Cross' piling ground, because the piling ground shown on my diagram would be square, or rectangular, and not irregular, as the piling ground of Mr. Cross. So something would have to be deducted from those figures to arrive at the exact quantity that could be piled on Mr. Cross' piling ground.

Q.—Will you produce this diagram as Exhibit D-192?

A.—Yes.

Q.—Will you explain to his Lordship exactly what this diagram shows?

20 A.—To the left there is the railway spur line. The area representing the piles appears in dotted lines. The diagram shows the general layout applicable in a piling ground.

I produce, as Exhibit D-193, a sketch showing the extent of the piling ground, or the available land next to the mill which could be used for piling ground.

The word "Road" indicates the road passing through the piling ground, going to the power house and the workmen's cottages. On the south side, next to the mill, there is the portion marked "R", coloured in blue, which has an area of approximately .54 of an acre.

30 I have coloured in yellow the parcel of land included between contours 318 and 321, marked "P", which has an area of .62 of an acre.

I have coloured in green the parcel of land marked "N", 1.17 acres, extending between contours 321 and 324.5.

The area proposed to be filled by Mr. Ralph would include the yellow and the green areas on this plan.

Coloured in red there is the portion "M", of an area of 1.58 acres, which could, in part, be available for piling ground.

BY MR. SCOTT:

40 Q.—How much of it?

A.—Probably 60 per cent.

Q.—Amounting to how much?

A.—About an acre.

Of course, in this portion "M" there is a certain rocky portion. I think Mr. Small has explained it to your Lordship. This rocky portion is back of the school.

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BY MR. KER (continuing):

Q.—Having dealt with the piling ground and the damage to the lumber industry, as set out in paragraph "C" of Exhibit D-188, will you now take up item "D": damage to the electric power development of the Plaintiff—and will you explain how you went about making up the estimate of \$14,826?

A.—To transpose into dollars and cents the damages appertaining to this item, I proceeded in this way:

10 Mr. Boisvert, of the Public Service Commission, measured the tailrace elevation to be 313.91. I think Mr. Massue, of the Public Streams Commission, measured it as 313.81. There is a difference of about one-tenth of a foot between the two measurements. They estimate the total head at 74 feet. According to these figures, there is a loss of approximately 10 per cent of the original head. As a matter of fact, I think the exact figure is 10.3 per cent.

According to Mr. Scovil, the rated capacity of the generator is 160 horsepower.

20 This would mean that the maximum loss, at 10 per cent, would be of the order of 16 horsepower.

Mr. Scovil has estimated also that in the absence of continuous flow records on Meach Creek that he would fix the ordinary dependable minimum flow at six cubic feet second.

This, for a head of 74 feet, would represent 40 horsepower for the whole plant; 10 per cent of which would be 4 horsepower.

30 After considering all this, I thought I would suggest that the loss appertaining to this item should be taken at the equivalent of about 12 horsepower, dependable power. Expressed otherwise: this 12 horsepower would represent, I think, a better value than the amount of power lost by the reduction of the head, but taking into consideration the circumstances in which Mr. Cross operated, and the way he could make use of his power, I believe his loss should be taken at the equivalent of 12 horsepower, dependable power.

Twelve horsepower, at the rate of \$44 (which was given by Mr. Simpson as the price at which he could buy power from the Gattineau Company) would, at 6 per cent, represent a capital sum of \$8,800.

40 In my opinion, this is the best way of measuring the damage done to Mr. Cross by the reduction of head.

To that should be added the cost of readapting his machinery and power house to the new condition, which has been estimated by Mr. Lefebvre to be \$1,450, and which I have included in my estimate.

There is also the transmission line, which has been flooded, and which, I think, has been estimated at \$4,160 as a physical asset, I think by Mr. Parker.

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To this I have added 10 per cent, or \$416—making \$4,576.

This does not include any loss of clientele. I do not know if loss of clientele is to be allowed. If it is allowed by the Court, I think a fair amount should be \$6,000 instead of \$4,576—representing the value of \$80 per customer. I understand the loss has been mentioned as \$75 per customer.

BY MR. SCOTT:

10 Q.—\$75 or \$80 a year per customer.

A.—No, not per year. If Mr. Cross had wanted to sell his transmission line and his clientele, I think a price of \$80 per customer would have been a good price for him to obtain.

BY MR. KER:

Q.—\$80 per customer?

A.—Yes.

20 I have seen those values used before the Public Service Commission as a rate to justify whether or not a company could give service in a given territory.

Q.—You spoke about loss of customers. Would you mind telling us just what you mean by that? You have made an estimate on the basis that if the Gatineau Power Company were obliged to pay for loss of customers. Are you referring to customers who had to leave because of the Company buying out their property?

30 A.—Yes. The Company has flooded the road along which the transmission line was running, and along which there were certain lots. I understand the houses were removed to other locations. The figure I have mentioned represents, in a sense, customers that have been lost to Mr. Cross because they are not taking electricity any more from him.

Q.—Do you think it is fair to ask the Gatineau Power Company to pay for loss of customers if the Company has bought the land and those customers have gone away?

A.—I think that is a matter for the Court to decide.

40 Q.—You have given the figure you consider fair, in the event his Lordship comes to the conclusion that Mr. Cross has to be compensated for the loss of customers. In the event that he is not entitled to such compensation, then your other figure applies?

A.—I am trying to give the Court what I consider to be fair tools to use to appreciate the damage under one assumption or the other.

Q.—You are speaking now of the transmission line between Cascades and Kirk's Ferry?

A.—Yes.

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Q.—How does that bear upon your estimate of \$14,826? How is this figure of \$14,826 made up?

A.—The sum of \$14,826 is made up of \$8,800 for the reduction of head, \$1,450 for readaptation of the machinery and the power house to new conditions, of \$4,576 as representing the damage to the transmission line.

In my opinion, this figure of \$14,826 should be increased by \$1,424 if loss of clientele is to be allowed.

10 Q.—Basing yourself, I understand, on 75 customers?

A.—Yes.

Q.—If it should be ascertained that there were 75 customers. If, on the other hand, this figure of 75 is not accurate, your estimate would be on the basis of \$80 per customer for whatever may have been the number of customers?

A.—Exactly.

I took it as 75 customers. I do not know which of the witnesses gave the testimony, but I remember a statement to the effect that in 1926 there were so many customers on the line, and in 1932 there were so many less. Of course, I did not count the customers myself.
20 I took the figure that was mentioned here in Court. I think I could give you the reference, if you wish.

Q.—In any event, it is simply a matter of multiplying whatever the number of customers lost may have been by \$80?

A.—Yes.

Q.—Your next item is the Mileage 12 mill property, " E " ?

A.—Item " E ", Mileage 12 property. I placed a valuation of \$3,572 on this property.

Q.—How did you arrive at that figure?

30 A.—It is made up as follows:

Value of the land, 3.5 acres, at \$250 per acre, \$875;

Value of the building, \$1,203.75;

For the siding I have allowed a nominal value of \$500;

For dismantling and moving the machinery I have allowed \$250;

I have allowed for the moving of 200,000 feet board measure of lumber, at \$2.00 a thousand—making \$400. This figure may be variable. I tried to sense what were the conditions in 1926 from the photographs. There appeared to be some lumber there, and I
40 took it as 200,000 feet.

The figures I have just mentioned, added together, give a total of \$3,248.05.

I have allowed 10 per cent for trouble and disturbance, which brings the total up to \$3,572.

Of course, in this estimate the figure of \$250 per acre is high, but I have made it so in order to give a value sufficiently high to restore the site should Mr. Cross want to do so.

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In giving those values you will notice I presuppose the site is totally destroyed, and that Mr. Cross will not collect an additional amount from the C.P.R. for land and damage, and that if he wanted to continue his operations as he had carried them on formerly he would have to procure another site. I came to this conclusion because by the raising of the water the land drowned, and possibly affected, plus the land taken by the new railway, represents about 50 per cent of the area, and this 50 per cent of area is sectioned in two parts, and in my opinion most of the value of this property for practical purposes is gone.

10 Q.—You are allowing \$3,572, which includes the 10 per cent disturbance allowance?

A.—Yes. \$324 for disturbance allowance. A total of \$3,572.

Q.—The C.P.R. already has an expropriation proceeding pending with Mr. Cross in connection with this property?

A.—So I understand.

20 Q.—Did I understand you to say your figure is based on the assumption that there would be nothing coming to Mr. Cross from the railway expropriation?

A.—Yes. I take his site as totally destroyed. If he claims damages in expropriation from the C.P.R., and receives them, and also receives the amount I have mentioned as my estimate, he would be being paid twice for the same thing.

30 In connection with mileage 12 I have prepared a little plan which shows the property in relation to the river, and in relation to the timber limits which have been mentioned under Nos. 18-A, 19-A, 19-B, and 19-A, of the 11th and 12th Ranges of the Township of Hull. This shows the old highway and railway locations, and the new railway location and the new highway location. I produce this plan as Exhibit D-194. The timber limits are shown in green, and the whole of the mileage 12 property is coloured blue. I have coloured in yellow the former highway and railway location. I have coloured in red the new highway location and the new railway location.

40 Your Lordship will see the property coloured blue will be cut up, or sectioned, by the C.P.R., and the parcel of land being affected or flooded at the front, I have taken it that its practical value was gone. In connection with this I may also say that the area surrounding mileage 12 is not developed to any extent, and it should be an easy matter for Mr. Cross to reestablish himself if he wanted to do so.

Q.—I think on this Exhibit you are giving him credit for the whole of lot 16-B in the 13th Range. Does he really own the whole of the lot?

A.—If I remember his title correctly, his property did not extend to the Gatineau River—it extended to the highway, or to the

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railway—that is, to the northeast. The railway and the highway were practically beside each other.

BY MR. SCOTT:

Q.—That is, the original highway and the original railway?

A.—Yes. I think Mr. Farley's plan will give a clearer detailed value as far as that is concerned.

10 BY MR. KER:

Q.—The blue colouring on lot 16-B is not intended to represent Mr. Cross' actual holding, is it?

Mr. Scott: The witness has just said it does.

20 Witness: Mr. Cross' property is shown on Mr. Farley's plan, which has been produced. I have used the plan Exhibit D-194 to arrive at the right perspective of the timber limits, the site of the property, and the location of the highway and of the railway. It was not at all made up from the titles with the idea of showing exactly what land belonged to Mr. Cross.

BY MR. KER (continuing):

Q.—There is an item of \$310, for property on the east side of the river. I think it is the gravel pit property. What have you to say in regard to that?

30 A.—That is item " F ", representing property on the east side of the river. I have allowed \$310. This parcel of land borders on the Gatineau River. It is part of lot 23-B. The total area flooded and affected represents four-tenths of an acre. Higher up on this property there are two summer cottages, numbered respectively 36 and 37. Those cottages are not physically affected. They are cottages which are rented for the summer season, and in my opinion their rental value will not be affected. They should rent as well after the water has been raised as they rented before.

40 I assume the land there to be worth \$150 an acre, which would represent \$60 for the four-tenths of an acre. I have allowed the sum of \$250 for trees and embellishment. These two figures added together make my total valuation of \$310.

I consider that the amount of \$250 for trees and embellishment should easily permit Mr. Cross to re-establish the property and give it as much value as it had before, and perhaps more. The greatest incident of value on this property would be its contiguity to the river bed, and that has not been diminished. It is the equivalent

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of taking the land at the rear. The water front is not lost: it is only pushed back to a certain extent. I do not consider the property at the back would be worth more than \$100 per acre.

Q.—Have you a written statement of particulars regarding the Mileage 12 property?

A.—Yes. This morning I forgot to file the detailed valuations I prepared for the buildings at Mileage 12.

Q.—Will you now produce it as Exhibit D-195?

A.—Yes.

10 This estimate was prepared on the basis of measurements given by Mr. MacRostie, or Mr. Hazelgrove—I don't remember exactly—in which he detailed the area of the different buildings, but as he did not give any quantities whatever outside of this area, I went to work and reconstituted a house on the same basis as the workmen's houses that were at Farm Point, and, of course, with my view and my examination of the premises also, and you have the estimate as shown here of \$786.89 given for reproduction cost of the lodging house at Mileage 12 property.

20 For the shed, stables, out buildings, etc., I prepared my valuation on the basis of the exposed area as I had done in the previous cases for out buildings at Farm Point. This is all shown in detail on Exhibit D-195.

The total cost of reproduction new of all these buildings is \$2,004.97, which, for a depreciation of 40 per cent, leaves as fair value in 1926, \$1,202.97.

Q.—Did I understand you to say that the dimensions of these buildings had been taken from the Plaintiff's statement?

A.—Yes.

30 Mr. Ker: My Lord, I endeavoured by this witness to summarize as well as possible the allegations and offers made in paragraph 57 of the Defendant's Plea. They are not under the same letter numbers.

40 There is only one thing I would like to point out to your Lordship in order that it may go into the record, and that is, Mr. Beique has spoken of and valued all these properties, with the exception of the claim for extra judicial law costs which, I think he quite properly said, he does not feel called upon to touch upon, and the item 8 with respect to gravel which had been hauled over from the other side of the river. Mr. Beique has not made any evidence as to that.

As to paragraph 57-H, we offered in that case \$500 for certain gravel which Plaintiff alleged had been hauled over, and which had been submerged.

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

Q.—Mr. Beique, when was the first occasion you visited these properties of Mr. Cross?

A.—Towards the last of April, 1932.

Q.—One day.

A.—Yes.

10 Q.—In May?

A.—No.

Q.—June?

A.—I have not seen them since that date.

Q.—Just one day.

A.—Yes.

BY THE COURT:

Q.—In April?

20 A.—Towards the end of April. I can give you the date.

BY MR. SCOTT:

Q.—Just for one day in 1932?

A.—Yes.

Q.—That included an examination of the property at Farm Point, and such memoranda as you took, and also Mileage 12?

A.—Yes. We went to the east side of the river.

Q.—Then you crossed the river on the east side?

30 A.—We went to Farm Point, and then we crossed on the east side. We came back to Farm Point. I think we went to Alcove; we had dinner there and I think we came back to Farm Point and then went to the Mileage 12 property?

Q.—How long did you stay at Mileage 12?

A.—An hour or so, I suppose.

Q.—Did you get out of your car at Mileage 12?

A.—Yes. I went through the buildings which I described.

Q.—You got out of your car at Mileage 12?

40 A.—Yes. We made a thousand feet on foot. I don't remember exactly.

Q.—Did you get down as far as the present C.P.R. track?

A.—We went over the C.P.R. track. We went on the property itself. The lodging house is still there.

Q.—I am not talking about the house. You crossed over the C.P.R. track?

A.—Mileage 12 and the lodging house, through the same property.

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Q.—And you went down to the present water's edge?

A.—Yes, we went to the water's edge, or very near to it.

Q.—Can you tell us how much the water has been raised at Mileage 12 by the Chelsea Development?

A.—No. I think the figure has been given to you. It is quite an amount.

Q.—You have examined the property; you are giving evidence. Can you suggest by how much the water had been raised?

A.—I know what I have seen of it.

10 Q.—That is the inspection you made of Mr. Cross' property?

A.—I took the amount of flooded land as shown on Mr. Farley's plan.

Q.—And that was the inspection you made of Mr. Cross' property?

A.—At Mileage 12, yes, and other sites.

BY THE COURT:

20 Q.—When you say, "We went on the east side", what do you mean? On the east side of what?

A.—Over on the east side of the Gatineau River. Mr. Cross has certain property on which there are two cottages.

BY THE COURT:

Q.—Are they confused with the east side of the railway track?

A.—Oh, no.

30 BY THE COURT:

Q.—On the east side of the river?

A.—Yes.

BY MR. SCOTT:

Q.—That property on the east side of the Gatineau is where the gravel pit is.

40 A.—The gravel pit is located at a certain distance from the two houses I mentioned.

Q.—That is, on the east side of the Gatineau River?

A.—That is right.

Q.—And since we are for the moment on the east side of the Gatineau River, and referring to these two houses which you mentioned, you said that the raising of the water still left the property substantially the same as before the raising?

A.—Yes.

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- Q.—Did you notice whether certain trees bordering on those properties had been submerged?
- A.—Yes. I have allowed for them.
- Q.—You have allowed for trees being submerged?
- A.—Yes.
- Q.—How much?
- A.—I think I told you \$250?
- Q.—For the total submersion?
- 10 A.—I said for an amount of \$250 you could restore, in my opinion, the same embellishment, equipment embellishment to what they had there.
- Q.—You don't know how many trees there were on that bank before the flooding?
- A.—Yes, I think I can tell you that. There must have been about two dozen trees.
- Q.—Two dozen trees in April, 1932?
- A.—Yes,—I don't say anything about 1926.
- Q.—Do you know how many trees there were fronting on those properties in April, 1926?
- 20 A.—I did not see the property in 1926, but I imagine there would be substantially the same amount, a part of a small brush; I think most of the substantial trees would be there today.
- Q.—You imagine so?
- A.—They are drowned.
- Q.—How high had the water been raised at that point?
- A.—That is pretty difficult to answer. The level of water was varying very much before, and now it will be at 321.5.
- Q.—What was the level before the waters had been raised?
- 30 A.—The level before was something around 312. I would say—311 or 312. Of course, that is not the high water mark.
- Q.—I am not talking about the high water mark. I am talking about the average mark?
- A.—The river before had a substantial variation which went from, say, 310 to 317 or 318.
- Q.—But the day you went there in April, 1932 (and please answer this question simply, according to the best of your judgment) how much higher was the water then than it had been prior to the flooding by the Chelsea dam? If you don't know, just say so?
- 40 A.—I am afraid I cannot answer that question.
- Q.—Did you see the stumps of any trees that had been cut down there?
- A.—Yes, if I remember right, there were stumps.
- Q.—Were there many?
- A.—I am afraid I do not recollect.
- Q.—Can you recollect whether they had been pine trees?
- A.—I do not recollect.

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Q.—At any rate, to sum up your evidence on that point, what you found standing, were about two dozen trees?

A.—Yes.

Q.—Were they pine trees?

A.—No. They were mostly birch.

Q.—And you did see some stumps that were above the water or just above the water?

A.—Along the banks.

10 Q.—And you cannot recall what kind of trees they would be before?

A.—No.

Q.—Would it surprise you if you were told there had been a substantial stand of pine trees along these banks prior to the flooding, which had to be cut down and sawn up?

A.—I do not know at all.

Q.—You do not know whether it would surprise you or not?

A.—Well, surprise me. I don't know if there were any trees or not. I did not see the property in 1926, so I cannot answer you.

20 Q.—Looking at the plan D-189, you said you had taken into consideration in establishing your values for these properties available for summer cottages or otherwise the sales that Mr. MacRostie had mentioned?

A.—Yes.

Q.—Will you indicate to me the property bought by Mrs. O'Meara?

A.—I think it appears at the extreme right on the portion of D-189, between the road and the river, and it is marked "200 feet O'Meara".

30 Q.—And you agree with Mr. MacRostie the purchase price was \$200?

A.—The deed shows it.

Q.—How much per acre do you estimate that works out at?

A.—He has given you the corresponding value per acre and per frontage.

Q.—He said it worked out at about \$1,700 per acre?

A.—No, I do not think he did.

Q.—My recollection may be wrong as to that?

40 Mr. Ker: That includes the buildings, Mr. Scott.

Mr. Scott: It was a vacant lot.

His Lordship: Do you say the O'Meara property was a vacant lot?

Mr. Scott: When they bought it, but Mr. MacRostie in giving his evidence used that figure as one of the bases for establishing his values.

Witness: \$1,740 an acre. It sold for \$200.

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BY MR. SCOTT:

Q.—It works out at \$1,740 an acre?

A.—200 feet frontage on the river.

Q.—Did you take into consideration the sale mentioned by Mr. MacRostie, at about page 48 of his evidence, a sale from a person called Wilson to Mrs. Cross? First of all, will you indicate on this
10 Exhibit D-189 where Mrs. Cross' property was?

A.—Is that the sale of the 16th September, 1911?

Q.—Yes.

A.—Yes, I took that into consideration.

Q.—What was the purchase price there?

A.—I think I have that somewhere.

Q.—That was \$1,000, was it not?

A.—Yes, I think so.

Q.—And there was no building on it at the time? How much
does that work out at per acre?

20 A.—It works out at \$1,025 an acre.

Mr. Ker: The deed on its face calls for buildings.

Mr. Scott: Were there any buildings on it at that time?

Mr. Ker: The deed says buildings.

Mr. Scott: I cannot see any reference to buildings in that deed.

30 Mr. Ker: I am informed that that is the case.

Witness: "With buildings thereon made and erected."

BY MR. SCOTT:

Q.—You do not know the character of the buildings?

A.—No.

Q.—And if the buildings had no value, it works out at about
40 \$1,000 an acre. It is marked on the plan, "Mrs. F. T. Cross", and
it is above the Gatineau Road. It is at the corner of the Gatineau
Road and the Mulvihill Road? You might tell us what the area is?

A.—It is an average of a little over 250 feet by 170 feet.

Q.—What does that give you?

A.—It would work out at about an acre.

Q.—And Mr. MacRostie at page 49 of his evidence said that
was purchased on September 16th, 1911?

Q.—Yes.

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Q.—Mr. MacRostie at page 49 of his evidence referred to a deed of sale, dated October, 1922, from E. Martineau to Catherine White, part of 24-C, Range 16, 91 feet along the C.P.R., 94 feet along the Mulvihill Road, 75 feet along the southerly boundary and 65½ feet on the westerly boundary; the sale was for \$200?

A.—That is correct. I took that into consideration.

Q.—Mr. MacRostie says it works out at \$2.02 a foot frontage, or \$1,300 per acre. Do you agree with that?

10 A.—Those are the figures he gave. I have no reason to dispute Mr. MacRostie's figure on it.

Q.—Will you indicate on Exhibit D-189 where that property is?

A.—I had a plan where I had Mr. Farley plot me out where they were, where those properties were situated.

Q.—You must know where it is?

A.—I don't remember.

Q.—Here is the description: " Part of 24-C, Range 16, 91 feet along the C.P.R., 94 feet along the Mulvihill Road, 75 feet along the southerly boundary and 65½ feet on the westerly boundary " ?

20 A.—I will indicate it by a pencil line.

Q.—And put on it " Catherine White " ?

A.—Yes.

Q.—At page 50 of Mr. MacRostie's testimony he referred to a sale by E. Martineau to J. B. Meunier, dated April 15th, 1926, and the purchase price was \$350, and it apparently fronted on the Dunlop Road?

A.—That is Mulvihill Road.

Q.—Dunlop Road and Mulvihill Road are apparently the same thing?

30 A.—They are the same road. Two names for the same thing.

Q.—Mr. MacRostie says at this same page, 50, " I am informed there was a garage on that on which I placed a value of about \$75 and deducting that from the sale of \$350, it leaves \$275. This will give you substantially \$3 a foot frontage for his property or \$2,047 an acre." I am not asking you to accept Mr. MacRostie's valuation of the garage, because you were not up there at the time, but assuming the garage was worth \$75, do you agree with this conclusion that that sale was made at the rate of \$2,070 an acre?

40 A.—I have no reason to dispute the mathematics of Mr. MacRostie.

Q.—That was a sale on April 15th, 1920. Will you indicate on the map where that property is?

A.—I have indicated on Exhibit D-189 a certain plot of land which will show the general location of this lot. The dimensions are not exact. It is only to show the sites and I have marked it " J. B. Meunier ".

Q.—This morning you spoke about deferred realization. I know

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what you mean, that is, if an owner is proposing to subdivide a property, it may take him, three, four or five years. . . .

A.—Twenty-five years, fifty years, or one year.

10 Q.—He has taxes to pay and interest on his investment and one thing and another. In making up your values of Mr. Cross' property, did you take into consideration that they have to be taken all as of one day, at the same time, in April, 1926, that there is no question of realization here, whatever his Lordship or a final Court of Appeal decides has to be paid, is to be paid in one lump sum to Mr. Cross; there is no question of deferred realization.

A.—There is no question about deferred realization as far as the case you have in mind is concerned, only the value which I will place on land of that sort will take into account the deferred realization, and anybody would, otherwise all this land might be claimed to be worth millions and millions of dollars. No sensible man would ever think that. Take a district such as you have on the South Shore, where I have bought land on the basis of \$200 an acre which, in 1911 had all been subdivided, cut up, and subdivided, some portions where sales had been taken. . . .

20 Q.—Over the Chambly Road for instance?

A.—Over on the Chambly Road, it would represent billions of dollars. A man would be very glad today to sell at \$200 or \$300. The fact, is, I have bought some extent of it, sometimes ten or fifteen arpents in area, which had all been subdivided, and on the basis of subdivisions would have represented \$100,000 worth and for which I bought at some \$500 or \$600.

Q.—Was that when you were acting for the Roads Department, when they were widening roads?

30 A.—That particular case I am citing is a case for the C.N.R.

Q.—Do you realize here that any element of deferred realization enters into this case as regards May, 1926?

A.—I think we are speaking of two different things.

Q.—What are you speaking of?

A.—I am speaking about the deferred realization which obtains on a value of such lands which cannot be taken into consideration. Deferred realization means a profit which would accrue under certain conditions and these conditions do not obtain, and the time has not come.

40 Q.—In valuing Mr. Cross' property at Farm Point, were you dealing then in the same way that you would value a lump of properties belonging to a proprietor knowing he could not sell them all on the same day, or were you valuing them on the basis that they should all be sold and paid for on the same day?

A.—I value Mr. Cross' land according to my experience as to the value obtaining for such land, and I may say also that the valuation I have placed on that land, Mr. Cross' for ten years if not

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more, would not be able under the best conditions obtainable, to realize the values which I have given.

Q.—That is the basis upon which you proceeded?

A.—Yes. I am quite sure of that ground.

Q.—And you were able to do that all in one day?

A.—I have considerable experience, as I tell you, with land of that sort.

Q.—Had you known the Gatineau Valley prior to the time when the Canadian International Paper Company, and subsequently the
10 Gatineau Power Company made these developments?

A.—I have been there two or three times.

Q.—You had never made any special study of it?

A.—For the Canadian International Paper Company?

Q.—Before these developments took place on the Gatineau?

A.—No. I was never on the development before I was asked to value the Cascades.

Q.—And subsequent to these developments, you have been engaged from time to time, have you not, as a witness for the company defendant?
20

A.—Only in this case that I know of. I do not recall any other —for Cascades and Farm Point.

Q.—And Cascades?

A.—And Cascades.

Q.—And for no other properties on the river?

A.—I do not recall any. They asked me, I think, if I would act as arbitrator in a law suit case which they had around there, but I have not heard anything about it since.

Q.—The company asked you?

A.—Well, no, I don't know if my name was mentioned in Court
30 —I don't know.

Mr. Ker: The Judge appointed him, as a matter of fact.

Witness: My impression is, that the lawyer or the clerk of the Court communicated with me, and asked me if I would act, and I said, "Well, I don't know. I have been retained by the company for the Cross' case, and I don't know if the parties would be willing to accept me."
40

BY MR. SCOTT:

Q.—I forgot to ask you this: since the raising of the waters by the Gatineau, is it to your knowledge that this delta has become what I might term a frog pond and a breeding place for mosquitoes?

A.—I think, as far as the pond is concerned, if it was my property I would like it much better the way it is than the way it was.

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Q.—With the water going up and down seven feet?

A.—With the water going down. . . .

Q.—Practically every week with the water varying six or seven feet?

Mr. Ker: Why say that. That is out of the record. It does not do that at all.

10 Witness: I do not believe the water is varying seven or eight feet every day.

BY MR. SCOTT:

Q.—I did not say every day. I said every week.

A.—Even every week.

Q.—You don't know that?

A.—No, and I don't believe it.

20 Q.—And you do not know whether that has become a mosquito-infested area that summer cottagers would not like?

A.—I think if it was my property and if I was living alongside the delta, I would prefer to see it the way it is now than the way it was.

Q.—Did you ever own a summer cottage yourself?

A.—I have rented some for any number of seasons, and I have seen any number of them in my operations.

Q.—Did you ever own one?

A.—No, I do not think so.

30 Q.—How much does the water vary in the Chelsea pond each day?

Mr. Ker: The witness has not been examined on that?

Witness: It is only what I would imagine.

BY MR. SCOTT:

Q.—What would you imagine?

40 A.—I would imagine that it would vary probably two or three feet.

Q.—The pond varies two or three feet each day?

A.—Maybe.

Q.—Can you give us any estimate of how much it varies over the week-end period? Would it be more than two or three feet?

A.—I don't know.

Q.—This morning you produced a plan as Exhibit D-193 which refers to proposed piling ground. Would you please indicate on that

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green area which you have marked with the letter "N" where the 321.5 contour line comes. You said that plan was prepared by reference to Mr. Farley's plan which was filed as D-189. Would you indicate in pencil where the 321.5 area comes on the green section of Exhibit D-193?

A.—Do you want me to plot it roughly, because you have it on Exhibit D-189 and D-193 as an exact copy?

Q.—I want it on this exhibit.

10 A.—Well, I could only pencil it roughly. If you want me to do it I will do it at my office and do it exactly.

Q.—We do not want to prolong the case. Do it to the best of your ability.

A.—Yes, but it will be rough.

Q.—You can explain to his Lordship what it is, but do it to the best of your ability?

A.—I have superimposed on a piece of paper, contours 321, 321.5, which has the same outline as on D-193. I file that as Exhibit P-128. I have marked on this P-128 contours 318, 321, 321.5.

20 Q.—And what else?

A.—Contour 324.5 and some of the outline.

Q.—Having prepared this rough copy of a portion of Exhibit D-189, which you have filed as P-128, I understand you have superimposed this paper P-128 upon D-189?

A.—Correct.

Q.—So as far as that portion is concerned, the line should be exact?

A.—It should be exact.

30 Q.—With that before you, will you superimpose upon D-193 the contour line 321.5, then you can get it exactly?

A.—I have traced a pencil line, and marked 321.5 on Exhibit D-193.

Q.—You have traced it from P-128, and P-128 was traced from D-189?

A.—Yes.

Q.—And D-189 shows the contour lines as given in this case by Mr. Farley and by Mr. Cassels, does it not?

A.—Yes. Exhibit D-189 is a white print copy of Mr. Farley's plan.

40 Q.—Which was filed as D-160?

A.—Yes.

Q.—Will you indicate where the spur line comes on this Exhibit D-193?

A.—I mark this siding on D-193 by the letter A-B, lead pencil line with transversal dot lines.

Q.—Again, for the purpose of the record, that siding which you

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have now traced on D-193 is taken from the siding appearing on Exhibit D-189?

A.—Yes.

Q.—I would like you to show his Lordship where the siding and this contour line which you have just put upon D-193 appear?

A.—That plan D-193 was merely prepared to take away the outline from the plan D-189, the outline of what has been treated here under piling ground.

10

BY THE COURT:

Q.—One is in red and the other is in green?

A.—The green and yellow on Exhibit D-193 is approximately the same as the portion coloured red and marked A-13 on plan D-189.

BY MR. SCOTT:

20 Q.—This morning you suggested that the portion coloured red and marked letter "M" on Exhibit D-193 might be used by Mr. Cross for a piling ground, and then you qualified that by saying you thought about sixty per cent of it would not be suitable because there were rocks there, or else sixty per cent would be suitable?

A.—That is more like it.

Q.—Forty per cent was unsuitable on account of the rocks?

A.—Yes. To qualify that, there would be

Q.—Do you want to make a further qualification?

30 A.—I will qualify it in this way. I do not want to be misunderstood. The whole of "M" could be used as piling ground with adequate preparation, but very likely taking out the rock might constitute a heavy preparation or costly preparation, whereas the other portion would require only very light preparation.

Q.—Would you indicate on this red portion "M" on D-193 where you would take off the forty per cent, because it would entail costly preparation?

A.—I have sketched with pencil lines roughly the area which would be rocky, and which would represent about forty per cent.

Q.—Forty per cent of the portion

40 A.—Of the total red area.

Q.—Would you be good enough to say how much that would leave on this red portion in acreage or half acreage. This red portion of D-193 was how many acres?

A.—It would leave about one acre.

Q.—What acreage do you give in the original red?

A.—About 1.5 acres. There is more than 1.58 acres because if

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you look at the plan this does not extend exactly to the limit of the road leading to the workmen's cottages.

Q.—So you would have one acre left, roughly?

A.—I stayed about twenty feet away from that road, so the red portion does not extend to the border of the road.

BY THE COURT:

10 Q.—This 1.58 acres is a little over an acre and a half?

A.—Yes, about an acre and six-tenths.

BY MR. SCOTT:

Q.—Without this rocky portion which you have hatched, what is the acreage that is left?

A.—I would say roughly one acre.

Q.—You will notice looking at D-193 the portion marked blue and lettered "R" which you mentioned as having 54/100 acreage?

20 A.—Yes.

Q.—And you said that would also be suitable for piling?

A.—That is presently used for piling. That is one of the greatest portions of the actual piling ground.

Q.—At the present time?

A.—At the present time.

Q.—And you notice through that the spur siding runs?

A.—Yes.

Q.—How much does that leave after taking off the area occupied by the siding?

30 A.—Very little. The siding would be, say, eight or ten feet wide by one hundred feet, that is, 1,500 square feet.

Q.—Of this .54 acreage. What does that leave you? What is the net result in the way of acreage as regards the blue portion lettered R?

A.—It would leave about .51 of an acre instead of .54.

Q.—Looking at the plan which you filed this morning as D-192, and also looking at your exhibit filed this morning as D-193, can you indicate roughly where this proposed piling ground of one acre would come with reference to D-193? Can you tell me in a general
40 way?

A.—D-192 does not apply to one acre. It applies to any portion of an acre.

Q.—Any portion of an acre?

A.—Yes, any portion of an acre which can constitute so many units of piling ground. D-192 is only meant to show, I would say, the ultimate capacity of an acre of land for portions 16 feet high and 25 feet wide, if they were rectangular.

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Q.—That means if an acre can be found it could be used in this way?

A.—No, if any portion of the land may be utilized somewhat in that shape, if you can work it out, of course, with a piling ground that has irregular contours or boundaries. you won't be able to work out to as great an advantage as with regular shaped land.

10 Q.—You also filed this morning plan D-194 with reference to Mileage 12; these two red lines, one is narrower than the other; one is wider. The lower one on the right hand side of the plan is the present C.P.R. track?

A.—It is marked. One is marked " New railway location ", and the other is marked " New highway location ", with an arrow pointing at it.

Q.—With the corresponding markings as to where they had been before?

A.—That is right.

Q.—Looking at that plan, do you remember where Mr. Cross' site is, that he used as a mill site before?

20 A.—You can refer to Mr. Farley's plan and you will have the site.

Q.—But can you tell me, because you placed a value on the site?

A.—I told you that this plan D-194 was merely to show the relative location between the Mileage 12 property and the timber limits which had been mentioned, as well as to show the relative position of the old and new roads. It was not intended to show the outline of Mileage 12 property.

30 Q.—Will you please answer my question. You have given a valuation of the site owned by Mr. Cross; you have given a valuation on his mill; you have given a valuation on the buildings that were there, and do you mean to say you cannot tell me where the mill site was, looking at that plan prepared by yourself?

A.—I told you for details you will have to refer to Mr. Farley's plan.

Q.—First of all, what plan of Mr. Farley's are you looking at?

A.—It has been filed as D-160. I am looking at a plan prepared by Mr. Farley, 200 feet to the inch.

Q.—What date?

40 A.—Plan showing part of lot 16-B in Range 13 of the Township of Hull, issued on the 22nd November, 1926, bearing number 19-6-4-1/2.

Q.—And that has been filed as Exhibit D-164?

A.—Yes.

I have shown on D-194 the position of the saw mill by a pencil line and an arrow marked "O". You have the wrong perspective on D-194, because the whole of lot 16 from which the part owned by

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Mr. Cross was detached has been coloured blue. It does not all belong to Mr. Cross.

Q.—So that prior to the flooding Mr. Cross' mill site was in close proximity to the old highway and the old C.P.R. right-of-way?

A.—Yes, just as is shown in detail on Exhibit D-164.

Q.—If you will answer my questions shortly

A.—Well, I want to make my answer precise.

Q.—This Exhibit D-194 is marked on a scale of 20 chains to the
10 inch. Will you work out for me the distance between the present
highway and the present C.P.R. right-of-way, between the points
I now mark in pencil on the plan, and tell me what that distance is
between the new highway and the C.P.R. right-of-way?

A.—There would be about 17 chains between the new railway location and the new highway location along the pencil line which you have traced on D-194.

Q.—And which I will mark letter A in pencil. What is that in feet?

A.—I said 17 chains—1,122 feet.

Q.—And that is down hill? Was that the point you went in
20 approximately the day you visited the property?

A.—No, I do not think that is it exactly.

Q.—A little further south?

A.—It is a little further to the east—somewhere around there,
anyway.

Q.—Where you went there is a place where you go down a
path?

A.—There is a road.

Q.—Not a road to take a motor car in?

A.—No, it is a farm road.

Q.—And you go down hill?

A.—You may take an automobile on that road, but it depends
on what season of the year, and in what shape the land is.

Q.—You were only up there that one time, and you do not know
of any other gulleys leading from these limits marked in green down
to the site at that saw mill?

A.—No.

Q.—And this portion marked in green on D-194 that you referred to,
40 Mileage 12 saw mill?

A.—These are the numbers which some witnesses have said were available for the Mileage 12 operations.

Q.—And in valuing that saw mill site at Mileage 12, from the figures you gave, you did not take into consideration the fact that Mr. Cross was able to run this mill by electricity generated by himself, that he was able to supply himself with his own power?

A.—Well, I think that it is a very bad way of doing it.

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Q.—You may think that, but you did not take into consideration in your valuation or would you refer him to buy power from the Gatineau Power Company at \$40 a horsepower?

A.—No, I would not do that at all. I think most of those portable mills are run by steam or by these gas engines.

Q.—That is, because they have no water power sites available?

A.—No, because it is much cheaper to run them that way.

Q.—Have you ever run a saw mill yourself as well as being a land surveyor?

10 A.—No. But I have a general idea of that, because I appraised and valued the Plessisville Foundry which I think was one of the biggest sellers of these portable saw mill plants in the province, and at that time I enquired quite a lot about this business. I am not a saw mill expert, but I have general notions of these things.

Q.—You apparently have general notions of a lot of things?

A.—Yes, I surely have. I have worked quite a lot and I have much experience in many lines.

Q.—That is no doubt why you were such a valuable man to the Government and to the C.P.R. and to these various companies you have told us about?

A.—That is part of my going concern value.

Q.—You do not think it was any part of Mr. Cross' going concern value, that he was going to be able to run that saw mill with his own electricity?

30 A.—I do not want to say anything disagreeable, but I do not think it is a good way. You have asked me, and I say it is not a good way because these develop too much load to be used profitably. Although Mr. Cross used them, which is his own affair. But I do not approve of very many things that Mr. Cross is doing, as far as I could judge, but that is his own affair. He is the master of them.

Q.—You are not the only highly paid person who has said the same thing in this case, so we will let it go at that. You mean by that answer, that it has reference to the dislocation of this system, it was bad for him to use the power for the saw mill?

A.—I say I consider it bad business.

Q.—It is bad business generally to run a portable mill by electricity?

40 A.—I would say that in this case. There are any number of cases. It might be in certain cases, when a man is developing electricity to sell it for lighting, and he is using electricity for a saw mill, I think it is bad business, because his peak load will surely affect his clientèle.

BY MR. KER:

Q.—Each time he puts a log in?

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A.—Yes.

BY MR. SCOTT:

Q.—Supposing he was using his peak load in the day time, and used his electricity for running his saw mill?

A.—It may be that Mr. Cross for part of the day used it to advantage, and for other hours it was used to his greatest disadvantage. You ask me to base an opinion on that. I do not want to
10 give testimony on that portion. I am only giving you my opinion.

Q.—There is no use arguing the matter. So, you do not give any value to the portable saw mill at Mileage 12 on account of the fact that Mr. Cross got electricity for his own plant?

A.—That would be an appreciable element of value.

Q.—There is something else that you said this morning which comes to my mind. You said you thought there was a loss of ten per cent of potential power at Meach Creek by reason of the raising of the waters according to the elevations put in by various witnesses,
20 Mr. Scovil, Mr. Massue and others, did you not?

A.—I said according to the elevation taken by Mr. Boisvert and by Mr. Massue for the water in the tail race, and the difference of level between the tail race and Meach Creek and Meach Lake, or the intake, which works out at ten per cent.

Q.—I was just trying to repeat what I understood you to have said this morning, and you suggested as a remedy for it that Mr. Cross should make up the deficiency which you put at, you said, would be, about twelve horsepower?

A.—I said twelve. I suggested twelve as in my judgment would
30 be a fair compensation for that loss.

Q.—And you suggested making up that deficiency by his buying twelve horse power from some other system?

A.—No. I said that he could be given the capital value of \$8,800 with which he could buy, if he wanted, the power.

Q.—And how would he have that new power? Do you know of any case where a small development such as Mr. Cross, can have new power so to speak injected into the system? Is that possible, commercially practical or economical, or do you know of any case of it having been done in history?

A.—Any power which you buy, if you have need of power, must
40 necessarily be injected into your system.

Q.—Do you know of any case where a system such as Mr. Cross has had for power to be put into it?

Mr. Ker: It is injected into it now. He is getting 800 horsepower.

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Mr. Scott: Let the witness say if he is competent to answer?

Witness: What I know is from the testimony I heard in this case, that Mr. Cross was already buying electricity from the Gatineau Power Company.

BY MR. SCOTT:

10 Q.—Yes, he is buying all his electricity unfortunately now from the Gatineau Power Company, but that is not an answer to my question. You contemplate his going on with his present system losing 12 horsepower, and then picking that up from some other system and putting it into the line?

A.—I think we are looking at this matter from an entirely different angle. I am trying to measure up the loss made by Mr. Cross, and in order to get at that measure in dollars and cents, the best conceivable method I could use was the one which I used, and it represents a loss of so much, and I think that measures the damage which is done.

20 Q.—You say he will lose twelve horsepower?

A.—Yes, he will lose the equivalent of twelve dependable horsepower.

Q.—And you assume he can have twelve horsepower injected into his distribution system by the Gatineau Power Company which is the only company so far in that district, and carry on as before?

A.—No, not necessarily.

Q.—Well then, what is your suggestion?

30 A.—My suggestion is that to measure up this damage, the best way I see, and I have talked quite a lot about it—the best way I saw to measure that damage was by valuing the loss.

Q.—At so much, and capitalizing the amount?

A.—Yes.

Q.—Then, supposing that loss at ten per cent cannot be made up, and the system becomes so overloaded that it becomes unworkable, what happens to Mr. Cross? Ten per cent will make a difference between solvency and bankruptcy, won't it?

A.—He is supposed to have lost seventy-five customers. That is quite a lot. He is paid for them.

40 Q.—But his failure is always growing. For five years there is an increase. I think Mr. Montgomery could give you the percentage more quickly than I can, but it is quite considerable.

A.—I do not care to answer all these suppositions. You can view this business from a dozen angles, and there may be applied one hundred different cures to them.

Q.—You said something about which perhaps my arithmetic is bad, and perhaps your arithmetic is bad. My friend Mr. Ker asked

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you, supposing the company were liable for the loss of seventy-five customers below Cascades and down to Kirk's Ferry, you said a loss of each customer represents a four to one ratio, eighty?

A.—Yes, there being seventy-five, that makes up the amount of \$6,000.

Q.—Then you put in a figure of something like \$1,475 for the loss of the transmission lines and poles, etc., that were destroyed?

A.—\$4,576 which has been given by Mr. Parker as the physical value.

10 Q.—Of the property destroyed?

A.—Of the property destroyed, that is, he gave a loss only that if he added a certain amount, as I told you.

Q.—That adds up to a total of something of the order of \$10,475, does it not?

Mr. Ker: This four to one basis includes lines. That is elementary.

BY MR. SCOTT:

20 Q.—Are you including lines?

A.—Surely. We do not duplicate that. When a man will be buying a clientele, he will be buying the connections and transmission lines and everything connected with its distribution, otherwise he would not be buying anything.

Q.—Now, we understand each other. You are including the distribution line as well?

A.—Necessarily, yes.

30 Q.—We are now looking at this plan D-189; will you show me with reference to the power house where contour line 321.5 comes?

A.—321.5 is a corner of the power house building marked 11 on Exhibit D-189.

Q.—It comes through a corner of the power house?

A.—It hits the corner. It comes through the corner.

Q.—Get your magnifying glass?

A.—I have not a magnifying glass.

Q.—I will get one for you?

A.—I would say that it would hit the corner something like three feet.

40 Q.—The contour line 321.5 comes three feet inside the corner of the power house?

A.—Yes, according to this plan D-189.

Q.—Do you know the depth of the foundations of the power house?

A.—I imagine they would be something like six feet or so, or five feet.

Q.—And do you know how thick that concrete floor is?

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A.—I have known, but I do not remember, that is, I was told at the time of my visit, but I do not remember.

Q.—At the time of your visit were you told the elevation of the floor of the power house?

A.—Yes.

Q.—As being what?

A.—Something like 321.55 it is marked here. When I was there they told me that it was at the level of the elevation at which the water would be regulated.

10 Q.—That is, water would come on to the floor?

A.—At the maximum level of 321.5. I see on this plan it is 321.55, that is, half an inch above that or five-eighths of an inch above. As far as that goes, I took for my estimate the estimate of Mr. Lefebvre in whom I have the greatest confidence. I think every engineer in Montreal has the greatest confidence in Mr. Lefebvre's opinion.

Q.—You think the depth below the floor of the power house is only about six feet? If you don't know, just say so?

20 A.—The depth of the floor?

Q.—The depth below the power house floor?

A.—I would imagine it to be above frost; it would have to go in that location somewhere around five or six feet.

BY THE COURT:

Q.—That is below the surface of the soil?

A.—Below the surface of the soil.

30 *Cross-examination*
Nov. 15th, 1932. Q.—On the date that you went to visit these properties in April, do you know what the elevation of the water was at Farm Point?

A.—Yes. I think it was around 319. Do you want it exactly?

Q.—Yes, I would like you to give it to me exactly.

A.—319.1.

Q.—So you have never seen the properties when the waters have been raised to an elevation of 321.5?

A.—No.

My attention is drawn to an answer appearing at page 1036 in which the question was asked:

40 “ Q.—There is no use arguing the matter. So you do not give any value to the portable sawmill at Mileage 12 on account of the fact that Mr. Cross got electricity for his own plant?”

I am quoted as having answered:

“A.—That would be an appreciable element of value.”

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That is affirmative. I answered in the negative.
Q.—You want your answer to be in the negative?
A.—I answered in the negative.

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

Re-examination

10 Q.—You said that you visited the Farm Point properties in
April, 1932?
A.—Yes.
Q.—Had you previously visited any part of Mr. Cross' proper-
ties on the Gatineau in that vicinity?
A.—I visited the Cascades property on several occasions, on two
or three occasions some years before. I think it was in 1926 and 1927.
Q.—Previous to the water having been raised you were up in
that vicinity particularly regarding the Cascades?
A.—Yes. I gave my evidence on that point.

20 Mr. Scott: The witness stated that the only property he visited
was Cascades.

Witness: By Cascades, I mean Cascades proper.

BY MR. KER:

Q.—There was no claim in respect to the Farm Point properties
at that time?
A.—Not that I know.

30 Mr. Chisholm: I submit, my Lord, that question and answer
is quite irrelevant and should be struck from the record.

His Lordship: Do you make an objection to it?

Mr. Chisholm: Yes, my Lord, and I suggest that it should be
struck from the record.

His Lordship: I will reserve your objection.

40 BY MR. KER:

Q.—I refer you to Exhibit D-193, on which my learned friend
had you trace in pencil an approximate line on the 321.5 elevation.
I take it that the yellow upon this plan was never intended in the
first place to represent the 321.5 elevation. It appears to have been
run on the spur on this plan D-193. What was the northern bound-
ary of your yellow strip intended to be in the first place?

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A.—The yellow strip was intended to show so much of the land below 321.5. That was on the lower side of the siding.

Q.—What does your pencil mark noted then at the request of my learned friend yesterday represent?

A.—The pencil line shows the contour line 321.5, and you will see that it intersects the railway at a point marked " M ".

BY THE COURT:

10 Q.—On what exhibit is that?

A.—D-193. The siding is shown by a pencil line with transversal dots.

BY MR. KER:

Q.—And on that small plan D-193?

20 A.—I may say regarding this Exhibit D-193, I thought that it would be of help to the Court, and I see that it creates more confusion than anything else.

BY THE COURT:

Q.—It is more complicated?

A.—Well, I am sorry I put it in.

BY MR. KER:

30 Q.—And the portions " M " and " R " on Exhibit D-193 above, what elevations are they?

A.—The portion marked " M " and coloured pink is above contour 324.5. The portion marked " R " and coloured blue is also above contour 324.5.

Q.—And am I right in assuming from your last answer the portion marked " M " plus the portion marked " R " would be available as piling ground with the water at 321, and three feet allowed in addition for seepage?

40 A.—Yes, with the reservation, as I have said, that there would be in the portion hatched some work to do in order to prepare the ground for piling ground.

Q.—What would be the available area given in the pink section " M ", taking everything, including the rocky portion you spoke of?

A.—About 1.58—one acre and fifty-eight hundredths of an acre.

Q.—Did you say that this rocky portion included about 40 per cent?

A.—Yes.

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Q.—Leaving, therefore, available how much in acreage on the pink plot “ M ” as piling ground without any works?

A.—About one acre.

Q.—And added to that, what would be the dimension of the available part for piling ground on the blue part “ R ” ?

A.—.54.

Q.—Consequently, the two available together would be about an acre and a half?

A.—Approximately an acre and a half.

10

BY THE COURT:

Q.—Where is this part indicated by the letter “ R ”, which is in blue on D-193, situated on Exhibit D-189?

A.—I have pencilled on Exhibit D-189 and marked A, B, C, D, E, G, H, the portion appearing on Exhibit D-193 as parcel of land marked “ R ”. This portion is situated 100 feet away from the mill. I will mark 100 feet, approximately.

20

BY MR. KER:

Q.—Will you state what your Exhibit D-192 indicates in the amount of lumber that can be piled under that system on one acre of ground?

A.—For piles averaging 25 feet high, 1,870,000 feet board measure; for piles averaging 16 feet high, 1,275,000 feet board measure.

BY THE COURT:

30

Q.—On what area of ground?

A.—That is on one acre.

BY THE COURT:

Q.—Only on one acre?

A.—On one acre of ground this can be piled, when you can segregate some regular portion of land to that effect.

Re-cross-
examination

40

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

Q.—Just to clear this up once for all. You told us you visited this property only on one occasion?

A.—That is what I said. The Farm Point property.

Q.—And as a result of that visit you were able to decide what piling ground was available for Mr. Cross?

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A.—That is what I said. Although I visited the property on one day, I have studied this affair for weeks.

Q.—Oh, I know that.

A.—On my visit I would make certain observations, and with my study I would come to certain conclusions.

Q.—And one of your observations which is an observation which should only be reserved by a visit to a property was that 40 per cent of the portion coloured red and marked " M " on Exhibit D-193 had only 40 per cent that was unsuitable for piling ground, the remaining
10 60 per cent was available?

A.—You asked me this question, and I told you that according to my observation—I don't want to be precise, approximately 40 per cent; I may be out. It may be only 25 per cent; it may be 45 per cent; but to the best of my judgment.

BY THE COURT:

Q.—Do you remember the date on which you made that one
20 visit? I believe you have already stated it, but I am not sure.

A.—The 29th day of April, 1932.

Mr. Ker: I may say, my Lord, that Mr. Beique is my last witness, except for Major Blue, who was to get certain Government returns duly certified. I understand Major Blue is here this morning.

(And further deponent saith not.)

30

40

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DEDOSITION OF WALTER BLUE, A WITNESS RECALLED
ON BEHALF OF THE DEFENDANT

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

WALTER BLUE,

10

of the City of Ottawa, Manager of the Power Development Department of the Gatineau Power Company, a witness already examined, now recalled on behalf of the Defendant, who, being duly sworn, doth depose and say as follows:

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

20 Q.—Having previously been examined last week with respect to certain Government returns which you desired to file, an objection was made, and you were asked to secure returns officially certified by the Deputy Minister of the Department of Lands and Forests and Colonization, indicating timber cut upon Mr. Cross' limits over the years 1916-1917 to 1931. Have you since obtained those certified copies of these returns?

A.—Yes. There is also a letter to go with the file.

30 Mr. Scott: My Lord, I desire to enter an objection in the same manner as Mr. St. Laurent did last week, at page 924 of the Defendant's evidence to these documents going in inasmuch as they are not produced by the Government official who has the custody of the originals, and this witness cannot be cross-examined upon them. However, if your Lordship will allow them in under reserve, and note my objection.

His Lordship: I will reserve the objection.

40 Mr. Ker: I will give your Lordship the sanction for the certification by the Deputy Minister. The first sanction, insofar as the Department of Lands and Forests is concerned, is to be found at chapter 44 of the Revised Statutes of Quebec, 1925, section 10; and insofar as the Department of Colonization and Mines is concerned, as to these reports on freehold land, the sanction is to be found in chapter 74, R.S.Q., 1925, section 12.

BY MR. KER:

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Q.—Taking these returns of the Department of Colonization and Mines and Fisheries, which you are producing, will you state what those purport to be, what they certify to?

A.—These are the Department of Colonization, Mines and Fisheries inspection service return of forest operations during the year. These forms cover the years 1916-1917; the second year for 1916-1917; the year 1917-1918; 1918-1919; 1919-1920, and again 1919-1920; 1923-1924; 1925-1926; 1928; 1928-1929; 1928-1929
10 again; 1929-1930, and 1930-1931; thirteen sheets in all.

Q.—Will you produce these thirteen sheets as Exhibit D-196?

A.—Yes.

Q.—I notice there are some years for which you have not these returns. Have you endeavoured to get the returns for the years which are blank?

A.—Yes.

Q.—What was the result of your searches for these years?

A.—A letter signed by the Deputy Minister of Colonization
20 which states:

“ I certify that Mr. F. T. Cross, according to our records, has not made reports for lumber operations in the years 1920-1921, 1921-1922, 1922-1923, 1924-1925, 1926-1927.

(Signed) L. A. RICHARD,
Deputy Minister of Colonization.”

Q.—Will you produce that letter as Exhibit D-197?

30 A.—Yes.

BY THE COURT:

Q.—Is the Mr. Cross referred to in this document the Plaintiff in this case?

A.—Yes, sir.

BY THE COURT:

40 Q.—Are you sure of that?

A.—Mr. F. T. Cross.

BY MR. KER:

Q.—To what lumber operations do the returns which you have just spoken of and produced as Exhibit D-196 refer?

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Mr. Scott: I object to this question. The documents speak for themselves and my friend is producing something which is furnished to him by Government officials.

Mr. Ker: The document not being able to speak very readily itself, Major Blue can perhaps read the affidavit on the printed form.

Witness: On the printed form that states formally, "To be used on all woods, lands, seigniory".

10 Another part of the printed form states:

" I, Freeman Cross, residing at Farm Point, County of Ottawa, swear solemnly that this report is an exact statement of my various operations during the year 1916-1917, and that I have not made, or caused to be made, purchased, or caused to be purchased, any other timber during said year.

(Signed) F. T. CROSS."

20 Q.—And sworn to before a proper officer?

A.—This particular one states:

" Sworn before me at Farm Point, this 18th day of May, 1917.

J. O. HELIE."

Q.—What is the other certificate?

A.—" I. F." It is difficult to say what it is.

30 Mr. Ker: Ingénieur Forestier.

BY MR. KER:

Q.—And the same notation appears on all the thirteen forms you have produced, with dates correspondingly applicable to each form?

A.—Yes.

40 Q.—I notice some of them are certified, sworn to, and testified to by various individuals. It is not necessarily the same person each time?

A.—Well, for instance, this one for the year 1930-1931 is sworn before J. E. Gendron.

Q.—Have you certified extracts from the Department of Lands and Forest records indicating wood taken from Crown limits during the same period?

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(Same objection.)

(Same reserve.)

A.—Yes, I have.

Q.—Just indicate what years they are for, and produce them together as Exhibit D-198?

A.—I have here a letter dated May 30th, 1932, which states:

10 “ I certify this document is authentic.

(Signed) F. X. LEMIEUX,
Deputy Minister of Lands and Forests.”

Q.—What does that purport to be?

A.—Stating timber cut on limits No. 58 since 1910-1911 to 1920-1921. This statement also bears the following:

20 “ I certify that this document is authentic.

F. X. LEMIEUX,
Deputy of Lands and Forests.”

Q.—Where is limit 58?

A.—In the Township of Wakefield.

Q.—Is that the tract of timber lands which had been referred to in this case as being on the east side of the river belonging to Mr. Cross?

30 A.—Yes.

Q.—Have you made a study of these returns?

A.—This first letter covers 1910 to 1921.

I have another one here dated March 24th, 1932.

Q.—Will you then produce as Exhibit D-199 the same certificate from the Minister concerning the returns for the years 1921 to 1931?

A.—Yes.

Q.—For the Crown lands?

A.—Yes. This letter D-199 concerns timber limit No. 58 in the Township of Wakefield.

40 BY THE COURT:

Q.—It is the same date as the other?

A.—The letter is dated 24th March, 1932.

BY MR. KER:

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Q.—Do you find certain years which are not taken into account in this return?

A.—Yes.

Q.—Have you made any attempt to secure a return for the years that are vacant for this certificate?

A.—Yes.

10 Mr. Scott: This document states the Department did not have returns from Mr. Cross from 1921 to 1924 concerning the Crown lands. That is an affair between Mr. Cross and the Department as to whether they required a certificate from him or not. My learned friends are not acting for the Government.

Mr. Ker: I am merely producing it in order to show I am not suppressing any return for any years. I merely want to show I have done my best to get the returns.

His Lordship: I will reserve the objection.

20 Witness: I will produce as Exhibit D-200 a certificate signed by F. X. Lemieux, Deputy Minister of Lands and Forests, stating that Mr. Cross has not produced any statement for the years 1921-1922, 1922-1923, 1923-1924.

BY MR. KER:

Q.—Have you a copy of Order-in-Council making necessary the returns that you have just produced?

30

(Same objection.)

(Same reserve.)

A.—Yes.

Q.—Will you produce it as Exhibit D-201?

A.—Yes.

Q.—The forms which accompanied this are attached as one exhibit?

40

A.—Yes.

Q.—In the last few questions we have been dealing with the returns from the Department of Lands and Forests. Have you authenticated copies of the sworn returns made by Mr. Cross personally for that Department, similarly to the ones you produced for the Department of Colonization?

(Same objection.)

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(Same reserve.)

A.—I produce formulæ P of the Forest Service certified to by the Deputy Minister of Lands and Forests. It is stated to be a general return of lumbering operations on timber limits of F. T. Cross. This particular one is Wakefield, during the year 1920-1921.

Q.—Sworn to and certified?

A.—The printed statement in the corner says:

10 “ I, Freeman T. Cross, do solemnly swear that the sheet or sheets marked are the true and correct statement of all woods made in virtue of license on these limits by H. Newcombe from 1st July (blank) to 13th June (blank); that moreover I have no knowledge that any other wood goods have been cut on these limits during the same period of time.

F. T. CROSS.”

This particular statement is sworn before H. McCrady, J.P.

20 Q.—This Newcombe would indicate the sub-contractor who had taken the wood off?

A.—Yes.

Q.—For what years have you these returns?

A.—The statement covers the years, 1920-1921, Wakefield; 1924-1925 Stag Creek, No. 286 and Wakefield; 1925 and 1926, lumber operation at Conger Phelps and Hitchcock; 1925-1926 F. T. Cross limit No. 286; F. T. Cross in Low and Wakefield Township; Stag Creek, Wakefield.

Q.—What year?

30 A.—1926-1927, 1927-1928, “ Forest operations F. T. Cross ”; 1928-1929, F. T. Cross, Stag Creek, Low, Conger Phelps and Hitchcock; 1928-1929, Wakefield, Farm Point; 1929-1930, MacDonald and Conger Phelps, F. T. Cross, Stag Creek No. 286; 1929-1930, F. T. Cross limit in Wakefield; 1929-1930, M. J. Hendrick, F. T. Cross; 1930-1931, F. T. Cross, Wakefield, No. 58.

Q.—Will you produce this as Exhibit D-202?

A.—Yes.

Q.—How many sheets are there?

A.—Twelve.

40 Q.—Have you examined these returns carefully?

A.—Yes.

Q.—What does a summary or total of the amount shown on these returns indicate, as having been the total cut of Mr. Cross between the years 1921 and 1926?

A.—It would indicate that the total reported at Farm Point Mill by the Department of Lands and Forests and Colonization for the

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years 1921-1922 to 1925-1926, amounted to 168,850 feet board measure. No ties are reported.

Then, for the years 1926-1927 to 1930-1931, these reports show 5,504,405 feet board measure; 178,101 ties, cord wood, 9,782 cords.

Q.—Cord wood is not milled wood. It is just cut?

A.—Cord wood would be sold for fire wood.

For the ten years covering 1916-1917 to 1925-1926, shows 3,251,279 feet board measure; 241 ties; cord wood nil, and 20 cords of hemlock bark.

10 Q.—Taking, therefore, the ten years previous to 1926, namely, from 1916 to 1926, the total report of timber cut by Mr. Cross indicates 3,251,279 feet board measure?

A.—Yes.

Q.—That is at the Farm Point mill?

A.—Yes.

Q.—That is for ten years previous to 1926?

A.—Yes.

20 Q.—And for the five years after 1926, when the water was raised, or about the time when this case was to be tried, what does it indicate in the way of Farm Point?

A.—5,504,405 feet board measure.

Q.—In other words that more business has been done at the Farm Point Mill between 1926 and 1931 than was done in the whole ten years previous?

A.—So it would appear.

Q.—Have you made a tabulation indicating the amount of timber applicable each year from the freehold and from the timber limits according to these returns?

30 A.—Yes.

Q.—Would you produce that as Exhibit D-203?

A.—Yes.

Q.—What does this indicate with respect to timber limits at mills other than Farm Point, such as Perras and other outlying places?

A.—At mills other than Farm Point, 1921-1922 to 1925-1926, the returns show 6,556,925 feet board measure.

Q.—That is for mills other than at Farm Point?

A.—Yes.

40 Q.—Twice as much as at Farm Point in the ten years previous to the raising of the water?

A.—Yes.

Q.—And after the raising of the water, what is the situation at these other mills?

A.—1926-1929 and 1930-1931 shows a total of 1,653,407 feet board measure.

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- Q.—In other words, after 1926 he cuts 5,504,000 odd. He reports that for Farm Point after 1926?
A.—As against 1,600,000 for the period.
Q.—And previous to 1926 he reports?
A.—168,000.
Q.—For Farm Point?
A.—Yes.
Q.—And how many millions for Perras?
A.—6,500,000.
10 Q.—Perras and other mills. The other mills you speak of, Perras, etc., had nothing to do with this case?
A.—No.
Q.—Of course, there are certain vacant years, so far as returns are concerned in which there are no returns, it is only fair to say?
A.—Yes. Those reports, I think, show that there are certain years in which returns are not available.
Q.—So that the totals you have given are the totals actually reported under oath by Mr. Cross?
A.—Yes.
20 Q.—When speaking of Farm Point you were including the little portable mill at Mileage 12?
A.—Yes.

Cross-examination

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

- Q.—Major Blue, first of all I would like to ask you, are these statements you have here, which were filed as Exhibit D-196, in the same form as they were last Thursday, or have corrections or changes
30 been made to them by the Government officials between last Thursday and today?
A.—The only thing I see is they have been signed by L. H. Richard.
Q.—As to the figures, are there any changes?
A.—In glancing over them roughly, the only change I see is on sheet 12 under the column "Maple". This figure before was 326,853. It is now shown as 326,953.

40 BY MR. KER:

- Q.—An addition of one hundred?
A.—An addition of one hundred.
Q.—An error in addition?
A.—Yes.

BY MR. SCOTT:

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Q.—The Department has made at least one change to your knowledge?

A.—To my knowledge, yes.

Q.—That is the only one?

A.—That is the only one, except, of course, as I say, with the addition of the certificate of Mr. Richard.

Q.—Do you know that these returns are not obligatory upon a holder freehold, it is only if the Minister requests them they have to make a return? If you don't know, just say so?

10 A.—The statement at the top, I think, states that this form is to be used for the return of lands and seigniories. There is no reference on that return, I do not think, to Crown limits.

Q.—But that is in the discretion of the Minister as to whether or not the freehold owner has to make a return?

A.—I cannot argue that point.

Q.—You do not know?

A.—No.

20 Q.—And you would not think it possible that that accounted for the years in which there are no reports?

A.—I do not know why there are no reports in certain years.

Q.—I would like you to give me the board feet cut for the year 1923-1924, that is, the year for which there was a return. You will have to look at your Exhibit D-196—for the year 1923-1924, because you have already put in evidence showing there were no operations in that year on the Crown lands, so this will be confined to the freehold. Let us see how much Mr. Cross cut that year according to the return?

30 A.—This year, 1923-1924, according to the Department of Colonization, Mines and Fisheries, Mr. F. T. Cross resided at Perras, Quebec. The townships in which the wood is shown to be cut are Alleyn, Wright and Dorion. The total cut is 4,444,265 feet board measure.

Q.—Cut in the years 1923 and 1924?

A.—Yes.

Q.—You have never worked in the Department of Colonization and Lands and Forests?

A.—No.

Q.—You have never been one of their inspectors?

40 A.—No.

Q.—Just give me the total for the years 1925 and 1926 on the freehold limits?

A.—This is the Department of Colonization, Mines and Fisheries freehold.

Q.—That is with respect to freehold?

A.—Yes. This return for 1925-1926 for F. T. Cross, residing at

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Farm Point, shows the wood has been cut in the townships of Dorion and Wright.

Q.—From jobbers?

A.—Jobber or vendor.

Q.—The first shipper being Mr. George Montgomery?

A.—Mr. George Montgomery.

Q.—Now take the total as certified on this sheet?

A.—2,112,660 feet board measure.

Q.—Cut in 1925-1926?

10 A.—In the townships of Dorion and Wright.

Mr. Ker: None of these limits have anything to do with this case. None of those timber limits are connected with your declaration.

BY MR. SCOTT:

20 Q.—Do you know Mr. Small, who gave evidence in this case as to timber contents?

A.—I was here part of the time when he gave evidence.

Q.—Do you know him personally?

A.—I have known him for some years.

Q.—He told us he was employed by the Pembroke Lumber Company?

A.—I heard that.

Q.—Or that he ran the Pembroke Lumber Company?

A.—I heard it.

30 Q.—As a matter of fact, the Pembroke Lumber Company is owned either by the Gatineau Power Company or the International Paper Company?

A.—It is news to me.

BY MR. KER:

Q.—Is it a fact?

A.—I have no knowledge that the Pembroke Lumber Company has any connection with the Gatineau Power Company or the International Paper Company.

40 BY MR. SCOTT:

Q.—Or the Hull Electric Company?

A.—Or the Hull Electric Company, or the Canadian International Paper Company, or the Canadian Hydro Company, or any affiliated or associated company by any manner of means whatsoever.

Q.—Or any other company in the group?

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A.—Or any other company in the group.

Q.—Mr. Ralph told us the other day he was not the official of the Company who was responsible for raising the waters on Mr. Cross' property. I understand you had nothing to do with it yourself, had you?

A.—No.

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

Q.—The 1924 return of 4,000,000 odd feet, to what mill was that attributable?

A.—This was, I think, I said in the Township of Dorion and Wright.

Q.—Where is Dorion?

A.—Those Townships are on the Picanock River and the wood was brought to the Perras mill, not to the Farm Point mill.

Q.—Are the same remarks applicable to 1926 for the same Townships?

20 A.—Yes.

Q.—2,000,000 and some feet that year?

A.—2,112,660.

Re-cross-
examination

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

Q.—So your evidence would be that for the year 1923-1924, and for the year 1925-1926, Mr. Cross was not cutting any wood at all 30 at Farm Point. Is that your evidence?

Witness: For what years are those?

Counsel: That very one my friend asked you about?

Witness: 1921-1922.

40 Counsel: I said for 1923-1924, and for the years 1925 and 1926, your answer to my friend, if I understood you correctly, was that all that wood went to the Picanock mill and none of it to Farm Point. Is that your evidence to his Lordship that Mr. Cross was not operating Farm Point during the year 1923-1924 or during 1925-1926?

A.—For the years 1923 and 1924 I have no return showing anything operated at the Farm Point mill cut. For the year 1925-1926 the Department of Lands and Forests show 133,257 feet board measure.

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Q.—But you say that was cut in the Townships of Dorion and Wright, and would therefore go to Picanock?

A.—No, I did not.

Q.—I am talking of freehold?

A.—This 133,257 which I gave you, according to my information is Crown license lands.

Q.—For what year?

A.—1925-1926.

10 Q.—What is the freehold cut in 1925-1926, or was it out?

A.—1925-1926, it is my opinion it all went to the Perras Mill.

Q.—And none to Farm Point?

A.—None to Farm Point.

Q.—And none of the freehold timber in that year went to Farm Point?

A.—It is my opinion it did not.

Q.—In 1925-1926, to your personal knowledge, do you know whether the Farm Point Mill was operating?

A.—As far as I remember.

20 Q.—When did you first go into that territory on behalf of the Gatineau Power Company?

A.—I have been there off and on since 1900.

Q.—With the Gatineau Power Company or the Canadian International Paper Company, the predecessor?

A.—The Canadian International Paper Company, in 1920 or 1921. Riordan bought out Gilmour and Hughson and Edwards, it was at that time when I first went there in the employ of either the Riordan or the Gatineau Power Company.

30 Mr. Ker: That closes the Defendant's case, my Lord. There are some corrections in the testimony as reported that my attention has been drawn to and we can have them straightened out.

My attention is drawn to the fact that a panoramic photograph was produced by Mr. Ralph, and which was filed as Exhibit D-187. The suggestion was made yesterday that perhaps Mr. Ralph had taken that photograph back to Ottawa, but he says he has not got it, and I do not know where it can be. It is a very important photograph from the Defendant's point of view, and I think it should be forthcoming.

40 (And further deponent saith not.)
