

CANADA
PROVINCE OF
QUEBEC
MONTREAL

Court of King's Ben

(APPEAL SIDE)

13

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

CANADIAN
LAW
LIBRARY

GATINEAU POWER COMPANY,

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

(Defendant in the Superior Court),

APPELLANT,

—AND—

FREEMAN T. CROSS,

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

(Plaintiff in the Superior Court),

RESPONDENT.

THE CASE

VOLUME 13

PLAINTIFF'S EVIDENCE IN REBUTTAL

(Supplementary Hearing)

DEFENDANT'S EVIDENCE IN SUR-REBUTTAL

(Supplementary Hearing)

FINAL JUDGMENT

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INSTITUTE OF ADVANCED
LEGAL STUDIES,
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LONDON,
W.C.1.

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UNIVERSITY OF LONDON
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-6 JUL 1953
INSTITUTE OF ADVANCED
LEGAL STUDIES

*In the
Superior Court*

No. 135.

Plaintiff's
Evidence.
In Rebuttal
(Supp. Hearing)
Francis X. Plaunt,
Examination
Nov. 15th, 1932.

DEPOSITION OF FRANCIS X. PLAUNT, A WITNESS PRO-
DUCED ON BEHALF OF PLAINTIFF IN REBUTTAL

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

FRANCIS X. PLAUNT,

10

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

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

Q.—Mr. Plaunt, I understand you are a lumber merchant re-
siding in Ottawa, and have been in business for quite a number of
20 years?

A.—Yes.

Q.—For how long?

A.—For thirty-five years.

Q.—I understand you do quite a large business in railroad ties?

A.—Yes.

Q.—Both for the C.P.R. and the Canadian National?

A.—Yes.

Q.—And I understand further that for quite a number of years
past you have been buying ties from Mr. Freeman T. Cross, the
30 Plaintiff in this case?

A.—Yes.

Q.—As a matter of fact, this has nothing to do with the case,
but you have a mortgage on Mr. Cross' properties, have you not?

A.—Yes.

Q.—For how many years have you been buying ties from Mr.
Cross?

A.—Over twenty-five years.

Q.—Can you give us some idea of the amount of ties you were
buying from Mr. Cross, say, from the year 1920 to the year 1926?

40 A.—I have no records of those years, so I can only tell you from
my memory. The quantities varied. They run from 25,000 to a max-
imum of 115,000 in one of those years.

Q.—And where were they supplied from? From what saw mill
did he supply them?

A.—From Farm Point and Mileage 12.

Q.—I understand you business men are not like us lawyers, you
do not keep files for thirty or forty years the way we do?

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A.—As a matter of fact, these records have all been destroyed. They were only destroyed this year in moving our office in the Blackwyn Building. We had an accumulation of records there for twenty-five years, and they were taken away and destroyed.

Q.—How are ties measured in board feet?

Witness: Do you want to know the quantity of board feet?

10 Counsel: For the average tie, how many board feet are there?

A.—There are in No. 1 standard ties, 42 feet board measure; No. 2 standard ties, 32 feet—different grades. The switch ties run in various amounts up to 84 feet.

Q.—The switch ties are bigger than track ties?

A.—Yes. The average of ties, track and switch, would be around forty to forty-five feet.

Q.—Have you been purchasing ties from Mr. Cross from his Farm Point saw mill since the raising of the waters?

20 Witness: What year was that?

Counsel: The raising of the waters was the 12th March, 1927?

A.—Oh, yes, each year.

Q.—Have you visited Farm Point during that period since the flooding?

A.—Yes, several times—a number of times.

30 Q.—It has been suggested by my friends on the other side that Mr. Cross is just as well able to carry on business now as he was before?

Mr. Ker This is evidence in chief, not rebuttal. We object to this evidence as not being rebuttal.

BY MR. SCOTT:

Q.—Since the raising of the waters, how were deliveries made by Mr. Cross from the Farm Point property?

40 (Same objection.)

(The Court reserves the objection.)

A.—There being practically no piling space, the ties had to be shipped as produced. There was no opportunity of piling but a very small quantity of ties, so they might be sorted into grades, therefore they had to be taken away almost as produced practically.

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BY THE COURT:

Q.—They were shipped?

A.—They had to be loaded green, fresh cut.

10 Mr. Montgomery: I respectfully submit, not so much in connection with the witness' last answer, because your Lordship has ruled upon it, but obviously we are reaching a point where your Lordship has to decide as to the course that has to be followed in regard to this rebuttal evidence, and my suggestion is that that answer offers ample evidence that it is not rebuttal. I submit that the Plaintiff has to make his case in chief.

His Lordship: In a general way, but you may come back and prove certain details. I think they have a right to rebut that if they can. The Code states so.

20 Mr. Montgomery: I was trying to think of a line of demarcation because obviously there must be a line of demarcation as to what was proved or attempted to be proved in chief. Obviously, the Plaintiff has to make evidence in chief of everything that goes to support his claim. If he does not do it, then he forfeits the right to do it.

His Lordship: I differ from you, Mr. Montgomery.

30 Mr. Montgomery: Then, my Lord, I cannot have stated my proposition rightly, or your Lordship would not differ from me. What I intended to convey by my proposition was (and I do not think your Lordship would differ from me) that the Plaintiff has to make his case in chief and adduce such evidence in order to support it. If he does not do so in chief, either through motion or otherwise, he cannot hold it back and put it in in rebuttal. Obviously, he has to make his case in chief.

His Lordship: But if he has forgotten something.

40 Mr. Montgomery: If a thing is forgotten, of course the Court always has the power to allow a party to reopen his case in chief. That can be done by permission of the Court if it can be shown why he did not put it in in chief. That is open to the Court right up to the time it renders judgment, to permit a party to reopen his case for certain specific things. Subject to that qualification, for special reasons, the Court may permit a plaintiff or defendant to reopen their case and prove certain facts that for one reason or another were omitted. Subject to that qualification, the plaintiff has to

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make his entire case in chief. He cannot split his case and make part of it in chief and part in rebuttal.

His Lordship: There were new facts brought out in your defence which the Plaintiff can come back and rebut.

10 Mr. Montgomery: I do not want to prolong this argument. I am only raising the point now because obviously it is going to be a question for your Lordship's consideration a number of times when we come to our sur-rebuttal.

I submit they cannot make the excuse because a new detail is given, that they can ask a question which they should have asked in chief, to form part of their case in chief.

20 In order just to illustrate by this particular witness in the box; his evidence may be very interesting and very valuable, but if they alleged in chief that their Farm Point operations were rendered more difficult or impossible by reason of the fact that we had taken away the piling ground, then it was for them to prove in chief, because that forms part of their case in chief. They could not go into that same question in rebuttal. I admit that a new fact which we pleaded in defence to that claim, which was part of our defence, they are obviously entitled to rebut. If we, in defence, in answer to a claim of theirs in chief proved some new fact, which was not part of their case in chief, but was part of our defence, then obviously they are entitled to rebut it, but a new fact, which they could have proven in chief, they cannot prove now in rebuttal; in other words, new facts which are brought out in defence are the subject of rebuttal, but that is the only kind of evidence which is there to be rebutted.

30 His Lordship: I will allow the evidence for the present under reserve.

BY MR. SCOTT:

Q.—I understand you told us already you were a frequent visitor to Farm Point?

A.—Yes.

Q.—Did you have a tie contract with Mr. Cross every year?

40 A.—I had a tie contract every year for over twenty-five years, until the year 1931.

Q.—That is from Farm Point?

A.—From Farm Point.

Q.—That is, ties from his Farm Point sawmill?

A.—Yes.

Q.—And do you know personally that Mr. Cross also sold ties to other persons?

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A.—Oh, yes.

Q.—Than yourself?

A.—Yes.

Q.—Mr. Small, one of the witnesses called by the Defendant Company, gave some evidence about profits on lumber. Can you give us some idea about the profits which Mr. Cross made in selling his ties?

A.—No, I never saw Mr. Cross' books. I have no knowledge of his profits.

10 Q.—Profits on the tie business?

A.—Well, profits on the tie business generally; we produced large quantities of ties ourselves. I have a knowledge of that. Of Cross' particular profit I could not say, excepting that he has a very preferred position.

Q.—What do you mean by a preferred position?

20 A.—A very preferred production position. He has a creek there, Meach Creek, for his exclusive use only four miles in length. His timber haul is small. He has no heavy investment in power plant for driving rivers, and construction of water works ways, dams, sluices, sideways, all sort of power, boat equipment. All of that is free for him.

Q.—That is, prior to 1926?

A.—At any time.

Mr. Montgomery: I submit, my Lord, that is a repetition of the examination in chief.

His Lordship: I will allow it under reserve.

30 Witness (continuing): Cross' production cost must be very small if his business is well managed. His profit should be good. I would think if Cross makes less than fifteen cents a tie profit averaged throughout these years we have been doing business, that he is a poor manager, a very poor manager.

Cross-examination

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

40 Q.—Mr. Plaunt, you have known Mr. Cross for a long time?

A.—Yes, over thirty years.

Q.—You have been doing business with him for a long time?

A.—Yes.

Q.—You hold a mortgage on his property?

A.—Yes.

Q.—For how much?

A.—\$100,000.

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Q.—How much of that have you advanced to him?

A.—All of it—practically all.

Q.—What do you mean by practically all?

A.—Practically all in money, excepting a small amount that would represent services to him some years ago, and expenses, a very small amount.

Q.—I think you said that he has had practically no piling space since 1927?

10 A.—Very limited, as I saw it there.

Q.—And I understand you also said that as a result of that he had to ship out his ties green?

A.—Yes, green.

Q.—I infer from your answer that that was a more or less abnormal condition of affairs?

A.—No, not unusual.

Q.—Why do you mention it then?

20 A.—I mention it because his piling space was limited and one of his great difficulties was in his sorting. He must load his ties, each grade separately; that is the requirement of the railway, and with the limited piling space there was a tremendous amount of extra hand labour in connection with his ties. The question of shipping ties green in the past few years has not been important, because they have been establishing creosoting plants, to be seasoned there. Prior to that time it was very important, seasoning of ties, before the creosote.

Q.—It is not so important now?

A.—It is not so important, but it is very important from the standpoint of handling ties.

30 Q.—As a matter of fact, a piling ground is not so essentially necessary for ties as it is for lumber?

A.—Not as necessary.

Q.—And that condition generally existed with Mr. Cross long before the water came up when he was shipping out his ties green from the saw?

A.—Some years.

Q.—I will just draw your attention to what he says in his deposition taken in 1927:

40 “I have been running heavy on ties these last years because lumber was dull. We ship as soon as it is sawed so therefore we did not require the trestles put up in the yard as we were making up ties chiefly and shipped them practically as they came from the saw.”

This is before the raising of the water. Do you think that is a fair statement of his business?

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A.—It is partially fair. There are years it does not apply.

Q.—In a general way, it is not a question of a great disadvantage not to have a piling ground for ties, if Mr. Cross is right in his statement as to how he was operating?

A.—Mr. Cross gave his own evidence; I am giving mine, and I say to you it would be very important in some years. It has been important in a number of years to have piling space for ties, very important.

10 Q.—As a matter of fact, do you consider he has not any room for ties up there?

A.—The room I saw there was exceedingly limited. It was filled up with lumber.

Q.—That was the reason there was no place for ties?

A.—I don't know.

Q.—Is it, or is it not?

A.—I don't know. The lumber was there, therefore ties could not be put there.

20 BY MR. KER, K.C.:

Q.—At the adjournment I think we were discussing the ties you got from Mr. Cross. I suppose you have been at his place frequently?

A.—Yes, a number of times.

Q.—And, you have done a good deal of business with him, for many years?

A.—Yes.

30 Q.—Do you actually know, from your own personal observation, just how those ties were handled by Mr. Cross previously to the raising of the water? Let us take the process they go through. I suppose they are sawn in the mill?

A.—They are sawn from logs.

Q.—And, what would be done with them after that? How were they dealt with when they were made into ties in the mill?

A.—Following the production of the ties through the mill, they had to put them out.

Q.—Where would they be put?

40 A.—In any space available there. In the very limited space he had there. They had to be taken away very frequently. You understand, of course, ties are different from lumber, because lumber must be seasoned.

Q.—And, the same seasoning is not required for ties?

A.—Except under such circumstances as these: that the Railway Company may change their policy in such a way as would require ties to be held over into a second season, and, if that happened, there must, of necessity, be piling space for them. We have run into that a number of times. I have known of changes in the

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policy of the Railway Company. Railway Companies change their policy quite frequently about those things. At various times in our own production we have had to pile large quantities of ties, having to hold them over into second seasons.

Q.—Since the practice of soaking them with creosote has come into vogue, that holding over has not been so prevalent?

A.—No: the ties are shipped to the plants to be seasoned there.

Q.—Is the creosote forced into the ties in those plants, or are they just dipped in the creosote?

10 A.—They are put through retorts. They are seasoned first.

Q.—When did this creosoting process start?

A.—I could not tell you exactly when, but I would think about ten or twelve years ago.

Of course, you understand all those ties we are now speaking of, coming from Farm Point, went to the C.P.R.

Q.—And, I suppose most of them were being creosoted?

A.—Since creosoting came in.

Q.—And for ten years or so the creosoting process has been in vogue?

20 A.—Yes, except for certain classes of ties, such as cedar, which they do not creosote at all.

Q.—So far as concerns the class of ties requiring creosote, there would not be very much necessity of having a piling ground?

A.—No, except there is the very important matter of storing them and handling them?

Q.—But, they would not require to keep them on hand very long?

30 A.—Not unless the Railway Company decided they would not take the quantity, and changed their policy, and the ties would have to be carried over.

Q.—In your business do you specialize rather in ties?

A.—Yes, that is a large part of my business. Of course, I am interested in more than the Harris Tie Company. I am interested in the Poupore Lumber Company, for example, and we produce large quantities of lumber.

Q.—You are interested in the Harris Tie Company?

A.—Yes, and in the Poupore Lumber Company, and in another Company also.

40 Q.—When the ties are sawn I take it they are sorted, and put into the cars?

A.—At Farm Point the ties were put out from the saw into whatever space there might be available. Then when they were loaded they were sorted into the various cars.

Q.—That was done at the time of loading?

A.—Yes.

Q.—On one of the pictures of the Farm Point plant filed here

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it would seem to appear that after the ties left the mill they were floated down the creek and put on the cars from a conveyor which was lower down than the mill. Do you recollect that method of handling them at Farm Point? I think the apparatus has been referred to in the evidence in this case as the tie loader .

A.—I do not know about that. I do not know exactly what you mean.

10 Q.—Apparently the process was after the ties left the saw they would be floated down the creek, and taken from the creek by means of this tie loader. You do not know of that?

A.—I never heard of that, no.

Q.—Did you have a sort of standing contract with Mr. Cross for ties?

A.—No, not a standing contract—a yearly contract.

Q.—Every year?

A.—Every year.

Q.—Until, I think you said, 1931?

A.—Every year, for twenty-five or more years, until 1931.

20 Q.—And, what happened then? The Railway stopped using them?

A.—The depression caused the Railways to curtail their tie requirements. They carried over in creosoting plants ties that they expected to use in construction and maintenance work, and which were not used, and consequently they were not buying what they did not need.

30 Q.—We have to rely to a great extent upon the returns we get of the quantities of ties reported during various years by Mr. Cross. I notice his reports up to 1926 do not show any considerable tie manufacturing, but after that they show a considerable increase, between 1927 and 1931, during which years they run up into quite a large number—178,000. Would all those have been delivered to you?

A.—No.

Q.—Can you give me an idea of the quantity of ties you got in any one year, say, 1920 and 1925? Or, perhaps you could give me the yearly average of the number of ties?

A.—No. I have not those records.

Q.—You could not even make an estimate of it?

40 A.—I could give you a reasonable average, I think.

Q.—What would the figure be?

A.—Say about 45,000.

Q.—Each year?

A.—I would think it would be about that.

Q.—Those do not appear as having been reported?

A.—I do not know about that, of course.

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Q.—Could he have purchased any of those ties, and resold them to you?

A.—Of course he could.

Q.—Could he have purchased them manufactured?

A.—I suppose he could, if he wanted to do so. There would be nothing to prevent him from doing it.

Q.—You did not stipulate that they should be manufactured in his plant?

A.—No, not at all.

10 Q.—So he could have bought those ties elsewhere?

A.—Yes, certainly. We were only looking to him for delivery of the ties. We did not question where they came from.

Q.—And, of course, if he was buying elsewhere, a piling ground would not interest you, or would not interest him?

A.—All the ties came from Farm Point, or Mileage 12.

Q.—Of course, you do not know whether he bought them or not?

20 A.—I do not see where it makes any difference whether he bought them or not. They came from those points. They were loaded from those sidings.

Q.—I suppose you have been on Mr. Cross' properties a number of times since the water has been raised?

A.—I have been there a few times, yes.

Q.—Have you any idea of the elevations of the water when you were there?

A.—I have no knowledge of those things, no.

Q.—I think you said Mr. Cross' position at Farm Point was rather a favourable one geographically?

30 A.—Yes.

Speaking of that, I was speaking more, perhaps, from the tie point of view. Of course, it is favourable from all lumbering angles.

Q.—And it is still so?

A.—From the tie point of view it is favourably located because of its proximity to Ottawa, and because of the fact that the C.P.R. have branch lines out of Ottawa through country where there is practically no timber, such as the Brockville branch, the Prescott branch, and so on; as well as the main line itself, and the Pontiac line.

40 Q.—Of course, Mr. Cross' source of motive power at his mill is still there? It has not in any way been interfered with by the Company Defendant?

A.—I do not know about that. I see the mill there, and I see the variable amounts of a piling ground.

Q.—It is the piling ground that seems to have been most seriously affected?

A.—The piling ground is a very serious difficulty.

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You were asking me about the mortgage, and I think I told you about it. I think I should tell you now that this mortgage was arranged in the fall of 1929. Prior to that time Mr. Cross' finances seem to have been quite satisfactory. He did not seem to need financial help.

Q.—You are the Mr. Plaunt whose name has been referred to in connection with Mr. W. L. Scott's accounts? He was representing you in connection with the mortgage matters?

A.—Yes.

10 Q.—And he has been representing you, to some extent, in this case also?

A.—Yes, to a certain extent.

Q.—I am speaking of Mr. W. L. Scott.

A.—So am I.

Q.—And I understand Mr. Scott has been following this case before his Lordship since it began, and has been here from the very beginning, on your behalf?

A.—Yes; Mr. Scott has been watching my interests, as far as he can.

20

BY THE COURT:

Q.—As far as the mortgage is concerned?

A.—As far as the mortgage is concerned.

BY MR. KER:

Q.—And he has been in Court here every day on that work?

30 A.—I do not know about that.

BY THE COURT:

Q.—I understand the Mr. Scott to whom you refer is Mr. W. L. Scott, K.C., of Ottawa?

A.—Yes.

(And further deponent saith not.)

40

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DEPOSITION OF GEORGE B. LANGFORD, A WITNESS
EXAMINED ON BEHALF OF PLAINTIFF IN
REBUTTAL

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

GEORGE B. LANGFORD,

already sworn, who, being now called as a witness on behalf of Plain-
tiff in rebuttal, deposes as follows:

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

20 Q.—I do not propose to go into all the evidence you gave in the
Plaintiff's case in chief, but I understand there are a few comments
you wish to make in connection with some testimony given by Mr.
Gill, for the Defendant?

A.—Yes.

Q.—You have read his evidence?

A.—Yes.

Q.—Will you tell his Lordship what are the comments you wish
to make?

30 Mr. Montgomery: Your Lordship has observed the form of
the question. This evidence is being made to contradict a witness,
and not the plea.

40 I do not know if I expressed myself very well this morning, and
I thought possibly it would be as well for me to cite to your Lordship
one of the authorities I had in mind, which will express my idea
more clearly. I have before me a Judgment of the late Mr. Justice
Langelier, upon whom we all looked as an authority on proof. In the
case of *Crompe ès qual vs. La Compagnie du Chemin de fer Urbain
de Montréal* (VIII *Revue de jurisprudence*; P. 277) I find the fol-
lowing:

“ Suivant la doctrine et la pratique suivie en Angleterre,
la contre-preuve n'est permise en faveur d'un demandeur que
pour contredire les allégations du plaidoyer et non pas pour
contredire les témoins produits de la part de la défense; en
conséquence un Demandeur ne peut, en contre-preuve, faire
entendre un expert uniquement en vue de contredire les témoins
entendus de la part de la Défenderesse ”.

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His Lordship: And do you object to the evidence?

Mr. Montgomery: Yes, your Lordship. The question is directly in conflict with the rule.

His Lordship: But he can contradict a witness.

10 Mr. Montgomery: He cannot be called to contradict a witness. He may be called to contradict the Plea.

His Lordship: A statement made by a witness.

Mr. Montgomery: He may be called to contradict evidence brought in support of our Plea.

20 If evidence is made in chief in support of the Plaintiff's Declaration, and we make evidence in conflict with that, the Plaintiff cannot come back again and produce further evidence in support of his Declaration. He may produce in rebuttal evidence in contradiction of the Allegations of our Plea, and the proof we have made in support of those Allegations, because, of course, that would not be part of the Plaintiff's case in chief. On the other hand, he cannot fortify his Declaration by calling further witnesses to contradict witnesses whom we have heard in support of our Plea, or to contradict his evidence in chief.

I do not know that I can state it better than it is stated by Mr. Justice Langelier (page 279):

30 “ Lors de l'enquête dans cette cause, j'ai maintenu une objection à l'enquête de la part de la Défenderesse. La Demanderesse voulait faire une contre-preuve par un expert pour contredire certains témoins produits par la Compagnie Défenderesse. Vu l'objection faite par les procureurs de la Défenderesse sur le motif que la contre-preuve n'est permise que pour contredire les allégations du plaidoyer et non les témoins, et la pratique suivie en Angleterre. J'ai maintenu cette objection à l'enquête sauf à entendre ce témoins, si je venais à changer d'opinion.

40 Après considération de la question je n'ai pas à changer la décision et je maintiens l'objection à l'enquête ”.

Mr. Scott: I meet my friend's argument by saying it is covered by Paragraph 37 of the Plea:

“ That Plaintiff's sawmill at Farm Point, Meach Creek, also referred to in Paragraph 18, is high up on the side of the hill, and none of the operations of the said industry nor the property

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directly appurtenant thereto can or will be affected by the maintenance of a water level of 321.5, and except a small area of less than three acres of land at times used by the Plaintiff for the piling of lumber, and the said piling ground has always been low lying land and was land which had been in part filled in by the Plaintiff for the said purpose; and the measure of compensation due to Plaintiff in respect thereto is a sum representing the cost of filling in and reclaiming of the said area, and the raising of the railway spur thereon, as hereinafter offered by the Defendant; and Plaintiff is without right to set up against Defendant, as he has done herein, an exorbitant claim based upon the pretended ruin of his industry."

In Paragraph 57-E the Defendant pleads:

20

"With respect to Plaintiff's sawmill and industry at Farm Point, Meach Creek, to pay Plaintiff the sum of \$6,000, which is more than sufficient to pay for the work of reclaiming the portion of Plaintiff's piling ground which might be affected, and to remedy the effect on the railway spur, as set out in Paragraph 37 thereof. With interest as aforesaid."

Professor Gill has given rather lengthy evidence to the effect that what is alleged in Paragraph 37 and in Paragraph 57-E can be done. The contention of the Plaintiff is that it cannot be done. Professor Gill has given evidence in support of his professional opinion, and I am now simply asking Mr. Langford if he agrees with Professor Gill's professional opinion on one or two particular points.

30 His Lordship: I will take the evidence under reserve of Mr. Montgomery's objection.

BY MR. SCOTT (continuing):

Q.—Will you please tell His Lordship the first comment you have to make on Mr. Gill's evidence? And you have before you the volume containing the transcript of his testimony?

A.—Yes, I have.

Q.—Perhaps you might tell His Lordship what Mr. Gill has said, about which you wish to speak?

40 A.—At pages 603 and 604 Mr. Gill made certain statements regarding the level of the water table, which is the point below which the porous spaces of the soil are completely saturated with water.

As I understand it, Mr. Gill claims that the water table rises from the level at Meach Creek and continues to rise, somewhere below the surface of the land, in a gradual slope upwards as you go away from Meach Creek. In support of that he says it is a theory which is generally accepted in such cases.

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As far as that goes, it is correct, but Mr. Gill has overlooked the fact that you get variations in that water table—you get perched water tables, and you get depressed water tables. In this case you have your water table depressed below what the theoretical conception of it would be.

As far as I can see from Mr. Gill's evidence his location of the water table is based entirely upon theory, and it is not supported by the facts as we found them in one of my drill holes.

10 Exhibit P-112 is the plan I put in showing the location of my drill holes and the profile lines.

The hole to which I refer is hole "F" on Exhibit P-112, near the profile line marked in yellow pencil with a large "C" at each end of it. That hole was started from above the water, the day I was there. The water did not come up to the point where I started to put the hole down. I have here the field book from which I quoted when I gave my former evidence. The log of that hole is this: We went down 5 feet through dry clay. The elevation of the water was within a foot of the point where we started our hole; nevertheless, we went down 5 feet below where we started our hole, or approximately 4 feet below the water level, and the clay was still dry.

20 Professor Gill's evidence is the water table would start there, and slope upwards, but the clay was so dry that as we drilled down with the auger the material would come up in little flakes or chips, and a man had to stand on the auger while two others twisted it to put it down through the clay, it was so dry and hard.

When we got down to 7 feet in depth through this yellow clay we struck a flow of water, which raised up in the hole to within approximately a foot or a foot and a half of the top, showing that underneath this yellow clay the material was saturated with water under pressure, which forced it up; which are the conditions present in a depressed water table when the water in it is trying to rise to its normal condition.

30

BY THE COURT:

Q.—And at what conclusion do you arrive?

A.—That the water table is not as Mr. Gill described it.

40 BY MR. SCOTT (continuing):

Q.—What is the result of this depressed water table condition?

A.—The result supports my contention that this yellow clay material we speak of is forming a crust on the whole piling ground and is not completely saturated. Dr. Gill claimed it was completely saturated, but my contention is it is above the water table, and, therefore, is not completely saturated, but that it is under pressure.

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The water is trying to force its way in, and it will soften more than its present condition shows it to be softened. It is not softened completely, but the water is trying to get in to soften it.

Q.—In other words, the ground would still have a carrying capacity?

A.—Yes. The water is still trying to get in, and soften it; which was my original contention.

10 Q.—Have you any other observations you would care to make on the testimony of Dr. Gill?

A.—Yes.

20 Dr. Gill has also said this surface crust—that is, the yellow clay—is getting thinner as you go from the spur out towards Meach Creek—and at Meach Creek it thins out to practically nothing. I do not see any evidence put in by him to support that. My profiles show the thickness of the material as determined from drilling. Hole “C”, which is approximately half way between where the spur joins the main line and the culvert underneath the main line, shows this yellow material to have a thickness of 10 feet—greater than any other thickness I found. This indicates there is rather a tendency for it to increase, rather than decrease, as you go towards Meach Creek.

His Lordship: All this sounds like a scientific discussion on something which is very theoretical—a discussion between two learned men. I do not know how far it will affect the Court, or what assistance it will be to me. We want something practical.

30 In any event, Professor Langford, you may continue, if you wish.

Witness: I would only add that my evidence was based on approximately 15 or 18 holes: I forget the actual number. Dr. Gill's testimony was based on my record of those holes, and one partially drilled hole later—which I think should be given some consideration in valuating the two opinions.

BY MR. SCOTT:

40 Q.—From what you have said, and from observations you made, have you any remarks to make concerning the railway embankment?

Mr. Montgomery: The witness has already been very fully examined on that in the Plaintiff's case in chief.

His Lordship: Let us not prolong the evidence, Mr. Scott.

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BY MR. SCOTT (continuing):

Q.—Having read Dr. Gill's evidence, has the opinion you previously gave in connection with the railway embankment been changed?

A.—No, it has not been changed.

Dr. Gill mentioned the fact that the railroad

10 Mr. Montgomery (interrupting): Just confine yourself to answering the questions, please.

Mr. Scott: I have no further questions.

Cross-examination

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

Q.—At what level was the water when you were there?

A.—I forget the figures. I think I mentioned them in my former evidence.

20 Q.—It was about 318 or 319?

A.—Somewhere around there.

Q.—You have just been speaking with reference to the water table. I think you stated in your evidence in chief that you did not know what the water table of the Gatineau River was under natural conditions?

A.—I do not recall what my remarks were on that.

Q.—At page 450 of your evidence you said:

30 “ The layers underneath being in various stages of wetness, that is something which cannot be cleared up now because we do not know where the water table was originally ”.

A.—Yes.

Q.—Consequently, your remarks now with respect to the water table do not apply to the water table of the Gatineau River as it originally existed before this rising of the water?

A.—No.

The water table is higher now than it would be then.

40 Q.—Of course, Dr. Gill's remarks were all based on the water table of the Gatineau under natural conditions?

A.—I think he was referring to Meach Creek.

Q.—But he was referring to natural conditions?

A.—Yes.

Q.—So that there is not much you can compare when you check?

A.—Yes, because raising the water will have a tendency to raise the water table.

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Q.—Then in five years it has not softened the crust underneath this piling ground?

A.—Because it has not been able to raise the table.

Q.—For some reason it has not softened it?

A.—That was my whole contention—that this impervious layer has prevented the water from coming up quickly. It has taken a long time.

Q.—But you just said it would naturally change quickly?

A.—I did not say “quickly”.

10 Q.—Eventually it might bring the water table up to just exactly what Dr. Gill said it would?

A.—That is my contention on the whole thing—that the whole thing will be softened when the water table does come to that point.

Q.—It is not softened yet?

A.—It is just starting.

Q.—Then, as far as the level of the water is now concerned, it has no application, because it has not yet reached its level?

20 A.—It certainly has an application. If the hole drilled by Dr. Gill had gone deeper, and started from a high point, he would have seen the softening after a few feet.

Dr. Gill went down to the original water table of the river, elevation 312, and he said there was an upward slope to 318, after which there is none.

A.—How did he recognize it? His hole was started under water.

Q.—He took it from the gauges.

A.—Does the gauge have anything to do with the water table? Gauging is usually confined to the river.

30 BY MR. SCOTT:

Q.—I understand you have something you would like to say with reference to an opinion given by Mr. Gill in connection with the clay and the absorption of water.

A.—You mean in the way of commenting on his experiments, and so on. The only thing I had to say in that regard was in connection with the railroad, and Counsel for the Defence preferred not to discuss it.

40 (And further deponent saith not.)

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DEPOSITION OF NORMAN B. MACROSTIE, A WITNESS
EXAMINED ON BEHALF OF THE PLAINTIFF IN
REBUTTAL.

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

10 NORMAN B. MACROSTIE,

already sworn, who, being now called as a witness on behalf of the Plaintiff in rebuttal, deposes as follows:

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

Q.—You have already been sworn and examined in this case?

A.—Yes.

20 Q.—Some evidence was given by Mr. Ralph and by Mr. Chadwick with reference to a stream of water running over a portion of the piling ground of Mr. Cross. My recollection is Mr. Ralph said it was just a temporary affair, but Mr. Chadwick considered it was a permanent stream. They stated there was stagnant water lying around which did not come from the Gatineau River. Have you examined into that condition?

A.—I have.

Q.—Will you tell His Lordship what you found?

30 A.—I re-examined the source of some water that was running down the tracks, which has been referred to both by Mr. Ralph and by Mr. Chadwick. That water was coming from a crevice in the rock up near Group No. 12 houses on Exhibit D-160. I mark the location on the plan Exhibit D-160 with the letter "X", adjacent to Group No. 12. There is a crevice there, out of which a certain amount of water flows which finds its way down the hill, past 12-A and 12-B, and strikes the siding or spur about 40 or 50 feet west of the road leading to the power house, where there is a box culvert under the spur, leading through to Meach Creek.

40 I trace on the plan, in pencil, the approximate course of the water coming down the hill.

The culvert I speak of is in a bad state of repair, and the water does not all go through it. Part of the water goes down the track, and part of it goes under the spur and into Meach Creek. The greater part of the water goes down the siding.

Q.—Has the raising of the water in the river bed anything to do with this water of which you now speak not going through the culvert?

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A.—Quite a bit of debris from the mill has been dumped adjacent to Meach Creek there. A lot of raising has been done throughout the yard, to attempt to raise it above the elevation of the water.

Q.—That has been done since the flooding?

A.—Since the flooding, yes. That has partially filled this up.

Q.—You mean, partially filled up the culvert?

A.—Yes.

10 Q.—Do you know where that stream emptied before the flooding?

A.—No, I cannot say where it emptied before the flooding.

I was in the yard quite frequently in 1926

Q.—(Interrupting) Before the water was raised?

A.—Yes, before the water was raised—and I observed no water in the place where it is today; that is, flowing down the track.

Q.—I think I understood you to say something about a fill being put over the yard?

20 A.—Yes, there has been a great deal of fill placed in the yard—sawdust, pieces of broken wood, chips, bark, and so on—refuse from the mill. It has been placed particularly over the area on the north side of the siding. From one to three and a half feet of fill have been placed in there since 1926.

Q.—In order to ameliorate conditions?

A.—I presume so.

Q.—I think you told us in your evidence in chief that the elevations you took at Farm Point were taken from the natural ground, and not from the top of this sawdust fill. Is that correct?

A.—That is correct.

30 Q.—Will you trace on the plan filed by Mr. Beïque as Exhibit D-193 where the 321.5 contour line would go over the yellow, green, and pink areas; based on conditions as they were before the flooding?

Mr. Ker: My learned friend had the opportunity of proving in chief exactly where the 321.5 contour goes, and it was part of his case. Mr. Beïque has produced a small sketch indicating various other things, and my friend now wishes this witness to trace on this sketch where the 321.5 contour would go. I submit this is illegal.

40 Mr. Scott: Mr. Beïque's outline is from the top of the sawdust fill, not from the natural soil.

Mr. Ker: Then let my friend ask the witness whether the measurements on the plan produced by him were taken from the top of the soil or from below the surface.

Mr. Scott: Mr. MacRostie's measurements were taken from the natural soil.

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Mr. Ker: We are asked to take this piling ground just as we found it. We cannot go three feet below the level of the natural piling ground, and compensate Mr. Cross on that basis. I object to this as not being proper rebuttal evidence.

10 Mr. Scott: Under the Special Act your Lordship has to compensate Mr. Cross for everything taken up to an elevation of 321.5. That means the elevation of 321.5 as of May 17th, 1926. It is not an elevation taken from the top of a sawdust fill which Mr. Cross had to put in in order to ameliorate or help remedy conditions caused by the acts of the Defendant Company.

I think it will assist your Lordship to have on this plan the elevations established by Mr. Farley and others taken on top of this three or four foot fill, and to have the contour line taken by Mr. MacRostie on the natural ground conditions in 1926.

20 Our submission is that under the Special Act Mr. Cross is to be compensated up to elevation 321.5, and the date for assessing that compensation is the date of the approval of the Defendant's plans, May 17th or May 21st, 1926. Therefore, it is on the contour line as it existed in May, 1926, your Lordship will have to determine the damage to Mr. Cross' property.

By having the witness indicate the elevation on this plan, your Lordship will see exactly where the line goes.

30 Mr. Ker: The unfairness of my learned friend's position is this: we sent our engineers to this piling ground, and they made certain definite measurements as to elevation. My friend has produced a plan which he indicates to be the plan showing the extent of the damage we have caused to this piling ground. He makes no reference whatever in his evidence to the fact that he has, so to speak, put a bar down until he got to hard ground, and then taken his levels. When our engineers have taken their levels, my friend says: "It may be 321.5 appears on this plan, but if you go down through the sawdust it is a different level." We are asked to compensate for this piling ground as we find it, and there was not a word of evidence in chief that there were three feet of sawdust, or slabs, or refuse, put on it.

40 Mr. Scott: Mr. Strumbert made that evidence.

Mr. Ker: Mr. Strumbert was not examined in this case.

If my friend had any evidence to make to the effect that three feet of sawdust, or slabs, or mill refuse, had been put on this piling ground since the water was raised, we would have been put on our guard and we would have had to meet that evidence.

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It is my respectful submission that it is not open to my friend to come now and say there are three feet of sawdust, or whatever it may be, on top of the natural ground and that levels taken away beneath that sawdust are the proper levels, and the levels we have been working on all through are wrong. The levels which formed the basis of our calculations were taken on the piling ground as we saw it, not levels taken three feet down. We are not to go down through the sawdust and slabs which Mr. Cross may have put there for his own purposes.

10

His Lordship: Does not the Plaintiff claim for damages caused by the raising of the water?

Mr. Ker: Yes, your Lordship.

His Lordship: And, if he has done work, or has spread two or three or three and a half feet of sawdust or other materials on the surface of this piling ground, to raise the level, does not that constitute an element of damage?

20

Mr. Ker: But, there is no evidence that it has been done. We have no evidence that it was not done before the water was raised, to bring the piling ground to a natural condition. If this sawdust or refuse was put on at the time of the raising of the water, it might be different.

Mr. Scott: I think my recollection of the evidence is at least as good as that of my friend. There is evidence, made by Mr. MacRostie in chief, that the elevations were taken from the natural ground conditions in 1926, before the raising of the water. He also said the same thing this afternoon.

30

The Legislature has directed your Lordship to compensate Mr. Cross for the damage suffered up to elevation 321.5, as at May 17th, or May 21st, 1926, before the water was raised—in other words, for the existing natural conditions at that time.

His Lordship: Did you prove that there was a certain quantity of material put on this land at that level, which raised it three or three and a half feet?

40

Witness: I put that in myself, your Lordship.

Mr. Scott: It is a fact.

Witness: My recollection is I referred to it from my records.

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Mr. Scott: In any event, whether it is in or not is quite immaterial. The Defendant has proved that there is an available piling ground to be left for Mr. Cross, and amongst the diagrams produced to prove that is the very ingenious plan presented by Mr. Beique, with levels taken from the top of this sawdust fill. This plan indicates the portion marked "M" as available to Mr. Cross.

10 His Lordship: I thought you had proven that the ground had been raised three or three and a half feet by the addition of sawdust, slabs, mill refuse, and so on. If that fact be proven, what do you want to establish further?

Mr. Scott: What I want to prove now is that with the natural ground elevations as the determining feature this red area, which Mr. Beique said was about one acre in extent, would not be available as a piling ground for Mr. Cross: it would be too small. Our contention is that there is practically nothing left.

20 What I am trying to do is to establish in a practical way just what the two lines mean. If your Lordship decides you should take the elevation from the top of the sawdust fill, it will be one thing; if you decide that the Statute directs you to take the elevation from the natural ground conditions before this trespass was committed, then I think we are entitled to trace on this plan, in rebuttal, where the 321.5 contour line would come. If that be done, your Lordship will have the whole story before you.

30 Mr. Ker: My recollection of the evidence is that there had been sawdust, chips, and so on put on this piling ground generally, but there is not a word of evidence to the effect that this was done by Mr. Cross since the water was raised. It is only now Mr. MacRostie adopts this theory, in order to dispute our plan. The level as shown on this plan was the level he was using before the water was raised, and I submit that is the level upon which we must compensate him. We cannot have a witness appear now and say: "This has all been done since the flooding, and therefore you have to go down three feet further."

40 Mr. Scott: Mr. Ralph spoke about that.

Mr. Chisholm: I think the last few words of my learned friend Mr. Ker show why we should be allowed to make evidence that the fill was put on after the raising of the water. Mr. Montgomery has cited a case to the effect that proper rebuttal may be made by the Plaintiff on facts alleged by the Defendant in its Plea. In our Declaration we did not allege that the piling ground had been filled, but the Defendant does so in Paragraph 37 of its Plea, in which it

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refers to the piling ground as "low lying land which had in part been filled in by the Plaintiff".

Mr. Ker: At the time the water was raised.

Mr. Chisholm: It implies such filling as had been done prior to the raising of the water. If our friends choose to be mistaken in their facts, it is not our fault.

10 By this evidence we propose making now we are merely rebutting an allegation in the Defendant's Plea, and I submit it is the truest rebuttal your Lordship can have, and that we are entitled to show by Mr. MacRostie, first, that the sawdust fill was placed there after the raising of the water; and, secondly, that the elevations he took were taken upon the natural soil.

His Lordship: I will allow the evidence, under reserve.

BY MR. SCOTT (continuing):

20 Q.—Will you trace on the plan filed by Mr. Beïque as Exhibit D-193 where the 321.5 contour line would go over the yellow, green, and pink areas; based on conditions as they were before the flooding?

A.—I have marked on Exhibit D-193 by a dotted line the approximate location of the 321.5 contour taken on the natural ground elevation, and I have marked it "321.5" in pencil, and placed a circle around it.

30 Q.—Will you please put your initials immediately to the right of the figures "321.5".

A.—I put my initials "N.B.M."

Q.—In tracing this contour line just now I noticed Mr. Ralph and Mr. Beaubien were beside you?

A.—Yes.

Q.—From what did you plot that line?

A.—I replotted on our copy of Exhibit D-160 the location of my own 321.5 contour, because it is on a different scale from the one I had used. I then transferred it to Exhibit D-193.

40 Q.—I understand you have some photographs, taken a few days ago, which you would like to file?

A.—Yes, I have.

Mr. Ker: The photographs my friend shows me indicate a section of the property, on which there are two men standing. I see on the back of the photograph something to the effect that these men are supposed to be standing at the 321.5 level. Surely if my friend wanted to prove the 321.5 level this should have been done in chief.

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I object to the production of these photographs as not being proper rebuttal evidence.

Mr. Scott: I just want to show your Lordship that our contention is right as to where the contour line goes.

Mr. Ker: It is clearly an attempt to indicate the 321.5 contour line, which is definitely a matter which should have been established in chief. This is not rebuttal evidence.

10

Mr. Chisholm: We have shown the line on the plan, and we are now offering to show your Lordship pictures of this line.

His Lordship: I think the plan will be sufficient. I do not require a photograph of it.

BY MR. SCOTT (continuing):

20 Q.—Mr. Beique indicated that about 60 per cent of the red area “ M ” on Exhibit D-193 was available for a piling ground. What have you to say to that?

A.—I would say a great deal of work would have to be done on it to make it suitable for a piling ground. As Mr. Beique says, there are large outcroppings of rock. The spot levels are shown on the plan Exhibit D-160. In order to get access to that property in any way that you could use it for a piling ground, you would require to have a siding to make it accessible, and that rock would have to be taken off. In addition to that, the piling ground area which they suggest as a piling ground in this case—the portion marked “ M ”, 30 coloured in red—is sloping. There is quite a heavy grade to it. The piling ground as it was in 1926 was substantially level. The suggested piling ground runs from an elevation starting at the 325 contour, up to 337.8, and I would say that variation over an acre or an acre and a half would not allow of a suitable piling ground unless a lot of expensive work was done upon it.

Q.—Would it necessitate the relocation of the spur siding?

A.—Yes, it would, if you were going to use it. That in itself would be quite an expensive proposition.

40 Q.—This contour line you have put on Exhibit D-193 was transferred from a contour line you put on your copy of Exhibit D-160?

A.—Yes.

Q.—The contour line you put on Exhibit D-160 being a dotted line behind the other contour line?

A.—Yes.

Q.—Will you file, as Exhibit P-129, the copy our friends were good enough to lend us of Exhibit D-160?

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A.—Yes.

Q.—This is a copy of Mr. Farley's plan Exhibit D-160?

A.—Yes.

Q.—And the dotted line is your contour line?

A.—No. The solid yellow line marked "321.5" is the contour line.

Q.—Is that their contour line, or yours?

A.—It is mine. I put my initials under it.

This is based on the natural soil.

10 Q.—Before the filling?

A.—Before the fill was put in.

Q.—And that is the yellow line?

A.—Yes.

Q.—Will you please put the letter "A" at the beginning of this contour line, and the letter "B" at the end of it?

A.—I put the letter "A" at one end, and the letter "B" at the other end.

20 Q.—I think Mr. Boisvert and Mr. Ralph mentioned some elevations taken at the foot of the draft tube?

A.—Yes.

Q.—Have you since taken some elevations there?

Mr. Ker: The witness has already testified to the elevations he took, and he said he took them on the basis of the spot having been scoured out at the bottom, although the scouring did not exist naturally, and thereby got one and a half feet more of head.

30 Mr. Scott: I think Mr. Ralph told us there was cement at the bottom.

Witness: I think it was Mr. Farley who testified to that.

BY MR. SCOTT:

Q.—Have you since checked that up?

A.—Yes, I have rechecked what I originally did, and I have made other checks as well.

Q.—And what are your conclusions?

40 Mr. Ker: I object to this evidence. All this has been covered in chief, and it is not competent to reopen it in rebuttal and change the figures.

Witness: There is no change.

Mr. Ker: The figures are set out definitely in the evidence in chief.

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Q.—Did you give evidence on the point on which you are now being questioned?

A.—Yes, your Lordship. I testified that the elevation at the bottom was around 311.

Q.—And now you just want to confirm that?

A.—I have made two additional tests since then, which confirm it.

His Lordship: I think Mr. Ker's objection is well taken, and I maintain it.

BY MR. SCOTT (continuing):

Q.—There was some evidence to the effect that there was cement blocking the mouth of the draft tube, at the culvert. You did not speak about that in your evidence in chief?

A.—No, I did not; not that I know of.

Q.—What are the facts?

A.—I have not found any cement in that outlet.

Q.—Did you make an examination to see if there was any?

A.—Yes, I did.

Cross-examination

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

Q.—As I remember your testimony, you are not a Quebec Land Surveyor?

A.—No.

Q.—It is to your knowledge that Mr. Farley made the plan Exhibit D-160?

A.—No, it is not to my knowledge.

Q.—Is it to your knowledge that that plan has been checked, in respect to the piling ground, by Mr. Cassels, another Quebec Land Surveyor?

A.—I believe so.

Q.—I understand on Exhibit P-129 you have assumed to trace what, in your opinion, was the 321.5 contour?

A.—What, in fact, was the 321.5 contour, on the ground.

Q.—What, in your opinion, was the contour?

A.—No; what, in fact, was the contour.

Q.—That is, taken under natural ground conditions?

A.—Under natural ground conditions.

Q.—Under the level of the existing condition of the ground?

A.—No. At the surface of the ground.

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Q.—Under the present surface of the piling ground as it actually exists?

A.—No. Perhaps I could clear the whole thing up for you, if you will allow me.

Q.—Perhaps you might let me clear it up in my own way. Let us call the surface of the piling ground that portion of it which is exposed to the air at the present time.

A.—Very well.

Q.—Your level is not taken from that surface?

10 A.—My level is not taken on the top of the sawdust.

I would like to say also that we checked out the 321.5 contour as shown on Mr. Farley's plan, on top of the sawdust, and it agrees with what he has.

Q.—What I am saying is his plan shows the contour as taken from the surface, and your contour is not taken from the surface?

A.—Mine is taken from the surface of the ground.

20 His Lordship: The surface of the ground under the material that was added to it?

Mr. Ker: Under the material which covers it. I do not know whether it was added to it or not.

BY MR. KER (continuing):

Q.—Taking your natural condition of the ground, and going down below, will you tell me where your 321.5 contour crosses the railway spur?

30 A.—It is shown on the plan.

Q.—Will you mark the spot on the plan Exhibit P-129 with the letter "X"?

(Witness does as requested.)

Q.—That is the point at which, under natural ground conditions, the 321.5 contour crosses the railway spur?

40 A.—Yes. If you wish to follow your contour, taking into account the ballast under the railway track, that 321.5 contour would come to the railway where I mark "X"; then it would follow down the railway track to the point I mark "Y"; it would then cross the railway track, and come back on the opposite side of the railway.

BY THE COURT:

Q.—Is that the spur?

A.—The siding. In all cases where I have used the expression "railway track" I refer to the siding.

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BY MR. KER (continuing):

Q.—Now that you have marked the spot with the letter “X” I would like to refer you to the testimony of Mr. Farley, at pages 306 and 307:

“ Q.—In arriving at the elevation 321.5 were your instruments on top of the sawdust or refuse?

A.—Not at this particular elevation, no.

Q.—Not for the particular elevation marked “X”?

10 A.—No.

Q.—You went down to the natural ground?

A.—Yes.”

In other words, Mr. Farley deposes to the fact that at the point “X” on his plan he went down to the natural ground. Will you please indicate the distance between your point “X” on the plan Exhibit P-129, assumed to be the natural ground, and Mr. Farley’s point “X” on the plan Exhibit D-160, assumed to be the natural ground?

20 A.—It corresponds substantially with my point “Y”.

Q.—But that is not an answer to my question. I asked you to indicate by the letter “X” on the plan Exhibit P-129 where the contour 321.5 crosses the siding, and you have done so. How far is that from the point indicated on Mr. Farley’s plan, checked by Mr. Cassels?

A.—That point is on top of the ballast.

30 Q.—Mr. Farley states it is on the natural ground. I do not want to enter into a controversy with you on the subject, but I would like you to tell me the distance, by scale, between Mr. Farley’s point “X” and your point “X”?

A.—About 185 feet down the track, measured along the siding.

Q.—Yours is 185 feet farther up the track than his?

A.—Yes.

BY THE COURT:

Q.—That is on the main line?

40 A.—No, your Lordship; on the siding. The contour goes out to the siding. There is ballast under the siding.

Mr. Farley’s contour line goes along, and strikes the siding, and you can run it down the siding and come back to the other side of the siding. It corresponds substantially with my point “Y”.

BY MR. KER (continuing):

Q.—Either the siding between the two points is at 321.5 level, or it is not.

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A.—It is not at that level. It rises from that level.

Q.—I have asked you to point out where your line strikes the siding?

A.—It will cross as I said.

Q.—At the point "X"?

A.—It crosses natural ground at the point "X"; and the fill of the siding at or about the point "Y".

10 Q.—Mr. Farley deposes the line also crosses the siding under natural ground conditions. I have asked you the difference between the point you find as natural ground, and the point he finds as natural ground, and you say it is 185 feet?

A.—I do not agree with Mr. Farley on that point, because the siding has about two feet of ballast under it.

Q.—But I am not speaking about ballast. I am speaking about natural ground, and so is Mr. Farley, and so are you.

A.—Well, Mr. Farley evidently does not refer to natural ground.

Q.—In any event, there is a distance of about 185 feet between your point "X" and his?

20 A.—Yes; straight down the siding.

BY THE COURT:

Q.—That is, between "X" and "Y"?

A.—Yes, your Lordship.

Mr. Ker: Between Mr. Farley's point "X" and Mr. MacRostie's point "X".

30 Witness: My point "Y" is very close to Mr. Farley's "X".

BY MR. KER (continuing):

Q.—You spoke of having traced this water that was running down the hill back to its origin, and I think you said you found it coming out of crevices or cracks in the rocks near the group of buildings No. 12?

A.—Yes.

40 Q.—Those buildings are fairly high up on the hill?

A.—Yes, quite high up.

Q.—The Company Defendant could not be held responsible for the origin of that water?

A.—No.

Q.—And it was apparently flowing down under absolutely natural conditions, and whatever may have happened to it was not the fault of the Company Defendant that that water was there?

A.—No.

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Q.—You are, therefore, prepared to admit that Mr. Chadwick and Mr. Ralph were justified when they said that was water running down to the piling ground from areas for which the Company was not responsible?

A.—Yes. They said they saw it run down on to the siding.

Q.—I think I understood you also to refer to the fact that you do not give credit for as much as an acre and a half in the portion "M", coloured pink, on Mr. Beïque's little plan?

10 A.—I do not recollect that. I said about an acre and a half. If my memory serves me aright, it was about 1.5 acres he had as a total area, of which he said 60 per cent was available as piling ground, which would be slightly under an acre.

Q.—And you said you do not agree with the 60 per cent?

A.—I do not agree with it. I said the whole thing would require to have considerable work done on it to make it a suitable piling ground.

Q.—Because it was uneven, as you said?

A.—Yes.

20 In addition to that there was quite a heavy outcropping of rock. There are quite heavy outcroppings of rock, which, by the way, are at other places than what is shown on the plan Exhibit D-193. They are shown approximately correctly on the plan Exhibit D-160.

Q.—Let us now deal for a moment with the inconvenience of the suggested piling ground. What do your spot levels show as being the inconveniences to the Plaintiff in that area?

A.—If you start at the westerly side of the C.P.R. right-of-way, there is a difference of level.

30 Q.—What would be the difference? Would it range to as much as 5 feet?

A.—The maximum is about 337.

Q.—What would be the range?

A.—325 from 337, would be 12 feet.

Q.—Do you think the whole thing should be level in order to be a piling ground?

A.—Approximately level, yes .

Q.—Do you not recollect that before ever the Company Defendant came on the river Mr. Cross' piling ground ranged from 318 to 325, under natural conditions?

40 A.—No, I would not say that. It ran from about 317 to about 321 or 321.5.

Q.—The natural piling ground, then, was between 318 and 321.5, and that was the only piling ground he had?

A.—As shown on the plan Exhibit D-160. 321.5, I think.

Q.—He did not pile anything above 321?

A.—Except up adjacent to the mill.

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Q.—There was no piling done above 321 level, under natural conditions?

A.—Not on the area marked " M ".

Q.—Surely you do not want His Lordship to understand that the only piling ground Mr. Cross was using before this water was raised, under natural conditions, was the land between 318 and 321.5?

10 A.—On that area east of the road leading into the mill, as I stated before, up adjacent to the mill. The siding is around 327 or 328, and it slopes down to an elevation of 320.5. The piling ground to which Mr. Beique refers on his sketch Exhibit D-193 assumes that when he gets down to the elevation of the roadway, or a little below, he will start and go uphill again. That is not an economic proposition.

Q.—Then, perhaps we have been generous in offering to pay him for piling ground up to 324.5?

A.—No. It is the effect.

Q.—But, how could there be any detrimental effect up to 324?

20 A.—321.5 and 324, under natural conditions, are substantially the same area.

Q.—But there was nothing piled in the area above 321.5 before. Therefore, if we compensate him to 321.5, irrespective of what the effect was above that, it would not affect his piling ground?

A.—I am not saying that. The 321.5 and the 324.5 contours are very close together. They follow along the bottom of that ledge of rock.

30 Q.—I understand you to say that so far as you are aware Mr. Cross was doing no piling above elevation 321.5, under natural conditions?

A.—I did not say that. I said he started at 327 or 328, at the mill, and came down to that.

Q.—I mean in this area east of the road—in the area on the border of the part coloured red on Exhibit D-193. You have seen him pile above 321.5?

A.—I have not seen him.

Q.—How long have you been there to observe?

A.—Since 1926.

40 A good deal of the piling was done on the other side of the track—on the south side of the siding—at the time.

Q.—But, Mr. Cross says he never piled any lumber on the south side of the siding; and his foreman said the same thing.

In any event, I have only one or two more questions to ask you. You said there was no cement in the bottom of this draft tube?

A.—Not that I could find. I made three tests, and I could not find any.

Q.—You referred to one of the exhibits in this connection, and

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I now refer you to Exhibit D-161, which is a very simple little sketch made by Mr. Farley. Will you please indicate to me on that sketch where you find your level 311?

Witness: What scale is it?

Counsel: I do not know.

10 Exhibit D-161 purports to represent the tailwater at the electric plant at Farm Point. You see the wall, you see the draft tube coming out. You see the water comes down and discharges at the point marked "Discharge". In estimating those levels Mr. Farley found that the line below the word "Discharge" was at elevation 312.8. I assume nothing could be done unless and until the water raised to a point where it could go through the hole marked "Discharge"?

A.—It has to raise above that.

Q.—At what point did you measure it to get your elevation of 311?

20 A.—To begin with, there is a hole in the concrete flooring in connection with the water wheel. I made a test through that hole, and it was a little awkward getting the measurement down through there, because I had to go in at a slope. I could get down to 310.7 at the bottom. I was on a slope, but I could judge by the feel of it that I was not quite at the bottom but I was somewhere near the bottom.

Q.—Was that something which did not at all represent the bottom of the tailrace?

30 A.—I went outside the door, on the road—where Mr. Farley has marked "Roadway". I made a test through there. And, by the way, I checked the top, 318.1. That is the top of the concrete culvert. Exhibit D-101 would show just what it was. I drilled a hole through the top of that, and I went down to the clay level, at 310.6. There was some débris that had been washed in, which would not stick to the iron bar I put down, and it was difficult to find out how thick it might have been.

I did the same testing on the outlet again, and I got 311.

40 Q.—Are you prepared to say the level of 310.8, established by Mr. Farley, Mr. Massue and Mr. Boisvert—below which you could not go. . . .

A.—(Interrupting): They spoke of the outlet only.

Q.—Are you prepared to say their levels are wrong?

A.—I am prepared to say what I stated is correct.

Q.—That is, that you pushed bars down, and got down below that level?

A.—Not only that. There is no concrete there.

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Q.—There is rubble, and there are other things, which would prevent any flow below 310.8?

A.—I recognized the clay as the same clay that is underlying the other, and I recognized it at elevation 310.66.

BY THE COURT:

Q.—Is that rubble or débris which washed in?

10 A.—If you shut the power off there would be a certain back-wash in there.

BY MR. SCOTT:

Q.—Mr. Chadwick spoke about seeing bulrushes there. Did you ever see any bulrushes before the flooding?

A.—Not before the flooding. There are some there today. One of the photographs shows the location of them.

20 Q.—Did I ask you the size of this stream that went through this pipe?

A.—We put it through a half-inch pipe.

Q.—Does the photograph I now show you show the bulrushes?

A.—Yes.

(And further deponent saith not.)

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DEPOSITION OF WILLIAM A. RIDDELL, A WITNESS
EXAMINED ON BEHALF OF PLAINTIFF
IN REBUTTAL

30

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

WILLIAM A. RIDDELL,

40 of the City of Ottawa, in the Province of Ontario, railway conductor, aged 54 years, a witness produced and examined on behalf of the Plaintiff in rebuttal, who, being duly sworn, deposes as follows:

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

Q.—You are a conductor, in the employ of the Canadian Pacific Railway?

A.—I am.

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Q.—Do you know Farm Point.

A.—I do.

Q.—I understand you were a conductor on a way freight?

A.—I have been a brakeman and a conductor on the line running from Ottawa to Maniwaki.

Q.—Which passes through Farm Point?

A.—Which passes through Farm Point.

Q.—Do you mean you are a conductor on a freight train?

A.—Freight, or passenger; it means the same thing.

10 Q.—You would necessarily have to do with taking freight cars from Farm Point, would you not?

A.—Yes, and I must also know whether it is fit to allow an engine to go in there, or go over a piece of track, supposing I have orders from the Superintendent to do so.

Q.—You know the flooding which took place on the Gatineau River as the result of the Chelsea development?

A.—Yes.

Q.—Prior to the flooding, did you have any trouble with your engines or freight cars on Mr. Cross' spur line?

20 A.—No, sir.

Q.—At some date subsequently to the flooding there was, I understand, a special order issued with respect to engines not going in on this spur line?

30 Mr. Ker: I do not think there is any dispute between the Plaintiff and the Defendant on the fact that C.P.R. engines do not go on Mr. Cross' siding at the present time. Even if there were such a dispute, the Plaintiff has alleged that his piling ground has been injured and rendered unfit for use for his spur and for his general lumber business. That is his whole case in this respect, and he has made his proof on it. It seems to me if my learned friend desired to make proof that the softness of this ground, or whatever it may have been, had prevented engines from going in on the siding, surely that would be a matter for evidence in chief.

Mr. Ralph stated there was a sign posted to the effect that locomotives should not go in there, and he told us he surmised this was done because if locomotives did go in there they might be liable to go off the track by reason of the fact that the right of way was not plumb.

40 I see a great many witnesses here this morning, and I presume my friend intends calling them to prove facts along the same lines. So far as the fact he is now endeavouring to prove is concerned, I submit it cannot in any way assist the Court, and it is not sound rebuttal evidence.

Mr. Scott: All I wanted to establish was the date the order was issued.

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His Lordship: Then you may ask that question.

BY MR. SCOTT (continuing):

Q.—Will you tell us the date the order was issued?

A.—I cannot tell you the date exactly.

Q.—How closely could you come to it?

A.—It was some time after the flooding. I do not know the exact date the flooding started.

10 Q.—I may tell you the date the flooding started was March 12th, 1927.

A.—It was some time after that date. I would not swear to the date.

Q.—A month or two, would you say?

A.—Thereabouts.

BY THE COURT:

20 Q.—You are not even sure of that?

A.—I will not swear to the time. I had nothing at that time to mark it in my memory.

BY MR. SCOTT (continuing):

Q.—Why was the order given?

Mr. Ker: How can the witness answer that? He did not give the order.

30 BY MR. SCOTT (continuing):

Q.—Do you know why the order was given?

A.—I know; because the track was not fit to put a locomotive beyond that point.

Q.—The Defendant has pleaded, in paragraph 37 of its Plea, that this piling ground was wet and had been in part filled in by the Plaintiff prior to the flooding. Is that a fact?

40 Mr. Ker: We did not say it was wet; we said it was low lying land.

Mr. Scott: My learned friend has attempted to prove it was wet.

Mr. Ker: The evidence now sought to be made is not rebuttal evidence, and I object to it.

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Mr. Scott: The Defendant pleads that the ground has been in part filled in by the Plaintiff because it was low lying land. I am asking the witness whether the ground had been filled in by Mr. Cross before the flooding. I am dealing with a paragraph of the Defendant's Plea.

His Lordship: Have you not already proved all that, Mr. Scott?

10 Mr. Chisholm: Your Lordship will remember we made much the same evidence as this yesterday in rebuttal.

His Lordship: What do you want to prove now?

Mr. Chisholm: This is additional evidence to the evidence we made yesterday in rebuttal, and which your Lordship permitted under reserve. This is another witness on the same fact.

20 Mr. Ker: No evidence was admitted yesterday with respect to the piling ground. Evidence was admitted under reserve as to the fact that Mr. MacRostie put his measuring instruments down under the level of the soil.

His Lordship: As far as I can see, we are simply losing time.

Mr. Scott: It has a very important bearing on the case, your Lordship.

30 Mr. Ker: We say the land has always been low lying land, which had been in part filled in by the Plaintiff for his own purpose.

His Lordship: I will maintain the objection. You are asking the witness in connection with a fact which is not alleged.

Mr. Scott: The allegation is:

40 " and the said piling ground has always been low lying land and was land which had been in part filled in by the Plaintiff"

In any event, I will change the question.

BY MR. SCOTT (continuing):

Q.—Had the area of land around that spur or siding been filled in with sawdust by Mr. Cross prior to the flooding?

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A.—Not to the best of my knowledge. In fact, the piling had been done on the south side of the track, as well as the north side.

Q.—Of the spur line?

A.—Of the spur line.

Q.—Prior to the flooding?

A.—Prior to the flooding.

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

Cross-examination 10

Q.—As a C.P.R. conductor operating on the Maniwaki line you, of course, know about the time the main line of the C.P.R. was raised?

A.—Yes.

Q.—And it was subsequently to that the order was issued not allowing engines to go in on Mr. Cross' siding?

A.—After the track was raised, and down to a certain point—around 200 or 150 feet—we call it three car lengths.

20 Q.—This raise made a very considerable difference in level between the piling ground and the main line?

A.—Not at this particular point of 150 feet.

Q.—I am afraid I do not understand what you mean. What was the difference when the main line was raised?

A.—I do not know. I know where the filling stopped, and that was where the engines were supposed to stop—at about the end of the filling. They filled the Cross siding for a short portion; I do not know how many feet.

Q.—To make it level with the track?

30 A.—To make it level with the track. And beyond that the engines could not go.

Q.—Because it had all been filled in, and there was a very distinct drop?

A.—No, sir.

Q.—The main line being higher than it had been previously?

A.—It was some higher, but there was an upgrade.

Q.—A very distinct upgrade?

A.—An upgrade from the main line into Mr. Cross' siding.

Q.—Always?

40 A.—Always. When we were switching there previous to the filling we would have our engine on the main line, and take a race as it were to get our cars up to a certain point on the siding, wherever we wanted to place them.

Q.—That was before the water was raised?

A.—Yes.

Q.—And there was a very much greater rise after the water was raised?

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A.—No. This grade from the track levelled out to the siding, so that from the main line to where it stopped there was just a little upgrade from the main line to the siding, and then it went out level, and went uphill farther, to the mill.

Q.—Considering Mr. Cross' siding before any filling was done, and before the water was raised, it was at a certain level?

A.—Yes; and it was uphill.

Q.—Then the main line was raised?

A.—Yes.

10 Q.—So that there would be more of a grade up to get to the main track?

A.—It is more level. It was downhill from Mr. Cross' mill to the main C.P.R. line. When they raised the track it levelled out the track, as it were—it was more level from the track up to a certain point.

Q.—But they did not do any work inside of Mr. Cross' piling ground?

20 A.—I do not know how much they dumped in there, but instead of us going uphill into Mr. Cross' siding we were going practically on a level, until we hit this hill.

(And further deponent saith not.)

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Ronald Stenhouse,
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DEPOSITION OF RONALD STENHOUSE, A WITNESS
EXAMINED ON BEHALF OF PLAINTIFF IN REBUTTAL.

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

RONALD STENHOUSE,

of the City of Smiths Falls, in the Province of Ontario, Civil Engineer, aged 45 years, a witness produced and examined on behalf of the Plaintiff in rebuttal, who, being duly sworn, deposes as follows:

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

Q.—You are one of the engineers of the Canadian Pacific Railway at Smiths Falls?

A.—Yes.

Q.—I understand you recently visited Mr. Cross' property at Farm Point?

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A.—Yes.

Q.—The Company Defendant, in its Pleadings, and through some of its witnesses, has suggested that the piling ground of Mr. Cross could be relocated farther north than the piling ground which is situated around the spur line. Mr. Small stated in his evidence that would mean making a new spur line from the C.P.R. into this proposed area to the north of the present piling ground. Have you made any estimate of how much that would cost?

A.—Yes, sir.

10 Q.—Looking at Exhibit D-160, it has been suggested that a piling ground area could be used to the northwest of the area edged in red, and one of the Defendant's witnesses has said that would necessitate a new spur line from the C.P.R. into this new area. You have made an estimate of the cost of such a spur line?

A.—I have.

Q.—What does it amount to?

A.—Approximately \$16,000.

Q.—I notice you have certain figures in regard to it?

20 A.—Yes.

Q.—Will you file, as Plaintiff's Exhibit P-130, a statement setting forth the details of this expenditure?

A.—Yes.

Q.—I understand you have prepared a sketch plan to accompany the estimate of the amount of cost of removing the F. T. Cross spur at Farm Point to higher ground on account of it being flooded?

A.—Yes.

Q.—Will you file this sketch plan as Plaintiff's Exhibit P-131?

A.—Yes.

30 Q.—Will you explain briefly what this sketch plan Exhibit P-131 represents?

A.—It represents, first, the existing spur, and a little spur off that existing spur. The other is the proposed new spur.

BY MR. KER:

Q.—Whose proposed new spur?

A.—These gentlemen.

40 Q.—Not the Defendant's new spur?

Mr. Scott: Mr. Small's new spur.

Mr. Ker: Mr. Small did not make any statement about putting a new spur there.

Witness: The upper line is the surface of the ground as it exists now. The lower straight line is the proposed grade to which

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I understand the Plaintiff wishes his spur to be in order to afford economical operation of his mill and piling ground. Mr. MacRostie gave me the elevations.

BY MR. SCOTT (continuing):

Q.—Will you mark the new spur, and the old spur, on the plan Exhibit P-131?

10 (The witness does as requested.)

Q.—Referring to the plan Exhibit D-160, can you give us an idea of where that new spur would run?

A.—I can only give it to you as an approximation. I can only draw it in roughly.

Exhibit P-131 and Exhibit D-160 are both to the same scale, and if one is superimposed on the other, it will show where the spur would run.

20 It would be approximately as I outline in lead pencil on Exhibit D-160.

Q.—Will you please put the words “new spur”, and your initials?

(Witness does as requested.)

Q.—I suppose you are familiar with drawing plans for spurs or sidings?

A.—Yes, sir; that is my job.

30 Q.—And, having seen the territory, that is approximately where you would put it?

A.—I would answer that in this way: that I figure it is none of my business to say where to put it. Mr. MacRostie told me where they wanted it put, and he gave me the elevations to which they wanted it to run.

40 Q.—If the spur line has to go through this area above the portion edged in red on Exhibit D-160, up to the line marked “Road”, and then down to a point 75 or 80 feet from the point marked “Church”, and through the portion marked red on Exhibit D-193, would you suggest that would be the approximate position of the spur?

Mr. Ker: The witness has just told us it is Mr. MacRostie's suggestion.

Witness: I would just as soon not answer that question, if you do not mind.

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BY MR. SCOTT (continuing):

Q.—Where would you put it, if you would not put it there?

A.—Of course, if you were going to make the area just mentioned into a piling ground, that would be the logical place to put a spur — provided you were going to grade that area into a piling ground.

BY THE COURT:

10 Q.—That spur was to go to about where the sawmill is?
A.—Yes, your Lordship.

BY MR. SCOTT (continuing):

Q.—The area we have been discussing, that is, above the upper side of the red line extending up to the road, and going down to a point about 75 feet from the spot marked "Church", is a rocky place, is it not?

20 A.—It is all rock.
Q.—And if it were proposed to grade that off so that it could be used for a piling ground, is there any other location for a spur line than the one you have suggested?

A.—It would be possible to use the existing spur line, provided quite a lot of money was spent raising it up to grade sufficiently above the existing high water; but that would be an expensive job. If you have to take out the rock, and level it off, to make a piling ground, why not relocate the spur instead, rather than go to the expense of raising the old track, which will always cause trouble anyway on account of the water.

30 Q.—You say it will be an expensive job to raise the old track?

A.—I would not like to give any figures on it, but I can say it would not be cheap. I did not make any figures on it.

Q.—If for some legal reason it is impossible to raise the old spur, and you were left with the matter of building a spur into the new proposed piling ground area I have indicated, would your spur be located at that spot?

A.—That is the only place it could be located, on account of the curvature.

Cross-examination

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

Q.—How long is the existing spur?

A.—I should say it is in the neighbourhood of 1,200 or 1,300 feet long.

Q.—What would be the length of your new spur?

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A.—Approximately the same.

Q.—I think I understood you to say you had a look at this piling ground?

A.—Yes.

Q.—And, I think you said Mr. MacRostie asked you to estimate on putting a spur through the portion which you have shown on your plan?

A.—Yes.

10 Q.—You have given your evidence quite frankly, and I would like to ask you if as an engineer for the C.P.R. you would think of putting a spur in that location, in the way Mr. MacRostie suggested to you?

A.—If Mr. MacRostie is going to make his piling ground up there, and if he is going to do excavation for his piling ground, naturally that would be the place to put the spur.

Q.—But there would not be any circumstances which would justify putting in a spur line 1,200 feet long which would require 5,000 cubic yards of rock excavation at \$2.00 a yard?

A.—I have seen them do it.

20 Q.—You would not think that would be a sound proposition in that place?

A.—If he has to get into the mill, and if, as Mr. Scott said, for certain reasons he could not go in on the existing spur, that would be the only way to get into the mill.

Q.—As I read your plan Exhibit P-131, the spur you indicate would be in a sort of tunnel, several feet below the piling ground, would it not?

30 A.—As indicated there, it would be. But I understood the entire piling ground would also be levelled.

Q.—But, if you are going to raise the piling ground, what would be the use of excavation?

A.—Of course that is something with which I have nothing to do.

Q.—Is not this estimate of \$10,000, out of \$15,000, for getting out rock an absolutely unsound proposition?

A.—No, providing you want to have your spur to those grades, and Mr. MacRostie says those grades are necessary to operate the mill.

40 Q.—But, if you have a spur to this grade, you find it is five or six or seven feet below the surface of the ground?

A.—That has nothing to do with me. I am merely telling you what it costs to put a spur in that location.

Q.—You merely estimate the amount of rock excavation required, and other work necessary, to put a siding from a certain place to a certain other place?

A.—Yes.

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Q.—And, it has no reference whatever to the level of the ground, or the spur which you have described in the plan Exhibit P-131 in the sense that it could be at all used for a piling ground if it was done in this way, because the spur would be away below the level of the piling ground? According to your plan it would be eight feet below the level of the piling ground?

A.—I understand all that material will be removed, for a piling ground.

10 Q.—But, what is the use of cutting down through rock, and removing 5,000 cubic yards of rock, if you are going to be left eight feet below the level of the piling ground?

A.—But, unless you do that you cannot get to your mill. You cannot put your spur across the top, because the existing track is there now. He has to have the line Mr. MacRostie tells me for his mill, so that he can run the empty cars from his mill down to his piling ground by gravity.

20 Q.—And, in order to get that little run down, you will make him carry on through a tunnel eight feet below the level of his piling ground?

A.—That is what they have now on the ground.

They require to have the same elevation.

Q.—At the present time the spur is on top of the piling ground?

A.—Yes; and the elevation of the new spur is exactly the same as the elevation of the existing spur.

Q.—And, that is where it should be. The spur should be on top of the ground?

A.—I would not like to answer that question.

30 Q.—In any event, as a member of the engineering staff of the Canadian Pacific Railway you have produced an estimate, one item of which, \$10,000, is for getting out 5,000 cubic yards of rock at \$2.00 a cubic yard?

A.—Yes. That is about the price of rock work of that nature on a small job.

Q.—And, if you did take out those 5,000 cubic yards of rock, and if you spent this sum of \$15,000, you would have a piling ground with a spur line running through it approximately 8 feet below the level of the piling ground—in any event, considerably below the level of the piling ground?

40 A.—I understood from Mr. MacRostie that the entire area through that piling ground would be removed. The arrangements were that I was merely to give an estimate of the cost of making the spur, and that Mr. MacRostie would handle the rest of it.

Mr. Ker: The proposition of the Defendant is that this spur should remain in its present location, with proper remedial works. There was no proposition by the Defendant that the spur might

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perhaps be relocated, except in the sense of its being filled and pushed back. There has never been any idea of going back and cutting into the rock, because it has been shown that there has never been a piling ground there.

Mr. Scott: That is not quite the evidence of Mr. Small.

BY MR. KER (continuing):

10 Q.—You were not looking at it so much from the point of view of a piling ground as from the point of view of an estimate on the cost of a spur at location indicated to you by Mr. MacRostie?

A.—Absolutely.

BY MR. SCOTT:

Q.—You are assuming, of course, that the ground on each side of this proposed spur would be made level?

20 A.—Yes.

Q.—And, it is not level at present?

A.—It is not level at all.

Q.—It is covered with rocks ?

A.—Yes.

I understood it would be all levelled off to the same elevation as is shown on my plan.

Q.—The cost of those spurs is charged to the proprietor who wants them?

30 A.—The C.P.R. usually takes no interest in the matter at all. It is up to the proprietor to build the spur himself. The C.P.R. merely furnishes the rails, etc., on a rental basis.

Q.—But, the proprietor does the work?

A.—Yes.

BY MR. KER:

Q.—The C.P.R. does not interest itself in it at all?

A.—No.

40 Q.—Consequently the C.P.R. would not interest itself in the condition of Mr. Cross' present spur line?

A.—It would, if it came to a question of putting their engines in.

Q.—But, they would not be interested in paying for the repairs, or anything of the kind? If they were going to put their engines in they would want to know that those engines would not go off the rails, for instance, but outside of that they would not be interested? They would not, for example, be interested in the cost of any repairs to this existing spur?

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A.—They would be interested so far as concerns rails, and ties, and making the track safe for locomotives or cars.

His Lordship: I understand the locomotives did not go on the spur at all—they simply pushed the cars up the spur.

Mr. Ker: And that was my impression also, your Lordship. Certainly they have not gone on the spur since the notice was put up, and I doubt whether they went on it as a customary matter before:
10 however, I do not know that.

BY MR. SCOTT:

Q.—A proprietor would take your advice before building a spur, I suppose?

A.—He would have to do so, because we will not allow any curvature in excess of 16 degrees, if we expect to put our engines over it.

20 BY MR. KER:

Q.—Apart entirely from this item of \$10,000 for rock excavation, your estimate on a brand new spur of the same kind, clearing, grubbing, and the various other items such as excavation, moving main line set, spur switch, set switch, etc., new rails, and everything else, is \$3,758?

A.—I might explain that the rails would not be new. This would be using the existing rails that are on the old spur.

30 Q.—In any event, making it practically new again?

A.—Yes: if it was on level ground.

(And further deponent saith not.)

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DEPOSITION OF DEGASPE BEAUBIEN, A WITNESS EX-
MINED ON BEHALF OF PLAINTIFF IN REBUTTAL

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

DeGASPE BEAUBIEN,

10

already sworn, who being recalled as a witness on behalf of the Plaintiff in rebuttal, deposes as follows:

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

Q.—You have already given evidence in this case?

A.—Yes.

20 Q.—It has been suggested by two of the witnesses for the Defendant that with reference to Mr. Cross' power plant at Farm Point there has been a loss in production of approximately 10 per cent, and that that could be made up by his being furnished with power by the Defendant Company or by another company, and that that power could be injected into his system. What have you to say to that?

Mr. Ker: I object to this evidence. My learned friend has made his case on this subject in chief.

30 Mr. Scott: Not on injecting power.

Mr. Montgomery: As a matter of fact, injecting power was the suggestion of my friends in cross-examination. We merely assessed the capital amount required to compensate for the loss of a given amount of power.

40 Mr. Scott: Mr. Simpson, the Chief Engineer of the Company Defendant, estimated Mr. Cross' loss at four horsepower, and said that he could procure that four horsepower from the Gatineau Company or from some other company. Your Lordship will remember asking him how Mr. Cross could be sure some other company would supply it to him.

Mr. Beïque, in estimating the damages caused to Mr. Cross' plant at Farm Point, said he thought his loss was about 12 horsepower. He then went through a process of capitalization, to show that 12 horsepower could be supplied to Mr. Cross in perpetuity from another company, by injecting power into the system.

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We discussed the matter at considerable length, and your Lordship will remember I asked Mr. Beïque if he knew of any case where it had been done, and your Lordship will remember Mr. Simpson stated positively it could be done.

I want to prove by Mr. Beaubien that it is impossible economically, or physically, or in any other way.

His Lordship: I will allow the evidence under reserve of the objection.

10

Witness: You cannot economically inject a fixed amount of power from a larger station into a small system.

BY MR. SCOTT (continuing):

Q.—You are satisfied as to that?

A.—Yes, quite satisfied.

Q.—Have you any reasons you would care to offer in explanation of your answer?

20 A.—I am quite willing to do so, if your Lordship will bear with me.

A turbine operating a generator is controlled by an apparatus called a governor, which functions purely on the basis of speed. If there is a reduction in speed due to load on the generator, the turbine will slow down, and as the turbine slows down more water is admitted to it. The governing is purely a question of speed, and the governors are so set that if the total amount of load is taken off a turbine it will increase in speed, say, 3 per cent, or something around that figure.

30 In an alternating current system all the generators that may be operating are tied together by current circulating in the system in such a way that they cannot change speed. They are tied together as firmly as if they were tied by gears. If you have a big generator, and a small generator operating in parallel, and there is a fluctuation in load equivalent to the full power of the small generator, it would mean there would be a reduction in speed of the small generator of 3 per cent, and in the larger generator it would only mean a very small amount. So when the full load is not on the small generator, the large generator would not slow down. As a result the fluctuations
40 in load would be taken care of by the large generator, and the small generator would go on operating with whatever gate opening it had at first. This means there would be no flexibility whatever.

You can have a small generator pumping into a large one without changing speed, but you cannot have a large system supplying a constant amount of power to a small one.

I think I should apologize for an extremely poor description, but it is a difficult thing to explain.

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Q.—In your experience have you ever known of it having been done, or attempted?

A.—No.

10 Q.—Some of the witnesses for the Defendant said the area edged in red on Exhibit D-160 could be used as a piling ground by Mr. Cross. Mr. Small and Mr. Beïque said that the area to the north and west above the red area could also be used as a piling ground. Being asked to define it, I think the evidence was that it was from the north of the edge of this red area up to the line marked "Road", and extending down to about 75 feet from the church. They would not go any farther than that because of the rocky condition of the ground.

Have you examined that area?

A.—I have worked out what it would mean in excavation on that section.

Q.—To make it a piling ground?

A.—To make it a piling ground and to leave to Mr. Cross the advantages of grade which he now has.

20 Q.—Mr. Small said the cost of the relocation would be about \$3,000. What have you to say as to that?

A.—In order to leave Mr. Cross in the position in which he was as far as gradients on his sidings are concerned it would require 26,800 yards of rock to be removed, and if 5,000 yards were taken in for the siding, it would leave 21,800 yards of rock to be removed, at about \$2.00 a yard. The area of that section is about an acre and a half, and the siding would involve about .35 of an acre, which would leave about an acre and a quarter of piling ground.

Q.—Can you give his Lordship an idea of the cost?

30 A.—I think the total cost of the siding and all would be in the neighbourhood of something like \$60,000.

Q.—Mr. Stenhouse, I think, mentioned the figure of \$16,000 for the siding.

A.—Yes.

Q.—So that would leave about \$44,000 for the rest?

40 A.—Yes. To give him a flat surface to pile on in that irregular section of land bordered by the road to the power house on the south and west, and the school and church. That does not include property belonging to Mr. Hendricks, which evidently would have to be purchased. As I have no elevations on the Hendricks property, I have not included any excavation there.

Q.—If I understand you correctly, the Hendricks property would have to be purchased for the spur to come in?

A.—Yes.

Q.—Will you look at Mr. Beïque's plan Exhibit D-193, on which he indicated in red marked with the letter "M" a portion of 1.5 acres as being suitable for piling ground. That covers a part, I think, of

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this area mentioned by Mr. Small?

A.—It covers part of the area I have measured as far as excavation is concerned.

Q.—He said he thought 40 per cent of it was unsuitable for piling, because of the cost of removing those rocks?

10 A.—With the present grades on the siding it is all unsuitable for piling, because it is very much too high. As Mr. Ker stated, the piles would be above the railway, which would make it uneconomical from a lumbering point of view—or, let us say, a loading point of view; because I do not pretend to be a lumberman.

Q.—You would have to remove the rocks, and level it down?

A.—Yes.

Cross-examination

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

Q.—This portion you speak of north and west of the red line is not a suitable piling ground?

20 A.—In its present condition.

Q.—And it never has been?

A.—I suppose you could pile slabwood or other wood on it. You could build a structure upon which you could pile.

Q.—Strictly speaking, the part north and west of the top of the red line, which you have just had under consideration, is not at all a part of Mr. Cross' piling ground?

A.—I certainly would not consider it as part of the piling ground.

Q.—You have said it is uneven, and is full of rocks?

30 A.—Yes.

Q.—So there should be no compensation paid to Mr. Cross for any damage to that as piling ground?

A.—There is a question as to whether it could be used as a piling ground. It could be used, with the work I have mentioned.

Q.—But Mr. Cross has not seen fit to have that work done yet?

A.—No.

Q.—And according to your view if it is done it will cost \$60,000?

A.—Yes.

Q.—It would be a very uneconomical proposition?

40 A.—But if he is forced to go there.

Q.—Is it a portion of his piling ground?

A.—No.

Q.—Has it ever been?

A.—No, I do not think so.

Q.—And there should be no compensation by the Company Defendant for it as a piling ground?

A.—Not unless he has to make use of it as a piling ground.

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Q.—But at the present time no use is being made of it as a piling ground?

A.—No.

Q.—And it should not be taken into account as an area of piling ground for which this Company has to compensate him?

A.—Not if he has another piling ground.

Q.—The whole of his piling ground is practically between those red lines; or the whole of his piling ground has been practically between those red lines?

10 A.—I do not know.

Q.—Do you know what piling ground he has up above the road?

A.—No, except I have seen the piles up there.

Q.—There would be no justification whatever for spending \$60,000 to put that place into the condition of being used as a piling ground?

A.—Not if he could get it cheaper.

Q.—With regard to injecting electricity into a line: are you familiar with the latest developments in frequently changing electrical apparatus, whereby power may be transmitted from a system of one frequency to a system of another frequency?

20

A.—Of course there are different systems. I do not know to which system you may refer when you speak of the latest system. It has been done for years.

Q.—I am speaking of the system of a series of motors, which slip by induction when the load is changed. You are not familiar with that system?

A.—I do not know that I am specially familiar with it, but it would not apply to the operation of this system.

30

Q.—Why not?

A.—Because of the cost.

Q.—What would be the cost?

A.—You are speaking about \$48 a horsepower here.

Q.—What would be the cost?

Witness: You mean the capital cost?

Counsel: Yes.

40 A.—I do not know. I can say, however, you would require to have motors, and generators, which would multiply your apparatus, and make a complicated piece of machinery connecting between the two.

Q.—But it is a possibility?

A.—It is a physical possibility, but it is not an economical possibility.

Q.—That being so, would it not have been fair for you to have mentioned it?

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A.—I said it was economically impossible.

Q.—But it is not physically impossible?

A.—It is possible, physically; but it is not, economically.

Q.—Taking it for granted that this latest development in changing of frequency by motors that slip and take up the slack in that way is possible, is there anything to prevent 12 horsepower being put into Mr. Cross' line for a set of customers?

A.—He could amputate his system, and take about the equivalent of 12 horsepower and put it on your line.

10 Q.—Is there any reason in the world why 12 horsepower cannot be taken off the Gatineau Power Company's lines and allocated to a certain part of Mr. Cross' line, or to certain of his customers, for twenty-four hours a day?

A.—Provided the system fed by the Gatineau Company be amputated from Mr. Cross' system.

Q.—What do you mean by that?

A.—Separated. So that they would not be in parallel. So that a part of his distributing system would be cut off to your system, and the rest left on his own system.

20 It is a very important question, because it would mean that any advantage he might derive on the whole system might be cut off, and any fluctuation in the load would go to the Gatineau Company, and he would not get the benefit of it.

Q.—Is not the Back River system cut into the system of the Montreal Light, Heat & Power Company?

A.—Yes. but that is a very different thing.

30 Mr. Scott: I would refer your Lordship to pages 800 and following of the deposition of Mr. Small, with reference to the subject of the practicability of relocating the piling ground.

Mr. Ker: In making his estimate, to which my learned friend has just referred, Mr. Small was not discussing the question of excavating for a piling ground.

Witness: I think probably all he had in mind was to put a few pieces of timber over the rocks, and put his lumber piles on them. I cannot see he could have had anything else in mind.

40 (And further deponent saith not.)

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DEPOSITION OF SAMUEL JEFFERY, A WITNESS EXAM-
INED ON BEHALF OF PLAINTIFF IN REBUTTAL

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

SAMUEL JEFFERY,

10

of the City of Ottawa, in the Province of Ontario, extra gang foreman, Canadian Pacific Railway Company, aged 59 years, a witness produced and examined on behalf of the Plaintiff in rebuttal, who, being duly sworn, deposes as follows:

EXAMINED BY MR. CHISHOLM,
OF COUNSEL FOR PLAINTIFF:

Q.—You have been employed on the Ottawa-Maniwaki line of
20 the Canadian Pacific Railway?

A.—I was roadmaster on that line for about nineteen years, from 1909 to 1928.

Q.—Were you frequently at Farm Point?

A.—I had charge of that siding. It is on the Maniwaki Sub-division.

Q.—When you speak of “ that siding ” do you refer to Mr. Cross’ spur line?

A.—Yes.

Q.—How often would you be at Farm Point?

30 A.—I would visit it on an average from twice to three times a month, and sometimes oftener than that.

Q.—There has been some question in this case as to whether the engines of the C.P.R. ran up the spur?

A.—Right up to the mill.

Q.—I mean, since the flooding?

A.—Since the flooding—after the river was raised—I had an order put on prohibiting the engines from going past, I think, about 100 or 150 feet from our main track.

Q.—What was the reason for that order?

40 A.—On account of the soft roadbed, and the liability of the engines upsetting or tumbling over, and getting off the track.

Q.—What would cause the engines to do that?

A.—The water raising and softening the roadbed under the track.

Q.—Would that cause the spur line to cant to one side?

A.—Yes, it would cause it to cant; or the bottom to drop out of it, as we call it.

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Q.—Are you familiar with conditions surrounding the spur, before and after the flooding, with respect to the sawdust fill which Mr. Cross is stated to have put on his piling ground?

10 A.—There was no sawdust fill, or no tramway made for men to work on. The ground was dry enough so that we could work in and out of it without any sawdust fill or plank platform, which had to be put there after the water was raised. I have ridden on engines in there myself many a time. After the water was raised I made it my personal business to go in and examine the track, and I found it in such a condition that I prohibited the engines from going in there. We arranged with Mr. Cross to have his cars dropped from the mill to a point where we could reach them, sometimes with a car behind our engine.

Cross-examination

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

Q.—Your engines used to go a little way in on the spur?

A.—We went right to the mill.

20 Q.—I mean after the water came up?

A.—About 100 or 150 feet in from our main track. We could go that far.

Q.—Then you would kick the cars in, and they would be hauled back?

A.—We dropped them in as far as we dared go. Then Mr. Cross had to winch them in from that to the mill, and when he was moving them out he would drop them out to us over the soft part of the track.

30 Q.—The engines carried on going in there right up to the time the water was raised?

A.—Yes, we went in right up to the time the water was raised. The only trouble I ever had with Mr. Cross' siding before that was he was always cramped for room to take care of his material, and he used to pile so close to the track that I had to take it up with him to give us six feet clearance so that the men could walk alongside the track.

Q.—You felt the siding did not justify your send-in your locomotives after the water was raised?

40 A.—According to my knowledge of trackwork I was positively sure it was not safe to put our engines in over it.

Q.—You were afraid they would topple off the rails?

A.—I was afraid they would topple off.

BY MR. CHISHOLM:

Q.—You spoke of six feet clearance to allow your men to work. Would that be six feet on either side of the spur?

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(continued)

A.—On either side. According to our instructions we have to have a six-foot clearance to give the men room to work on either side of an engine or a car.

Q.—Prior to the flooding would there be lumber on either side of the spur?

A.—On both sides. Lumber, and ties, and wood.
(And further deponent saith not.)

*In the
Superior Court*

No. 142.
Plaintiff's
Evidence.
In Rebuttal
(Supp. Hearing)
Duncan Brown,
Examination
Nov. 16th, 1932.

10 DEPOSITION OF DUNCAN BROWN, A WITNESS EXAMINED ON BEHALF OF THE PLAINTIFF IN REBUTTAL.

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

DUNCAN BROWN,

20 of the Village of Wakefield, in the Province of Quebec, farmer, aged 63 years, a witness produced and examined on behalf of the Plaintiff in rebuttal, who, being duly sworn, deposes as follows:—

EXAMINED BY MR. CHISHOLM,
OF COUNSEL FOR PLAINTIFF:

Q.—Are you familiar with Mr. Cross' place at Farm Point?

A.—Yes.

Q.—Did you ever farm there?

A.—Yes.

Q.—When?

30 A.—About 1902.

Q.—Where did you farm?

A.—I farmed down next to the creek, on the north side of it.

Q.—Do you know the spur line leading from the C.P.R. track to Mr. Cross' mill?

A.—Yes.

Q.—Where did you farm with relation to that spur line?

A.—From there.

Q.—Did you farm at the place where the spur line is situated?

A.—Yes.

40 Q.—On either side of it?

A.—Yes.

Mr. Ker: If my learned friend is examining this witness with a view to showing your Lordship that the piling ground has been destroyed, or that the Plaintiff's property has been damaged, I respectfully submit this is absolutely and essentially evidence in chief, and I must object to it as evidence which is in no sense proper rebuttal.

*In the
Superior Court*

No. 142.
Plaintiff's
Evidence.
In Rebuttal
(Supp. Hearing)
Duncan Brown,
Examination
Nov. 16th, 1932.
(continued)

Mr. Chisholm: I think my friend misunderstands the reasons for the evidence. It is not a question of damages: it is merely to show that this land recently used by Mr. Cross as a piling ground was formerly a wheat field, and was not the low-lying damp land our opponents allege it to have been.

10 Mr. Ker: If that be the case, it is an element which entered into the value of the property, and it is not by any conceivable stretch of the imagination evidence which can be considered proper rebuttal.

How can it help your Lordship now to have proof that part of this land was originally a wheat field? Mr. Cross is not claiming for this part as a piling ground. If Mr. MacRostie estimates the value of it at \$1,500 an acre because it is a wheat field, that is something with which we have nothing to do.

20 Mr. Chisholm: Again my friend is straying from the point. We are not trying to claim damages because this was a wheat field. We are simply endeavouring to establish the fact that because wheat was grown there it was not the damp low-lying ground my friends allege.

His Lordship: I will allow the evidence under reserve of the objection.

BY MR. CHISHOLM (continuing):

30 Q.—What did you grow there?
A.—It was in hay the first summer I was there. That fall I broke it up, and I had wheat the next year; and I had as nice a piece of wheat there as anyone would want to see.

Q.—A good grade of wheat?

A.—Yes.

Q.—To what distance down the river did you grow the grain?

A.—Right down pretty close to the creek.

Cross-examination

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

40 Q.—This was in the days before Mr. Cross acquired the property?

A.—Yes.

Q.—Did you then own it, or were you just farming it?

A.—I was just hired there, by Mr. Patterson.

Q.—Mr. Patterson owned it?

A.—Yes.

*In the
Superior Court*

No. 142.
Plaintiff's
Evidence.
In Rebuttal
(Supp. Hearing)
Duncan Brown,
Cross-examination
Nov. 16th, 1932.
(continued)

Q.—And, you farmed it for him?

A.—Yes.

Q.—Will you look at Exhibit D-162, being a picture taken from the air, and will you say if you recognize it as a picture of the place taken before the water was raised?

A.—I do not recognize it very well.

Q.—Can you tell me about where you farmed this wheat?

A.—I cannot tell from this picture. I cannot see very well, anyway.

10 I farmed it to the north side of the track.

BY THE COURT:

Q.—The north side of the spur or siding?

A.—Yes.

BY MR. KER (continuing):

20 Q.—Not on the south side of the spur?

A.—No.

BY MR. CHISHOLM:

Q.—There was no spur there when you were growing wheat?

A.—No.

Q.—Do you know Meach Creek?

A.—Yes.

Q.—How close to Meach Creek did you grow your grain?

30 A.—I suppose may be about twenty or twenty-five feet, or somewhere around that.

(And further deponent saith not.)

*In the
Superior Court*

No. 143.
Plaintiff's
Evidence.
In Rebuttal
(Supp. Hearing)
Thomas Satchell,
Examination
Nov. 16th, 1932.

DEPOSITION OF THOMAS SATCHELL, A WITNESS
EXAMINED ON BEHALF OF PLAINTIFF IN REBUTTAL.

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

THOMAS SATCHELL,

10

of the City of Ottawa, in the Province of Ontario, chief tie inspector, Canadian Pacific Railway Company, a witness produced and examined on behalf of the Plaintiff in rebuttal, who, being duly sworn, deposes as follows:

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

20

Q.—Are you still with the C.P.R.?

A.—I was, up to the first of the year.

Q.—You are now retired?

A.—Yes.

Q.—I understand you were the inspector for the C.P.R.

A.—Chief Inspector.

Q.—For any particular area?

A.—The Eastern Division.

Q.—Would that include Farm Point?

A.—Yes.

30

Q.—Do you know Mr. Cross?

A.—Yes.

Q.—Have you visited his properties?

A.—Yes.

Q.—Were you called upon from time to time to inspect ties sawn by Mr. Cross at his Farm Point mill?

A.—Since that plant was put in there I had charge of the inspection of all his ties, for the C.P.R.

Q.—That is, the plant at Farm Point?

A.—Yes.

40

Q.—To your knowledge, did he sell ties to the C.P.R. every year?

A.—He sold ties to the C.P.R. through the Harris Company.

Q.—That is Mr. Plaunt's Company?

A.—Yes.

Q.—Between, say, the year 1920, and the year 1926, can you give us any idea as to how many ties he sold each year to the C.P.R.?

*In the
Superior Court*

No. 143.
Plaintiff's
Evidence.
In Rebuttal
(Supp. Hearing)
Thomas Satchell,
Examination
Nov. 16th, 1932.
(continued)

Mr. Ker: I object to this evidence as not being competent evidence in rebuttal. If it is my friend's idea to prove by this witness something in regard to Mr. Cross' earnings, or the capabilities of his mill, this is not the time to do it. It should have been done in chief.

His Lordship: I will allow the evidence under reserve of the objection.

10 Witness: It varied. Some years there would be a large quantity, and other years less. I should imagine it would run up to 100,000, and possibly a little over, some years.

BY MR. SCOTT (continuing):

Q.—And other years less than that?

A.—Yes; 30,000, or 50,000, or 60,000, and up.

Q.—Did you ever have occasion to make complaints to Mr. Cross after the flooding of his property?

20 A.—I complained to him of the extra time it took to load the material he was delivering to us, causing us expense in keeping a man or men there and not giving them sufficient work to keep them busy.

Q.—What was the reason for that?

A.—The small area in which he had to pile his ties.

Cross-examination

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

30 Q.—Had he any smaller area after the water was raised than he had before?

A.—He certainly had.

Q.—What area?

A.—He is confined to about three carloads.

Q.—What level was the water at that time?

A.—I do not know.

Q.—About 318, was it not?

40 A.—I do not know what 318 means. I know that before he used to pile his ties on the flooded ground, and after that he had to confine himself in his operations to his mill base.

(And further deponent saith not.)

*In the
Superior Court*

No. 144.
Plaintiff's
Evidence.
In Rebuttal
(Supp. Hearing)
James McCuaig,
Examination
Nov. 16th, 1932.

DEPOSITION OF JAMES McCUAIG, A WITNESS EXAMINED
ON BEHALF OF PLAINTIFF IN REBUTTAL.

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

JAMES McCUAIG,

10

of the City of Ottawa, in the Province of Ontario, contractor, aged 47 years, a witness produced and examined on behalf of the Plaintiff in rebuttal, who, being duly sworn, deposes as follows:

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

20 Q.—Evidence was made by Mr. Pepler and Mr. Small in this case as to the actual quantity of timber on the freehold limits of Mr. Cross on the west side of the river, and the figures they mentioned were very small. These witnesses were examined in support of Paragraph 15 of the Defendant's Plea. The figures they gave would indicate there was practically nothing left in those limits, and they stated they had made an actual count.

During the last few days have you actually checked certain lots on the freehold area belonging to Mr. Cross on the west side of the Gatineau River, adjacent to Meach Creek, and did you, or did scalers working under you, make a count of the trees on those lots?

30

Mr. Ker: There is a limit beyond which my learned friend should not attempt to go in his endeavour to make evidence in rebuttal which is not legal.

The Plaintiff has alleged, and has attempted to prove in chief, that he had certain timber limits, of a certain value, and the witness actually in the box was examined and told us he had cruised those limits.

40

Mr. Scott: I beg my friend's pardon. He did not say that.

Mr. Ker: I would refer your Lordship to page 735 of the Plaintiff's evidence:

“ Q.—Do you know the holdings he had behind the Farm Point and Meach Creek mills?

A.—I do.

*In the
Superior Court*

No. 144.
Plaintiff's
Evidence.
In Rebuttal
(Supp. Hearing)
James McCuaig,
Examination
Nov. 16th, 1932.
(continued)

Q.—Did you cruise them?

A.—I did.

Q.—Were you familiar also with the layout at mileage 12?

A.—Yes.”

This very witness was examined in the Plaintiff's case in chief as to the timber on those limits. The value of those limits is covered in the Plaintiff's Declaration, and the case is closed on that point.

10 The Defendant has made evidence to show a different effect, and surely my learned friend cannot now come back and bolster up his evidence in chief, by the very witness who has already told us all he knows about it. Your Lordship will find in the testimony of this witness in chief: “ I should judge 10,000 to 15,000 feet board measure on the freehold limits on the west side ”.

I submit this is not rebuttal evidence, particularly in view of the fact that this witness has been examined on this very point in chief. If he did not see fit to count and measure the trees before he gave his evidence, that is not the affair of the Company Defendant.
20 He cannot be brought forward now to bolster up what has already been said, and to give evidence in rebuttal on a matter which is clearly the subject of evidence in chief. If that could be done, we would be equally entitled to bring other evidence to rebut it, and there would be no end to the case.

Mr. Scott: It is my desire to shorten the case as much as I possibly can. We allege we had a certain acreage of freehold on the west side of the river, and certain Government licenses on the east side, and in our Declaration we set up the value per acre, and the fact
30 that there had been a certain depreciation to them. We made our evidence on that.

The Defendant, in support of its Plea, examined Mr. Pepler and Mr. Small before your Lordship. Mr. Pepler said he made a forestry survey of those limits, and Mr. Small said he made a special cruise over them. These gentlemen produced the plan Exhibit D-177 and, in support of paragraph 15 of the Plea, they said they actually counted the trees and made an absolute estimate of the merchantable timber on the areas, and that this survey and this estimate were made according to the rules of Forestry Art. Of course, the Defend-
40 ant was entitled to make this evidence, and was entitled to try to establish the conclusion that apparently Mr. Cross has nothing left on those areas in the way of merchantable timber. I think Mr. Pepler went so far as to say that there were only 300,000 feet of merchantable timber left on the west side of the river.

Of course, we have not at our command the means the Company Defendant has, and we have not had the time; but we have actually cruised one hundred acres of limits since the evidence was

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Superior Court*

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Plaintiff's
Evidence.
In Rebuttal
(Supp. Hearing)
James McCuaig,
Examination
Nov. 16th, 1932.
(continued)

given by Mr. Pepler and Mr. Small. We have had each tree on those limits counted, and I am seeking to establish by this witness the result of the count on the one hundred acres.

His Lordship: In the same space of land?

Mr. Scott: Yes, your Lordship, the same space.

10 Mr. Ker: And the same space of land to which this witness has already testified in chief.

Mr. Scott: All he has said was that he had a general idea—so many acres.

Mr. Ker: He went into it very definitely. He gave the feet board measure. How can he be brought back now to dispute or change what he has already said?

20 Mr. Scott: It looks as if my friends were afraid of the result of the actual count being put in.

Mr. Ker: We take it for granted your evidence would conflict with ours. Mr. McCuaig's evidence would probably conflict with the evidence he formerly gave.

Mr. Scott: For instance, we have the actual figures on lot 24-12. The evidence I am now offering is in rebuttal of the Defendant's Plea.

30 Mr. Ker: What my friend has just said is with regard to timber limits which are very remote from the present case, and are so pleaded. They are miles away from the mill, and they are not affected by the water.

The evidence we put in in this regard was made under reserve, and we simply established in a general way the quantity of wood on the limits. The evidence my friend is now offering cannot help your Lordship in any way to determine the indemnity, and, in the second place, it is evidence which has already been made by this same
40 witness in chief. Naturally, there would be a conflict, and no doubt there will be a further conflict in the evidence of those men. At the same time, it is my submission this witness cannot be brought back to begin all over again and say he has found certain things, inasmuch as he has already testified to what he found. He has told us in chief that he cruised the lots, and measured the timber, and he gave us the number of feet board measure. What is he going to say now?

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Superior Court*

No. 144.
Plaintiff's
Evidence.
In Rebuttal
(Supp. Hearing)
James McCuaig,
Examination
Nov. 16th, 1932.
(continued)

Mr. Scott: He had men under his instructions surveying certain of those lots, and every tree on the lots was counted, marked, and painted. He has an actual record of the timber that was there.

Mr. Ker: On my learned friend's own statement, Mr. McCuaig has examined one hundred acres out of 5,000.

10 Mr. Scott: We have not done anything at all with the Crown Land Licenses. There are about 1,500 acres of freehold on the west side.

Mr. Ker: Mr. Hamilton and Mr. Omanique testified to the same thing.

Mr. Chisholm: Mr. Omanique did not testify on the subject at all.

BY THE COURT:

20 Q.—You have already testified on the points you are now being called upon to give evidence?

A.—No, your Lordship. In my previous examination I was questioned regarding the west side of the river, and I stated I had simply travelled through in a general way, but that I had not examined it carefully.

Mr. Ker: At page 735 of your testimony you said you cruised it.

30 Witness: I cruised it in a general way, but not a strip cruise as a cruise is made.

His Lordship: This case will probably go to a higher Court. Suppose I maintain the objection, and the higher Court decides otherwise, the Record will simply be sent back, and heavy costs incurred. That is the reason I am allowing this evidence into the Record under reserve, as a general rule. That being so, I will allow the evidence, subject to the objection.

40 BY MR. SCOTT (continuing):

Q.—Will you look at Exhibit D-177, which is the plan filed by Mr. Pepler. If I remember rightly this plan indicates all the limits owned by Mr. Cross, or upon which he had cutting rights on the west side of the Gatineau River—in other words, all the limits Mr. Cross owns under freehold, or on which he has cutting rights, or

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Plaintiff's
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(Supp. Hearing)
James McCuaig,
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Nov. 16th, 1932.
(continued)

which he holds from the Crown under timber licenses. You note the legend at the bottom: Green means merchantable forest; Yellow means unmerchantable; Brown, cut over area; Brown, barren and waste; cleared land, brown hatched.

Have you recently employed one or more persons to make a cruise, in which the trees were counted on any of the lots?

A.—I have.

Q.—Will you please tell me which ones?

10 A.—Lot 24-A, of the 12th Range of Hull; 24-B and 25-B, in the 13th Range of Hull.

Q.—Did you employ men to count every tree on 24-A?

A.—We did: to count them, and measure them.

Q.—What was done on 24-B?

A.—Just a comparison made with the one we actually measured.

Q.—And, on 25-B?

A.—The same thing.

24-A was absolutely measured and counted.

Q.—Did you go on lots 24-A, 24-B and 25-B?

20 A.—I did.

Q.—Did you make any comparison between the character of the standing timber on 24-B and 25-B with that on 24-A?

A.—I did.

Q.—And, what have you to say in regard to that comparison?

A.—24-B and 25-B in the 13th Range are better stands of timber than 24-A, of which we made a detailed measurement.

Q.—This work you speak of was done under your supervision?

A.—Yes.

Cross-examination

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

Q.—You are not a forestry engineer?

A.—I am not a forestry engineer.

Q.—I think in your former testimony you stated you are a culler?

A.—I am a culler, yes.

Q.—And you and your men, or your men alone, examined only three of all the lots on the west side of the river?

40 A.—The men employed actually measured all the merchant-able timber on lot 24-A.

Q.—How large is lot 24-A?

A.—100 acres.

Q.—How many acres are there altogether on the west side of the river?

A.—About 1,200 to 1,600.

Q.—So your men measured in the proportion of one acre out of twelve, or one out of sixteen?

*In the
Superior Court*

No. 144.

Plaintiff's
Evidence.

In Rebuttal

(Supp. Hearing)

James McCuaig,

Cross-examination

Nov. 16th, 1932.

(continued)

A.—Yes.

Q.—Why did you not measure them all?

A.—We did not have sufficient time. We only had three days.

Q.—If you had the desire to assist the Court, do you not think you should have spent your time checking on the lot where you said there were 30,000 feet board measure, and where Mr. Pepler said there were 1,300 feet board measure? It seems to me it would be a matter of pride to you.

10 A.—I accept your compliment. It is a matter of pride. I do not really believe you could find an acre anywhere in that whole district with less than 3,000 or 4,000 feet on it.

Q.—That is a good answer, but it is not an answer to my question. You did not check the acreage on which you said there were 30,000 feet board measure to the acre, and on which Mr. Pepler said there were 1,300 feet?

Witness: On the west side of the river?

20 Counsel: On the east side of the river.

A.—I did not check it. I had checked it before, but I did not check it this time.

Q.—Mr. Pepler said there were 1,300 feet, as against your figure of 25,000 or 30,000 feet. You did not go back and check him on that?

A.—I would naturally expect him to say that.

Q.—Those counts were made by your men?

A.—I checked them myself.

30 Q.—How?

A.—I was right up and down behind the men.

Q.—Every one of them?

A.—Yes.

Q.—You checked every tree yourself?

A.—I checked every tree in that place.

Q.—How long were you there?

A.—I was there two days.

Q.—How many men did you have with you?

A.—We had thirty-five or thirty-six men.

40 Q.—And you were able to do the same amount of work as they all did, in the same time?

A.—No. I was checking their work, and I took samples all through.

Q.—You checked every man, and every tree, with calipers?

A.—Not them all with calipers.

Q.—Did you use the calipers at all?

A.—I certainly used calipers.

*In the
Superior Court*
No. 144.
Plaintiff's
Evidence.
In Rebuttal
(Supp. Hearing)
James McCuaig,
Cross-examination
Nov. 16th, 1932.
(continued)

Q.—Did your men use calipers?

A.—They did.

Q.—How many used calipers?

A.—All the men who measured the trees are qualified scalers.

Q.—A scaler is a man who scales logs?

A.—He is a man who knows all about logs.

Q.—I remember when I cross-examined you as a witness for the Plaintiff in chief I had some difficulty in getting you to answer my questions.

10 A scaler is not a forestry engineer, is he?

A.—They are regarded as more reliable than the average forestry engineer.

Q.—But even though they may be considered more reliable, the Quebec Government will not take their certificates wherever a certificate is required from a forestry engineer?

A.—I do not know about that.

Q.—You do not know of any cases in which it has been done?

A.—I happen to know of cases where they have taken their say so much in preference to forestry engineers.

20 Q.—Scalers cannot sign reports, can they?

A.—I have seen cases of forestry engineers being repudiated by the Governments and those men accepted.

Q.—Can a culler, or a scaler, sign anything official which the Government of the Province will take except the measurement of lumber after it has been cut? Will the Government, for instance, take any certificate you or your scaler may give them as to standing timber?

A.—Absolutely, they will.

30 Q.—Under what Regulation?

A.—Under the Regulation of the Department of Lands and Forests.

Q.—Would you mind showing it to me?

A.—I cannot show it to you, but the Department of Lands and Forests will accept a qualified scaler's report on any timber.

Q.—Mr. Cross has accepted your report, but it is not an official report.

A.—I am speaking about the Department of Lands and Forests. The Quebec Government will accept any qualified scaler's report.

40 Q.—Did I understand you to say you put the calipers on every tree in that section?

A.—I did not say that. I went behind those men, and checked up.

Q.—How could you check up? Could you check thirty-six men?

A.—Can a foreman not check one hundred men?

Q.—So what you were doing was in the nature of general supervision?

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Superior Court*

No. 144.
Plaintiff's
Evidence.
In Rebuttal
(Supp. Hearing)
James McCuaig,
Cross-examination
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(continued)

A.—I checked up on them through their work.

BY MR. SCOTT:

Q.—The men working for you were qualified scalers?

A.—The men who worked under me were qualified scalers, and the method adopted is that used in the general practice of cruising of timber limits, only a much more thorough count because every tree was measured and counted.

10

BY MR. KER:

Q.—Do you not think you could have checked them all out with the number of men you had at your disposal?

A.—They were checked out, as I told you.

Q.—All you checked was 100 acres, out of 1,200?

A.—Yes, and a comparison was made of that 100 acres with the rest of the timber on that side.

30

(And further deponent saith not.)

*In the
Superior Court*

No. 145.
Plaintiff's
Evidence.
In Rebuttal
(Supp. Hearing)
Marshall C. Small,
Examination
Nov. 16th, 1932.

DEPOSITION OF MARSHALL C. SMALL, A WITNESS
EXAMINED ON BEHALF OF THE PLAINTIFF IN
REBUTTAL.

30

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

MARSHALL C. SMALL,

already sworn, who, being now called as a witness on behalf of the Plaintiff in rebuttal, deposes as follows:

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

40

Q.—You have already given evidence in this case?

A.—Yes.

Q.—I have only one question to ask you. Is the Pembroke Lumber Company, with which you are connected, owned or controlled in part by the Gatineau Company or by any of the Canadian International Companies?

A.—No, sir. The International or the Gatineau Power are in no

*In the
Superior Court*

No. 145.
Plaintiff's
Evidence.
In Rebuttal
(Supp. Hearing)
Marshall C. Small,
Examination
Nov. 16th, 1932.
(continued)

way interested in the Pembroke Lumber Company.

Q.—It is owned by yourself?

A.—By myself, and two others.

Q.—You are not connected with the International, or the Gati-
neau, or the Hull Electric?

A.—No.

BY THE COURT:

10 Q.—The Pembroke Lumber Company is not in any way con-
nected with those other Companies which have just been men-
tioned?

A.—No, your Lordship.

(Mr. Ker, K.C., of Counsel for Defendant, declares he has no
cross-examination to make of the witness.)

(And further deponent saith not.)

20

*In the
Superior Court*

No. 146.
Plaintiff's
Evidence.
In Rebuttal
(Supp. Hearing)
A. S. Hamilton,
Examination
Nov. 16th, 1932

DEPOSITION OF ALLAN S. HAMILTON, A WITNESS
PRODUCED ON BEHALF OF THE PLAINTIFF IN
REBUTTAL.

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

30

ALLAN S. HAMILTON,

of the City of Ottawa, lumber salesman, a witness produced on
behalf of the Plaintiff in rebuttal, who, being duly sworn, doth
depose and say as follows:

EXAMINED BY MR. CHISHOLM,
OF COUNSEL FOR PLAINTIFF:

40 Q.—You have already been sworn and have given evidence in
this case?

A.—Yes.

Q.—You are a Government scaler or culler? Which is the word?

A.—Scaler.

Mr. Ker: We object to this evidence as having already been
testified to.

*In the
Superior Court*

No. 146.
Plaintiff's
Evidence.
In Rebuttal
(Supp. Hearing)
A. S. Hamilton,
Examination
Nov. 16th, 1932.
(continued)

(The Court reserves the objection.)

BY MR. CHISHOLM:

Q.—Were you one of the party who scaled lot 24-A in the 12th Range of the Township of Hull as mentioned by Mr. McCuaig just before the adjournment?

A.—Yes.

10 Q.—How many men were engaged in making this count?

A.—Fourteen log scalers and their assistants.

Q.—How many assistants?

A.—Fourteen assistants.

Q.—In order to make it clear just how this count was made, how were the men lined up with reference to the plan?

A.—We started from one end, fourteen side by side, and went straight across the lot.

Q.—How far apart were they?

A.—Approximately one hundred feet apart.

20 Q.—Where did these fourteen men go?

A.—They started on the line on the west side of the lot, and crossed over to the east side of the lot, then moved down fourteen hundred feet more and came back across the lot.

Q.—To the original starting line?

A.—To the original line, and then they started from the original line and went back to the old line, made three trips across the lot.

Q.—So you had fourteen men parallel going right through the lot three times?

A.—Three times.

30 Q.—Thus covering the whole lot in three surveys.

A.—Yes.

Q.—What position did Mr. McCuaig take in this counting?

A.—He showed us the lines that were marked up on the trees and he also followed behind us to see that we did not forget to measure any trees.

Q.—You referred to marks on the trees? What was marked out by those marks?

A.—One hundred acres.

Q.—That is on lot 24-A?

40 A.—Designated by 24-A.

Q.—What kind of marks were on the trees to indicate the limits of the lot?

A.—Just a chip off the side of the trees.

Q.—A blaze?

A.—A blaze.

Q.—Was that a fresh blaze?

A.—A fresh blaze.

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- Q.—What did each man do during this count?
A.—The scaler with calipers measured the diameter of the butt of the tree, and then took the length and the diameter at the top.
Q.—Did he have a tally or book?
A.—He had a tally card.
Q.—And did he enter on his tally the measurement of each tree?
A.—The length and the diameter.
Q.—Was there any limitation as to size?
A.—Six inches and up at the top.
10 Q.—There was nothing under six inches?
A.—Nothing under six inches.
Q.—Will you explain just how the trees are measured in detail? You said that each man has a caliper?
A.—Yes.
Q.—And what does he measure?
A.—The diameter of the butt of the tree.
Q.—What is the butt?
A.—The butt is the part closest to the ground.
20 Q.—About where the tree would be sawn?
A.—About three feet above the ground.
Q.—And then, how does he engage the height or length of the tree?
A.—With his own judgment. He judges the length of the tree.
Q.—Just how does he determine the number of board feet in that particular tree?
A.—With a Government table.
Q.—Each man carries a Government table?
A.—Yes. They are supplied with a Quebec Government rule.
30 Q.—They are supplied with Government scalers?
A.—Yes.
Q.—And does that particular chart show him the number of board feet for any given diameter and length?
A.—Yes.
Q.—No calculation is required?
A.—Simply to multiply the number of pieces.
Q.—In order that there would be no overlapping, that is, the men would not count one tree again. Will you tell me the system that was used?
40 A.—The assistant to the scaler blazed the tree. As the scaler measured the tree, the assistant blazed it.
Q.—By blazing you mean he took a chip off with an axe?
A.—He took a chip off with an axe.
Q.—So that when another man would come along he would see that that tree had already been done?
A.—Yes.

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Q.—After the scalers had gone through the lot three times, thus covering this whole area, who collected the tally cards?

A.—I collected the tally cards.

Q.—Did you make a tabulation of the result of the count by all these scalers?

A.—Yes, I made that.

Q.—Will you produce that tabulation as Plaintiff's Exhibit P-132?

A.—Yes.

10 Q.—In order to explain the method of tabulation and at the same time give evidence as to what you yourself actually counted, will you look at this Exhibit P-132 and explain the figures opposite your name, which is on the second page?

A.—The best way to explain that is to give you the tally card.

Q.—You have your own tally card?

A.—I have my own tally card.

Q.—Will you produce that tally card as Exhibit P-133?

A.—Yes.

20 Q.—I see opposite your name, in the first column of Exhibit P-132, under license number, the figure 684; that is the number of your license?

A.—That is the number of my license card.

Q.—And then, in the next column, is the word "hemlock"?

A.—Yes.

Q.—And under that I see the first figure, "239"?

A.—That is trees.

Q.—The number of trees you counted?

A.—Yes.

30 Q.—And the next figure is "Hemlock"?

A.—Feet board measure.

Q.—That is, 35,186?

A.—Exactly.

Q.—The next column is headed "Beech, birch, maple and oak". The first figure, I take it, is the number of trees counted?

A.—The number of trees: 636 trees, 51,323 feet.

Q.—In the next column I see spruce, cedar and balsam, 63 trees, 2,819 feet?

A.—That is right.

40 Q.—In the next column, basswood and ash, 159 trees?

A.—Yes.

Q.—14,535 feet?

A.—Yes.

Q.—In the last column, white pine, 2 trees, 220 feet?

A.—Yes.

Q.—Does that correspond with what you have on your tally?

A.—That corresponds with these tally cards.

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Q.—In fact, those figures are taken from your tally card?

A.—Yes.

Q.—The one which you actually used when you were going through the woods?

A.—Actually, when I measured the trees.

Q.—Referring again to Exhibit P-132, will you tell me from that the total quantity of board feet arrived at as a result of this counting?

A.—839,942 feet board measure.

10 Q.—Were all the men who were engaged in this count, to your personal knowledge, Government scalers?

A.—Yes, fourteen of them.

Q.—That is, officially appointed by the Government?

A.—Yes, they have their cards.

Q.—I understand that no logs from Crown limits can be cut unless they have previously been scaled by a Government scaler?

Mr. Ker: It is the opposite to that.

20 Witness: They are scaled after they are cut into logs.

BY MR. CHISHOLM:

Q.—And that scaling must be done by a Government scaler?

A.—Yes.

BY MR. KER:

30 Q.—After they are cut?

A.—Yes.

BY MR. CHISHOLM:

Q.—Are you quite satisfied from the way this lot was counted that every tree of over six inches was counted, and that there was no overlapping?

A.—There was no overlapping.

40 BY THE COURT:

Q.—The number of feet you have just mentioned were in that one hundred acres?

A.—In the one hundred acres.

BY THE COURT:

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Q.—On that lot 24-A?

A.—Yes.

BY THE COURT:

Q.—Which measured how much?

A.—839,000 some feet.

10 BY THE COURT:

Q.—Of the lot itself?

A.—The one hundred-acre lot.

BY MR. CHISHOLM:

Q.—Did you make any comparison between the lot 24-A in the Twelfth Range and adjacent lots shown on that plan with respect to the timber thereon?

20 A.—No, I did not.

Cross-examination

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

Q.—You happen to choose this lot 24-A, why was that?

A.—I did not choose it.

Q.—Under whose instructions were you working?

A.—I was under F. T. Cross. He gave me instructions to measure trees on that designated part of the plan.

30 Q.—Mr. Cross told you to go and measure the trees on that particular lot?

A.—Yes.

Q.—And did you attend to the hiring of the men?

A.—No.

Q.—Or did Mr. Cross choose the men too?

A.—I don't know. The men were all there when I got there.

Q.—The license of a scaler, as I understand it, does not in any way concern, or make official, the measurement of trees constituting standing timber?

40 A.—Well, I don't know. There are a lot of scalers.

Q.—Their license, as I understand it, applies to log scaling, not to the estimation of standing timber?

A.—No, log scaling.

Q.—As I understand your method, you spread yourselves out in line like a football team as it were, fourteen feet deep along the line, one hundred feet apart?

A.—Yes.

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Q.—A little further apart than footballers usually are?

A.—Yes.

Q.—Fourteen in that line?

A.—Yes.

Q.—So that you covered fourteen hundred feet on your first track through?

A.—Yes.

Q.—Then, did each man go fifty feet to each side of him on that tracking?

10 A.—Yes.

Q.—Then, he went along with his calipers and measured?

A.—Yes.

Q.—And then, I think you stated, measured the base?

A.—Yes.

Q.—And he cast his eye up to the top of tree and said, the top of the tree is about that much, and he put that down and worked it out?

A.—Yes.

20 Q.—You, of course, did not make any attempt physically to measure the top of the tree?

A.—No.

Q.—Do you think that a scaler whose license has to do with timber after it is cut and laid down would have the most experience, to run his eye up to the top of the tree and figure out what the diameter on the top would be?

A.—I think he would have a very good idea.

Q.—What would the height of a ten-inch tree at the base be? How high would it be?

30 A.—Ten inches at the top?

Q.—At the stump?

A.—Oh, it might run up to six inches.

Q.—How high is it?

A.—Oh, it might be twenty feet.

Q.—Only twenty feet?

A.—Some might be thirty feet.

40 Q.—And in any event, these men as they walked through the woods took every tree within fifty feet to the right or left of them, whichever they happened to be working upon, measured it with calipers, went up and made an estimate with their eye as to what it measured at the top, and then somebody put that down on a tally card?

A.—They put it down themselves.

Q.—The man who looked up the tree, or who would call it out, would follow who was down below?

A.—He looked up as you said.

Q.—Which of them look up?

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A.—The scaler.
Q.—And the other man put it down?
A.—No. The scaler put it down.
Q.—The scaler put it down on his own tally?
A.—Yes.
Q.—What was the assistant doing?
A.—Marking the trees.
Q.—Just blazing the trees?
A.—That is all.

10

BY THE COURT:

Q.—Did you say ten feet diameter at the stump?

Mr. Ker: I was asking the witness how high a tree would be?

Witness: Twenty or thirty feet.

20 BY MR. KER:

Q.—Of course, the branches would be sticking out?

A.—We do not look at the branches.

Q.—You measured every tree?

A.—Yes.

Q.—Six inches and upwards?

A.—Six inches and upwards.

Q.—Have you records of the varying trees that were more than
six inches?

30 A.—I have my tally card.

Q.—Does that show the size of each tree?

A.—Exactly the size of each tree.

Q.—You measured them whether merchantable or not?

A.—If merchantable.

Q.—How do you know?

A.—I have a pretty good idea by sounding it with an axe whether it is whole or good?

Q.—So every tree was sounded with an axe?

40 A.—No. By the looks of some trees you did not need to sound them. They are good.

Q.—So every tree was measured independently of its merchantable quality or not, you took a tally of every tree?

A.—No.

Q.—How many trees did you find that were not merchantable on an average?

A.—Quite a few.

Q.—You did not blaze those?

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A.—No.

Q.—Do you think anybody else came along and measured them after?

A.—I don't know.

Q.—You are speaking for yourself now?

A.—For myself, from my tally cards.

Q.—This estimate that you have put in, as I understand it, you can only speak from personal knowledge to the 239 hemlock trees and the 636 beeches?

10 A.—Everything that is opposite Hamilton.

Q.—239, 636, 63, 159, and 2 white pine?

A.—Yes.

Q.—So during the whole of the day all you could find were two white pines in the acreage you examined?

A.—Yes.

Q.—And all you could find were 63 spruce and cedars?

A.—Yes.

Q.—And the balance was hardwood?

20 A.—Hardwood and hemlock.

Q.—Is hemlock hardwood?

A.—No.

Q.—Of course, this estimate of yours does not show, for instance, how many trees of the hemlock variety were of six inches, and how many were seven or eight inches. That would show from your tally card?

A.—From the tally card.

Q.—Of course, insofar as the question of looking and sizing up the size of the trees, that is a matter for the judgment of the man?

30 A.—For the judgment of the man.

Q.—It is not put under the calipers anywhere, except on the stump?

A.—No.

Q.—I had a note about one word you used that I did not understand. I think you said, "Multiply the number of pieces". What do you mean by the pieces? Each tree?

A.—The Government log table gives the contents of one piece. If you have one hundred pieces it is one hundred times that. That is what I mean by multiplying.

40 Q.—Is the piece one tree, or do you go up into a section half way with your eye and another section lower?

A.—Mine are all trees.

Q.—When you speak of pieces, you mean individual trees?

A.—Individual trees.

Q.—And those pieces are really pieces that would then correspond to these numbers that you have here, insofar as a class of wood is concerned?

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A.—Yes.
Q.—How long were you working on this?
A.—Three days.
Q.—Just within the last day or so?
A.—We finished up yesterday.
Q.—Have you your license card?
A.—Yes.
Q.—It is in force this year?
A.—Yes.

10

BY THE COURT:

Q.—What length were the logs?

A.—We judge the tree. Some trees would only give you about eight feet, for instance, and others would go up forty or forty-five or fifty feet long. A piece eight feet long, we could call that merchantable. It is long enough to make a railroad tie, but then there are other trees that go twenty, thirty or forty feet, some fifty feet long. Of course, the longer they are the bigger they are at the butts.
20 Some are twenty-five or thirty feet at the butt.

BY MR. KER:

Q.—You said they cut to fifty feet?

A.—To fifty feet.

Q.—From eight to fifty feet board measure in each tree?

A.—No, the length of the tree, from eight feet to fifty feet.

Q.—In height?

30

A.—In height.

Q.—Where did you do your last measuring of standing timber?

A.—Oh, I did quite a bit at Ironsides in 1921 and 1922. I think that is the last I did.

Q.—Nothing for ten years or so?

A.—Nothing for ten years.

Q.—I am sorry, but I did not catch your answer when his Lordship asked you a question. Did I understand you to say some of the trees you measured were only eight feet high?

A.—Those were merchantable timber.

40 Q.—A tree eight feet high, what would it be at the base?

A.—A railroad tie.

Q.—What would it be at the base?

A.—Eight or ten inches.

Q.—Do you mean to say a tree with a base of eight or ten inches would only be eight feet high when it grew up?

A.—Yes. The top is no good.

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BY THE COURT:

Q.—Was it dead wood at the top?

A.—Yes, at the top, and rotten.

BY THE COURT:

Q.—There would only be eight feet of sound timber?

A.—Eight feet of merchantable, sound timber.

10

BY MR. KER:

Q.—I should think that would be rather difficult to estimate with the tree standing there?

A.—By sounding with the axe, chipping it off, you can tell whether it is sound. With the axe you can hit a tree pretty well, but the bottom of the tree was sound.

20 Q.—Then you would estimate that as being a certain number of feet board measure?

A.—Eight feet and six inches in diameter.

Q.—As high as you could reach with an axe to hammer on it, the whole business might be merchantable. This is your exhibit, and I wish you would sit down and add up the trees under each total so we may know what they are. I have no other question to ask you at the moment, but may want to ask you a question after you make up those additions.

A.—Yes, I will do so.

30

(And at this point the witness' examination was suspended.)

40

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DEPOSITION OF THOMAS RACINE, A WITNESS PRO-
DUCED ON BEHALF OF PLAINTIFF IN REBUTTAL

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

THOMAS RACINE,

10

of the City of Hull, Quebec, scaler, aged 43 years, a witness produced on behalf of the Plaintiff in rebuttal, who, being duly sworn, doth depose and say as follows:

EXAMINED BY MR. CHISHOLM,
OF COUNSEL FOR PLAINTIFF:

Q.—You are a Government scaler residing in Hull?

A.—Yes.

20

Q.—Did you take part in this count with Mr. Hamilton, Mr. McCuaig and others on lot 24-A in the 12th Range of the Township of Hull just recently?

A.—I am not sure of the number of the lot.

Q.—You were with Mr. Hamilton and Mr. McCuaig?

A.—Yes.

Mr. Ker: I will ask the Reporter to make a note of my objection under the same circumstances.

(The Court reserves the objection.)

30

BY MR. CHISHOLM:

Q.—Have you with you the tally cards which you used?

A.—Yes, I have them here.

Q.—Will you tell me the number of trees you counted and the calculation of the total number of feet?

A.—Not in trees. I made it up in logs.

40 Q.—Will you take communication of Plaintiff's Exhibit P-132 on which I see the name, T. D. Racine, license number 3229? Is that you?

A.—That is me.

Q.—From your own tally card, will you check over the results opposite your name, and tell me if they are correct?

A.—It is all added up in different lengths and he has it in bulk. I have hemlock, eight feet, ten feet, fourteen feet and sixteen feet.

Q.—Will you file as Plaintiff's Exhibit P-134 your tally card; how many are there?

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A.—Five tally cards all told, two different dates.

Q.—Which cover the count you made?

A.—Yes, the count I made there.

Q.—About which we are now referring?

A.—Yes.

10 Mr. Chisholm: I can either file these as exhibits or have the figures from the tally cards read into the record. It will possibly take some time.

His Lordship: You can file the tally cards.

Mr. Chisholm: The tally cards will be filed, but we will have no result in the record. That is the difficulty.

His Lordship: Can you add up the number of logs that are mentioned in there?

20 Mr. Chisholm: I might ask the witness to do that.

BY MR. MONTGOMERY:

Q.—How long will it take you to add those up?

A.—I have it here.

Mr. Chisholm: Mr. Hamilton made up his calculation from this witness' tally card. If I may be permitted to bring Mr. Hamilton back he will look at this card and tell me if the result is correct.

30 Mr. Montgomery: You had better cover the whole of them.

Witness: I did not quite understand. I have 134 hemlock, on tally card number 1. There is 1 to 3, but different dates. That is the last one. That is 15 and 16.

BY MR. CHISHOLM:

Q.—Let us number your tally cards?

40 A.—Yes, 1 and 2.

Q.—Then, number 3?

A.—There are three different dates.

Q.—You can refer to each one of those as No. 1 tally card and so on. What was the figure you were giving us?

A.—The first figure is hemlock taken off tally card No. 1.

Q.—134 hemlock?

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- A.—I don't know whether the hemlock is on that tally card—
no, it is off this one.
- Q.—It is taken off tally cards 1 and 2?
- A.—Yes.
- Q.—Off tally cards 1 and 2, you have how many hemlock?
- A.—134.
- Q.—How much beech, birch and maple?
- A.—Hardwood, 416.
- 10 Q.—Spruce, cedar, etc.?
- A.—46.
- Q.—Basswood and ash?
- A.—190.
- Q.—No white pine?
- A.—None on that.
- Q.—No white pine on that?
- A.—No.
- Q.—Take tally cards 3, 4 and 5, how many hemlock?
- A.—Hemlock, 252.
- 20 Q.—Hardwood?
- A.—Hardwood is 624.
- Q.—Spruce, cedar, etc.?
- A.—Spruce, cedar and balsam is 54.
- Q.—Basswood and ash?
- A.—87.
- Q.—White pine?
- A.—White pine is 11.
- Q.—What is the total number of feet for tally cards 3, 4 and 5?
- A.—37,908.
- 30 Q.—Will you tell me the total of feet for tallies 1 and 2?
- A.—31,666.
- Q.—One question which has not to do with this count: do you
know Mr. Cross' property at Farm Point?
- A.—I do.
- Q.—You know his sawmill.
- A.—Yes.
- Q.—Can you tell me the capacity of that sawmill?

40 Mr. Ker: I do not object particularly to this question, except
in principle. I submit this is not a matter upon which this witness
can be examined under these circumstances. It is not rebuttal.

Mr. Chisholm: It is a matter of proving by this witness, while
he is here now, instead of having to bring him back. I submit this
particular point is proper rebuttal by reason of the fact that the
Defendant has endeavoured to establish the small capacity of the
Plaintiff's sawmill.

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We, on our part, allege how much lumber Mr. Cross cut generally, and the profits he derived from it, without going into the details as to the actual number of feet. It is to rebut Mr. Small's evidence.

10 Mr. Ker: On my learned friend's own statement, he says that Mr. Cross was cutting a certain amount of timber, and making a certain amount of profit out of this mill. Surely the elementary thing he should have proven was the capacity of his mill. This witness cannot now be brought forward to bolster up my learned friend's case in chief. We have not alleged anything about the capacity of his mill in our plea. In fact, we have alleged specifically we do not affect it in any way. As a matter of fact, my learned friend has closed his case on this point.

20 Mr. Chisholm: Capacity is quite a different thing. You have attacked us on that ground and on that ground we are entitled to rebut. Our proof had to do with the profits made by that mill and we are attacked from another angle. They say, "Your mill is a small one, you only cut so much".

His Lordship: Do you allege the capacity of your mill?

Mr. Chisholm: No. We have dealt with profits only.

I will reserve the objection.

BY MR. CHISHOLM:

30 Q.—Can you tell me the capacity of that sawmill in feet per day?

A.—I was employed there as a tally man, and counted the pieces board measure at the mill, and I used to make a report to Mr. Cross every night. I was hired for that purpose, and we used to measure every day from 35,000 up.

Q.—What would be the maximum, the highest cut?

A.—I have no record of the highest mark, but as far as I can say, between 35,000 and 40,000.

40 Q.—And with respect to cutting ties, can you tell me about the capacity of the mill for them?

A.—It was pretty hard for ties, because we did not keep it separately. I did not keep a tally separately for ties so much in the production.

Q.—You cannot tell me then the number of ties that were cut?

A.—No, I cannot tell you the number of ties.

Q.—Did Mr. Cross have two saws, one for lumber and one for ties?

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A.—They were both cutting lumber and ties.

Q.—He had two saws?

A.—Two saws.

BY THE COURT:

Q.—Circular saws?

A.—Circular saws.

10 BY MR. CHISHOLM:

Q.—Will you tell me whether Mr. Cross used to cut during the winter?

A.—Yes.

His Lordship: What do you mean by cut?

Mr. Chisholm: Saw. He sawed during the winter?

20 Witness: Well, I was employed in the winter sawing, when I was with him.

Cross-examination

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

Q.—When were you employed as a scaler at this mill?

A.—In the season of 1927, 1928 and 1929.

Q.—Was that before the old mill was burned?

30 A.—Yes.

Q.—And that was not the same mill that is standing at the present time?

A.—The old one was burned.

Q.—You spoke of the capacity, in your opinion, of 35,000 to 40,000 feet board measure a day. How long a day would that be?

A.—Ten hours.

Q.—And how long were you employed? For what months in the year 1927, let us say, or 1926?

40 A.—I started after New Years; sometime shortly after New Years. It would be about the 8th January sometime, and I worked in the saw mill till the spring and then we started again and sawed all summer till the fall again; then, I was employed in the bush for Mr. Cross again after that.

Q.—That was the longest year you had?

A.—Well, but I never worked at any other time for Mr. Cross at that mill.

Q.—You only worked one season at that mill?

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A.—One season in that mill, but I was operating all that time shipping lumber.

Q.—What season was that? 1926 to 1927?

A.—1927 and 1928, if I can remember right. I am pretty sure that is what it is.

Q.—In order to get 35,000 or 40,000 feet board measure out of it in a day, how many logs would you have to cut? At what rate would you have to saw, how many logs per hour?

A.—It depends on the average of the logs, the size of them.

10 Q.—I suppose the smaller the logs the more logs you would have to cut?

A.—The more logs we would have to cut.

Q.—Did you ever work for Mr. Cross at any of his other mills?

A.—I worked at Perras.

Q.—The 35,000 or 40,000 feet you speak of, that was indiscriminately ties and lumber too?

A.—Yes.

20 Q.—You are not saying for a minute that that mill would produce 35,000 to 40,000 feet board measure of lumber alone in a day?

A.—That was combined.

Q.—Both ties and lumber?

A.—Well, the whole work, mill production.

Q.—At any rate, to be quite clear, a day of 35,000 feet you speak of, the mill was working at capacity, working on ties and everything else?

A.—Sure, the production of the mill.

30 Q.—Of course, you can put through many more feet board measure in the shape of ties, than you can in lumber?

A.—Sure.

Q.—Because, you have just to shear off?

A.—It stands to reason.

BY THE COURT:

Q.—What do you mean by shear off?

40 A.—Take the slab off and the lumber that comes off to make a clean face for a tie, and then turn it over.

BY MR. KER:

Q.—Well, that quick way of doing it means just the same for feet board measure?

A.—Well, it was measured.

BY THE COURT:

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Q.—Did you saw on four faces?

A.—Four faces, some on two.

BY THE COURT:

Q.—For the railway ties?

A.—For railway ties, two.

BY MR. KER:

10

Q.—I think I have seen them sawn on two faces?

A.—Sure, but I could not say how many there were?

Q.—But in any event, whether you sawed them on four or two,
it is a much quicker way of making feet board measure than making
actual lumber?

A.—Sure.

Q.—And they are counted in in your 35,000 a day?

A.—Yes.

20 BY THE COURT:

Q.—What was the size of the tie?

A.—Six by eight by eight feet long.

BY MR. KER:

Q.—In this work you have been doing in the last few days, you
have been estimating standing timber?

A.—Standing timber.

30 Q.—And you have been measuring it up according to your
experience as a scaler?

A.—Yes.

Q.—And applying your experience, and your knowledge of the
business, you have been working it out as though it were a log lying
down in front of your eyes?

A.—Yes.

Q.—Because that is the only way as a scaler you would have to
measure them, in the ordinary course of your business?

A.—Not like if they are lying down in front of me.

40 Q.—As logs, but not as trees?

A.—Not as logs either. I would measure them at both ends.

Q.—When did you ever measure standing timber before?

A.—I never did.

Q.—You never did in your life?

A.—No.

Q.—As a matter of fact, who was it asked you to go and
measure it?

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(continued)

A.—It was Mr. Cross.

Q.—Before you went, did you let him know you had never measured standing timber before?

A.—No, I did not tell him.

Q.—Did you tell anybody?

A.—No, I did not.

Q.—Did you ever mention to Mr. Delahaye that you did not think you were experienced enough to go on a job like this, because you were incapable, because you had never measured standing timber before, and you thought this was not a scaler's job? Did you tell Mr. Delahaye that before you went on this job?

A.—I did not tell him that.

Q.—Tell us what you did tell him?

A.—He asked me about it. He says, "You are going up there to measure". I says, "Yes"—no, it is not that either. It is not that he told me.

Q.—Well, he told you something?

A.—If I can think of it right. I am not quite clear on that. There was no very much said, whatever it was.

Q.—In any event, it is not of great importance. I wanted to make sure that you were rather on new ground when you were measuring standing timber?

A.—Well, I told him I did not understand the job so well. That is what I told him. I did not see my way clear of making a job as a Forest Engineer.

Q.—Still, in any event, they insisted on having you? They seemed to rely on your good judgment?

A.—I thought I had enough experience to do as well as the rest of them, anyway.

Re-examination

RE-EXAMINED BY MR. CHISHOLM,
OF COUNSEL FOR PLAINTIFF:

Q.—What kind of work do you refer to when you say the work of a Forest Engineer? You told Delahaye you were not a Forest Engineer?

A.—Well, yes, I am not a Forest Engineer.

Q.—Who is this man Delahaye?

A.—He is the manager of the woods department of the International Paper Company.

Q.—So he was around to speak to you?

A.—No.

Q.—Where did you run across him?

A.—I was looking for a job. He has been calling me up on the phone every now and again telling me that he was going to place me, and this day I called him. He made an appointment for me to call him at his house. I telephoned him. He says, "I wish you would

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meet me at the office", so I went over there, and we were talking together, and while we were talking he asked me where I was in the morning, because he had telephoned in the morning. He says, " You were up measuring for Mr. Cross ".

Q.—He knew where you were?

A.—He knew.

Q.—He did not need to ask you. Go on.

A.—That is all I know about it.

10 Q.—You used to work for the Canadian International Paper Company?

A.—Yes.

Q.—Did Mr. Delahaye have a job to offer you?

A.—I was out of work.

Q.—Was that the reason you were coming to his house

Mr. Ker: I object to this.

(Objection reserved.)

20 BY MR. CHISHOLM:

Q.—Did Mr. Delahaye say anything about work on the occasion on which you were called to his house?

A.—Yes, he did.

Q.—Have you had any work since?

A.—No. He was supposed to call on me on Tuesday or Monday. He says, " You will hear from me on Monday about work at the mill ", and I expected to get in there in time. He told me he was going to telephone me on Monday night or write me whether I would get a job there or not.

30 Q.—What was your position with the Canadian International Paper Company?

A.—I was a scaler.

Q.—What did your duties consist of? What did you do as a scaler?

A.—Measured logs. I was measuring logs.

Q.—That is, logs which had already been cut?

A.—Which had already been cut.

40 Q.—Did you experience any difficulty in making this count, in estimating the height of the trees?

A.—No, I did not after I got started upon it. It is quite simple enough.

Re-cross-
examination

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

Q.—Did you use calipers in your measurements?

A.—I used a straight rule.

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Q.—Is that the way to measure a tree when it is standing up, by a rule?

A.—If you have calipers, you measure with calipers. But if not, you measure with a rule.

Q.—Are not calipers the more exact way? Is that not what calipers are for, to measure circular butts?

A.—I never use them.

10 Q.—How many of the fellows who were with you were using calipers?

A.—I could not give you the names of them.

Q.—How many were not using calipers? Did you see any who were not using calipers?

A.—I saw a few using them, some of them, and some did not have them.

Q.—About half and half?

A.—About half and half.

BY MR. CHISHOLM:

20 Q.—You stated just now that about half of the men were using calipers? What were the other half using?

A.—A straight rule.

(And further deponent saith not.)

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30 DEPOSITION OF ALLAN S. HAMILTON, A WITNESS
RECALLED ON BEHALF OF PLAINTIFF IN REBUTTAL.

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

ALLAN S. HAMILTON,

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

EXAMINED BY MR. CHISHOLM,
OF COUNSEL FOR PLAINTIFF:

Q.—Mr. Hamilton, will you produce the tally cards handed to you by each of the scalers shown on Exhibit P-132, apart from that of Mr. Racine?

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(continued)

A.—I produce as Exhibit P-135 the tally card of George Charron.

10 I produce as Exhibit P-136 tally card of Telesphore St. Jean.
I produce as Exhibit P-137 tally card of James McCuaig.
I produce as Exhibit P-138 tally card of Lucien Bertrand.
I produce as Exhibit P-139 tally card of Pierre Martineau.
I produce as Exhibit P-140 tally card of Lionel St. Jean.
I produce as Exhibit P-141 tally card of Rene St. Jean.
I produce as Exhibit P-142 tally card of Marcelle Bouchard.
I produce as Exhibit P-143 tally card of Albert Nantel.
I produce as Exhibit P-144 tally card of Leo Tremblay.
I produce as Exhibit P-145 tally card of Joseph St. Jean.
I produce as Exhibit P-146 tally card of Isaie Brazeau.

BY THE COURT:

Q.—That is, twelve tally cards?

A.—Twelve, and two before that. I gave my own and Racine's.

20 BY MR. CHISHOLM:

Q.—That covers all the people mentioned on Exhibit P-132?

A.—Yes.

Q.—I understand you have gone over all these tally cards yourself, and the exhibit correctly represents the calculations?

A.—That is the calculation of all those tally cards.

Q.—Of the number of trees and board feet measure count?

A.—Yes.

30 BY THE COURT:

Q.—Were all these men scalers, except Mr. Racine?

A.—He is a scaler. They were all scalers. They are all log scalers.

BY MR. SCOTT:

40 Q.—Had not quite a number of them been employed by the Canadian International Paper Company as scalers?

A.—Most of them.

Mr. Scott: Would my friends in order to save expense, and time, agree that these witnesses, who are all scalers, if called, would say that their tally cards represented the number of trees and feet board measure set opposite their respective names on the exhibit filed by Mr. Hamilton?

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Mr. Ker: Mr. Racine said it was logs, not trees.

Witness: He made his in logs, but the feet came out just the same. He might have more logs than I had trees, but his feet came out just the same.

BY MR. KER:

Q.—What are you counting them as? Trees or logs?

10 A.—Trees. I will explain it to you. The way Racine does

Mr. Ker: Mr. Racine has been examined.

Witness: Oh, well, whatever your Lordship wants.

Mr. Ker: If this evidence is being brought to show discrepancies between our cruise and the Plaintiff's cruise, I can quite understand how there would be discrepancies in the counting of trees. We never undertook to count the trees.

20 Mr. Chisholm: Perhaps I might clear this up by asking the witness one or two questions.

BY MR. CHISHOLM:

Q.—Are there people who are experts in going into the forests, people who make a profession of going into the forest and measuring trees, standing timber?

A.—Timber cruisers are the experts.

30 Q.—Do you consider there is any difficulty for a Government scaler to compute the height of standing timber?

A.—He can come pretty close.

Q.—Even though most of his experience has been in measuring logs?

A.—Yes.

Q.—Was Mr. Racine the only one who made his return of logs? Can you tell that from the tally card?

A.—I could tell pretty well.

Q.—Can you tell from the tally cards?

40 A.—I would simply be able to tell by the average feet board itself, that is all.

Cross-examination

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

Q.—With respect to these figures in your report, P-132, I see under the various classes of wood, hemlock, beech, etc., for instance, 148 beside the name of Mr. Bertrand. What does that represent?

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(continued)

A.—Trees.

Q.—What does it represent insofar as Mr. Racine is concerned?

A.—Logs.

Q.—How, then, can you make any comparison under those circumstances?

A.—The feet amounts to the same thing. Pieces has nothing to do with it. It is the feet.

10 Q.—You are taking from Mr. Racine's tally cards an estimate of logs, and you are setting them down here as logs. As a matter of fact, they are under a tabulation of trees?

A.—Trees and logs.

Q.—It is conceivable that it should make a big difference, 148 trees. For instance, under Mr. Bertrand, 148 trees makes 18,317 feet; under Mr. Racine, 134 logs make only 6,000 feet. How many of these men worked on the basis of trees, and how many worked on the basis of logs?

A.—You can see that by the tally cards.

Q.—I don't understand tallies, you made these up?

20 A.—I wanted to explain to the Court before, and you stopped me. Racine would look up at a tree, which is 32 feet long. He puts down two logs, 16 feet, and I put it down, 1 tree, 32 feet.

Q.—Do you know how these other men did the same thing?

A.—Some of them did it by trees and some by logs. There are only a few logs. Most of them were trees.

Q.—How can you tell how to convert these logs into trees unless you are with the men?

A.—Their tally cards show that. I am not swearing to their tally cards.

30 Q.—That does not mean a certain number of trees, does it?

A.—No.

Q.—You put this exhibit in, as so many trees. You have not totalled them up?

A.—I do not say trees. I say pieces. The feet is what counts.

Q.—Do they, or do they not, represent trees by measurement?

A.—They represent trees or logs.

Q.—And you cannot tell which are which?

A.—I would have to get a tally card?

40 BY MR. CHISHOLM:

Q.—From the tally card you can determine the number of board feet irrespective of what is on the tabulation?

A.—The feet are there, whether there are a thousand pieces of trees, or two thousand logs, but the feet is just the same. It is a matter of feet.

BY MR. KER:

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(continued)

Q.—That exhibit does not reflect the tally cards, insofar as that point is concerned at all?

A.—This exhibit is copied from the tally card.

Q.—That first line represents trees. Those are not trees?

A.—Some of them are trees, trees or logs.

Q.—Trees or logs, not trees?

A.—Trees or logs.

Q.—But not trees altogether?

A.—No.

10 Q.—Do you know how many of those people measured them on the basis of logs, and how many measured them on the basis of trees?

A.—No. I would have to see the tally cards about that.

Q.—You took all those from the tally cards. Why did you not put pieces or logs, instead of trees, under that heading?

A.—Because it does not signify anything. It is feet board measure.

Q.—It signifies something to me.

A.—Oh, probably it does to you.

20 Q.—And the same thing applies to birches where you get 326 birches, that may be logs instead of trees?

A.—It does not matter, the feet is there.

Q.—Possibly the feet are there, but there is no method of controlling the matter unless you know. Did you use calipers? I see you are mentioned on this list to do a certain amount yourself in the way of cutting. Did you use calipers?

A.—Yes.

Q.—Did you have calipers with you?

A.—Yes.

30 Q.—How many men did you have directly under you?

A.—I measured all my own.

Q.—Only your own?

A.—Only my own.

Q.—Do you know whether Mr. Racine had any calipers or not?

A.—No. I think he had a rule.

Q.—Because Mr. McCuaig said every man had calipers. Do you know how many men had calipers?

A.—No, I could not say. I know several of them had them.

40 BY THE COURT:

Q.—What about the ties? Did you cut them out of logs or trees?

A.—I made them out of trees.

BY THE COURT:

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Q.—How did you measure a tie?

A.—Some were four cuts and some two cuts, make a tie. If you are making square ties, four cuts. If you make a flatted tie, two cuts.

BY THE COURT:

Q.—How much would that be in board measure?

A.—32 feet for a tie, 6 x 8 x 8 feet long.

10 BY THE COURT:

Q.—Did you measure them by board measure?

A.—The ties?

BY THE COURT:

Q.—The number of feet board measure?

A.—Yes.

20 BY THE COURT:

Q.—As far as the ties are concerned?

A.—Everything is board measure on that statement, feet board measure.

BY THE COURT:

Q.—To make one-inch boards?

A.—Yes.

30 BY THE COURT:

Q.—How many boards would there be in a tie, supposing you cut them to one inch? You said 6 x 8 x 8?

A.—Five boards, 1 x 8, 8 feet long.

BY THE COURT:

Q.—Did you calculate that in feet board measure?

40 A.—Yes, I figured board measure. These logs are made up from a Government table. They make this table up, I understand, from sawing the logs into boards, and there is no way of figuring it up, you have to use this Government scale.

BY THE COURT:

Q.—I am talking about ties. You cannot say how many feet board measure there would be in each tie, because you make only four cuts, and if you had cut them into board measure you would have made six cuts?

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Evidence.
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Nov. 16th, 1932.
(continued)

A.—Yes.

BY THE COURT:

Q.—That is, so many feet more, and if you count six boards in a tie, it would not be altogether correct?

10 A.—Well, there would be less footage. If it was sawed up into boards there would be waste with the sawdust. The more cuts you waste, the more lumber you waste, but if you take it only 6 x 8 x 8 feet long, which gives you board measure, it gives you more feet than if you sawed it up into boards and then measured it afterwards because you lose the saw cuts. You make four or five cuts in a six-inch log, you only get five boards, and then six inches thick, you only get five boards. On one cut you lose one inch board.

BY THE COURT:

Q.—You only get one tie?

20 A.—Well, you get more feet in a tie than if you saw it into boards.

BY THE COURT:

Q.—Did you saw it?

A.—No.

BY THE COURT:

30 Q.—You cannot say you sawed those ties into board measure?

A.—That is the way the log scale is made up on that basis.

BY THE COURT:

Q.—I don't know if it is just?

A.—But that is the way the government log scale is. If I had one here I would show you. That is the only thing we have to go by in the Province of Quebec, their log scale.

40 Mr. Ker: I think, in view of your Lordship's questions, that this is not based on feet board measure. It is based on log measure, which was not Mr. Small was estimating at all.

Witness: Board measure, government measure is the same thing.

BY MR. KER:

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(continued)

Q.—Is not this based on the Quebec log rule measure?

A.—Yes.

Q.—That is not feet board measure?

A.—Yes.

Q.—Is it?

A.—Yes, board measure.

Q.—What are the Government charts for, to estimate on?

A.—The contents in feet board measure of a log.

Q.—Or a tree?

10 A.—Or a tree, the same thing, yes.

Q.—So that the total feet board measure as shown on Exhibit P-132 is the same irrespective whether you take trees or logs? The result is the same?

A.—The result in feet would be the same.

Q.—You have calculated your feet board measure calculation from the tally cards?

A.—Exactly.

20 BY MR. CHISHOLM:

Q.—Will you file as Exhibit P-147, “ The Lumberman’s Reference Book and Culler’s Manual ”?

A.—Yes.

(And further deponent saith not.)

*In the
Superior Court*

No. —
Admission
Regarding
Exhibits P-135
to P-146.
Inclusive.

30 In order to save costs, the parties agree that the persons whose names appear on the tally cards put in as Exhibits P-135 to P-146 inclusively would, if called, give evidence regarding the entries on their said respective tally cards, and regarding the work upon which these entries were based, similar to the evidence given in that regard by the witnesses Hamilton and Racine.

40

Thursday, November 17th, 1932.

*In the
Superior Court*

No. —
Admission
Regarding
Exhibit P-113.

Mr. Chisholm: My Lord, sometime ago, during the Plaintiff’s evidence when this matter of the twenty acres on the hill came up, and the Plaintiff produced an Exhibit, P-119, and there ensued a discussion as to the necessity of bringing the land surveyor to establish the correctness of the plan, and it was at that time agreed that an admission would be made.

ADMISSION BY THE PARTIES

*In the
Superior Court*

No. —
Admission
Regarding
Exhibit P-113.
(continued)

The Plaintiff has produced as Exhibit P-119 a plan prepared by J. B. Lewis, Quebec Land Surveyor, and the parties admit that if Mr. Lewis were examined as a witness in the present case, he would testify that this plan sets out according to the information given him on the ground by Messrs. Dean and Cross, the boundaries of the property stated by the said Dean and Cross to have been conveyed by the Deed of Sale, Exhibit P-113.

10 I understand there is only one more witness to be heard on behalf of the Plaintiff. There is, however, the question of the proof of the costs, disbursements and expenses incurred by the Plaintiff during the pendency of the present trial. I am not quite certain of the form which the application for the proof of those matters should take, but it seems to me we should perhaps make a motion before your Lordship asking that we be permitted to file, what might be called, an incidental Supplementary Declaration, and proceed to the proof immediately. It is just a matter of proving certain ac-
20 counts, and I suppose that the allegations of such incidental Supplementary Declaration would be held to be denied by the Defendant.

I have prepared such a motion and such incidental Supplementary Declaration, which has not, of course, as yet, been served upon the Defendant. Perhaps my friends have some suggestion by which we could avoid the necessity of making any formal declaration with respect to the accounts.

30 Mr. Montgomery: I think it might be relevant to find out on what the claim is based.

Mr. Ker: My learned friend speaks in respect of the legal extra judicial non-taxable costs involved in the present hearing. Your Lordship will recall that the Plaintiff has already filed his account with respect to extra judicial costs up to the time this action was filed, but not during the pendency of this hearing.

40 The Defendant, of course, very strenuously objects on the ground that this Act is not intended to do more than allow your Lordship to give assistance to the Plaintiff in respect of the extra judicial costs which he has incurred, in the preparation of the present case, for engineers, and extra judicial matters, and that the question of costs from the time the hearing begins is taken up normally in the taxable costs which would exist in the case and be taxed either in favour of the Plaintiff or of the Defendant, in the ordinary course.

In any event, if my learned friends take the ground that they are entitled to such costs, they can only be entitled to it clearly on

*In the
Superior Court*

No. —
Admission
Regarding
Exhibit P-113.
(continued)

10 the reading of the Act as it stands and I cannot see that any motion is necessary to implement the Act, if it is right that the Company has to pay costs on that account. It would seem to me the way for my learned friends to do would be to tender accounts for services such as are claimed for extra judicial costs during the term of this hearing, and then we could either cross-examine the witnesses as to those costs, or if we had no cross-examination to make, we could make such argument with respect to their admission before your Lordship as we might find necessary to do, but I fail to see there is any motion necessary.

Mr. Chisholm: Possibly not.

Mr. Ker: If you produce your accounts we could then argue the matter.

20 Mr. Scott: It is a matter of the conclusions of the action. At the end of our conclusions we reserved our rights to sue for additional damages which, of course, would include these accounts, and we do not want your Lordship to render a judgment which might afterwards in the Court of Appeal be argued to be ultra petitory.

30 Mr. Montgomery: The only question I would suggest that should be enquired into is, on what my friends would base such a claim. If, as a matter of grace you have to ask the Court's permission in order to file a Supplementary Declaration, or to amend your present conclusions, you have, at least, to show some prima facie justification for making such a claim. As I read the Statute, there is not a word in that Statute that refers to any costs subsequent to the enactment of that Act. The Act was assented to in March last, and it specifies the costs that the Court should consider, "In fixing the compensation to be awarded to the said Cross, the Superior Court shall include such amount as it deems just for the disbursements, fees and costs incurred in such pending action and in connection with the passing of the present Act".

40 It deals with the matter section by section. There is nothing in section 4 upon which such a claim could even prima facie be based, because it obviously deals with the cost of the action petitoire and the costs of that litigation, and is obviously exhausted by the passage of that Act, because that disposed of the action en petitoire, and, of course, the Act itself was a thing of the past when it was passed.

Let us refer to section 5 of the Act to which my friends have referred:

"Such compensation shall be assessed and awarded to the said Cross in his said pending case against the Company, with such interest as the Court may deem proper, and the parties to

*In the
Superior Court*
No. —
Admission
Regarding
Exhibit P-113.
(continued)

the said case may under the control of the said Court, make such amendments to their pleadings and/or file such Supplementary Pleadings and submit such further evidence with respect to the new issues raised thereby as may appear proper to the said Court to give full effect to the provisions of this Act.”

10 In other words, that Act provided for the conclusion of the action en petitoire to make it an action to assess the value of the property, and also to fix the value of the lands which would be conveyed, etc., and the pleadings were authorized for that purpose; and it also necessarily authorized the admission of evidence in support of such pleadings, but as far as admitting extra judicial costs to be claimed as a claim, there is nothing in the Statute which touches on this insofar as the present action is concerned; unless there is something in this Statute which gives them the right, I don't know where they would get it any more than they would in any ordinary case. For that reason I would suggest if my friends do move the Court to be allowed to file a supplementary claim, that they should at least
20 say on what they base it, prima facie.

Mr. Scott: Your Lordship will remember before the Plaintiff closed his case in chief I stated that was our case, except for the accounts showing the costs, fees and disbursements to which the Plaintiff has been put.

His Lordship: It is not contested.

30 Mr. Scott: And there was a ruling by your Lordship on that at that time. Your Lordship stated that you could not know at the present time what those costs, fees and disbursements would be until the evidence was all in, so under that reserve the Plaintiff was given permission to file these accounts for costs, fees and disbursements at the conclusion of our case, and I have been relying on your Lordship's ruling given at the time when closing our case, that we could put in our costs, fees and disbursements when the case closed.

40 His Lordship: Depending upon any question of law. I think Mr. Ker's suggestion was a very good one. They will allow you to file the account.

Mr. Scott: Under reserve of all legal objection.

Mr. Ker: Of course, we register our objection to that, but they are there for the ruling of the Court, as to whether they are allowed or not.

*In the
Superior Court*

No. —
Admission
Regarding
Exhibit P-113.
(continued)

His Lordship: That will come later.

Mr. Ker: That will come as a part of your Lordship's judgment.

His Lordship: After having heard your argument on this point, but it is to avoid the motion or petition.

10 Mr. Scott: If your Lordship does not consider a motion necessary, that is another matter I was going to bring up; as I told my friend yesterday, it was impossible for us to have all these accounts ready for this morning. My learned friend said that as soon as they were ready I could show them to him and we would try and have them for tomorrow, and then they could be put in. Our argument will take a day or two.

His Lordship: Do you not think it would be better to finish your enquete?

20 Mr. Scott: Yes, I will complete my evidence.

Mr. Ker: I hope I have not in any way misled my learned friend. What I did tell him was this, that if these accounts were produced I would not require evidence on the part of other members of the Bar, for instance, to indicate that Mr. St. Laurent's services were worth so much, or Mr. Scott's services were worth so much, but I did not state that the accounts should go in without objection, but that I would waive my right of cross-examination with respect to
30 any persons who were produced to say what they were.

Mr. Scott: I find that your Lordship has a motion en delibere before you, in connection with the first branch of this case. Your Lordship will remember my friends moved to amend their defence by filing a supplementary plea stating that since the institution of the petitory action, they themselves had instituted proceedings before the Quebec Public Service Commission, and they asked permission to be allowed to file that supplementary plea. That motion, your Lordship will find, when you come to view the records, is still before
40 you en delibere. I have here a certified copy of the judgment of the Quebec Public Service Commission dated the 11th June, 1932, which I would like to file, as Exhibit P-148.

This matter was argued at Montreal on the 9th June, 1932, on motion of the respondent for the dismissal of the application. Counsel for the applicant admitted at the argument that he had no reason to advance why the motion should not be granted, and the only issue to be decided is the question of costs, and then the ques-

*In the
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No. —
Admission
Regarding
Exhibit P-113.
(continued)

tion of costs is dealt with. The sum of \$250 is fixed, and respondent's motion is maintained and the application is dismissed against applicant in the sum of \$250, etc.

That disposes of one of the motions your Lordship will find en délibéré in the record.

10 Mr. Ker: When this special Act was passed providing that your Lordship should fix compensation for damages, the question of the petitory action from the point of view of law question being out of the way, there was no need for our proceeding to have damages assessed by the Quebec Public Service Commission, knowing your Lordship was going to assess them. We merely withdrew our application to have them assessed by the Quebec Public Service Commission.

His Lordship: That is the motion to which your adversary has just referred and on which I rendered no judgment, so it is finished with.

20 Mr. Ker: It is practically out of the record.

30 Mr. Ker: My Lord, while Mr. Ralph was being examined the last time, he produced quite a long panoramic photograph which apparently has been mislaid out of the record. It was an important exhibit from the Defendant's point of view. It was a photograph which had been supplied to us by the Plaintiff some time ago, and we have made an intensive search for it. We have not found it, and my learned friend states his people have not got it. At any rate, we have applied to the photographer in Hull to have a copy made, and I received a telephone message this morning from Hull to the effect that they are sending down today a new copy by special delivery, and I would ask permission to produce that copy in lieu of the other one, as Exhibit D-187.

His Lordship: That is the exhibit number of the original?

40 Mr. Ker: That is the exhibit number of the original as endorsed, my Lord.

Mr. Scott: My Lord, Mr. Fellowes, the manager of the Dominion Bank at Ottawa, was called as a witness for the Plaintiff, and his deposition commences at page 609. He has written a letter saying that he wishes to correct one of the figures he gave there. He says: "Since I returned to Ottawa I find in looking over our correspondence at that time that I was wrong about the figure of \$160,000 borrowed approximately in 1921 by Cross. His total liabilities were

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No. —
Admission
Regarding
Exhibit P-113.
(continued)

in the neighbourhood of that amount, and that is what led me astray. His loans from the Bank were approximately \$50,000-\$60,000.”

He has written me this letter and I want to correct that.

Mr. Ker: Could not we have had this before? It is dated the 14th October. I would have liked to have known of that before. That reduces the figure of \$160,000 to \$50,000?

10 Mr. Scott: The information which is now given refers to the statement made by him at the bottom of page 610.

His Lordship: And not page 609.

Mr. Scott: Page 609 is the preliminary page where his deposition first starts.

His Lordship: Make the correction in the original deposition.

20 Mr. Scott: I will ask the Stenographer to put this statement I have just read into the record. It is at the bottom of page 610.

His Lordship: I want it corrected in the original deposition.

Mr. Scott: I will ask the Stenographer to add what I have just read from Mr. Fellowes' letter to the answer at the bottom of page 610 of Mr. Fellowes' evidence, and to put opposite it: "Corrected statement of Mr. Fellowes".

30 His Lordship: While we are on this subject, I would ask the attorneys in this case to see that the witnesses correct their depositions, if they have any corrections to make in order to close the matter, and do not forget to have it done in the original depositions. I will only take cognizance of the original depositions, not the copies, because they may vary.

40 Mr. Ker: We will see that the original evidence put into your Lordship's hands is corrected accordingly, and as to the depositions of other witnesses, if we cannot agree we may have to come before your Lordship on some points.

*In the
Superior Court*

No. 148.
Plaintiff's
Evidence.
In Rebuttal
(Supp. Hearing)
Carroll N. Simpson,
Examination
Nov. 17th, 1932.

DEPOSITION OF CARROL N. SIMPSON, A WITNESS PRO-
DUCED ON BEHALF OF THE PLAINTIFF IN REBUTTAL

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

CARROL N. SIMPSON,

10 a witness already examined, now called on behalf of the Plaintiff in rebuttal, who, being duly sworn, doth depose and say as follows:

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

Q.—With reference to these photographs which were put in by you, D-155, D-156 and D-157, which are referred to at page 178 of your evidence, I understand you now tell me they were taken on May 14th, 1932?

20 A.—That is the date when we got the proofs back from the photographer.

Q.—They were taken, then, on the spot a few days before?

A.—A few days before, on May 14th, 1932.

(No cross-examination.)

(And further deponent saith not.)

*In the
Superior Court*

No. 137.
Plaintiff's
Evidence.
In Rebuttal
(Supp. Hearing)
N. B. MacRostie,
Examination
Nov. 17th, 1932.

30 DEPOSITION OF NORMAN B. MACROSTIE, A WITNESS
PRODUCED ON BEHALF OF PLAINTIFF
IN REBUTTAL

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

NORMAN B. MACROSTIE,

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

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

Q.—Yesterday Mr. Stenhouse, of the Canadian Pacific Railway, put in a sketch plan as Exhibit P-131 showing a new proposed spur leading to Mr. Cross' mill, and he said that the profile elevations had been furnished to him by you?

*In the
Superior Court
No. 137.
Plaintiff's
Evidence.
In Rebuttal
(Supp. Hearing)
N. B. MacRostie,
Examination
Nov. 17th, 1932.
(continued)*

A.—That is correct.

Q.—And the elevations that you gave him are correct?

A.—Yes.

Q.—In stating your qualifications both in the first branch of this case, and in this case, I have forgotten whether you said you were a Dominion Land Surveyor or an Ontario Land Surveyor?

A.—I am both.

10

(No cross-examination.)

(And further deponent saith not.)

Mr. Scott: Subject to our right to produce our accounts for professional services rendered for the last two months, I declare our case closed.

His Lordship: Once these statements are filed, do you want to make evidence on them as to the value of the services.

20

Mr. Scott: I think my learned friends will agree with me that if these witnesses were called they would simply depose that those accounts were proper.

Mr. Montgomery: The only question is as to the time they appeared.

Mr. Scott: If necessary we want to reserve our right to make proof upon them in the ordinary way.

30

His Lordship: That will delay matters. Why don't you bring the witnesses here to prove those accounts?

Mr. Scott: I don't know, my Lord, when the case can be termed closed. My learned friends told me last night they might have some sur rebuttal.

His Lordship: Are you ready to go on with your sur rebuttal?

40

Mr. Scott: I would ask the right to reserve these accounts and make proper proof upon them.

His Lordship: You may do so provided it does not take too long.

Mr. Scott: There is one other point, my Lord—I don't know whether it calls for a motion in the record, but on checking over

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Superior Court*

No. 137.
Plaintiff's
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(Supp. Hearing)
N. B. MacRostie,
Examination
Nov. 17th, 1932.
(continued)

10 this record last night I found it would be necessary for us to move that paragraph 28 of the Plaintiff's Supplementary Declaration, that is, the one that deals with costs, fees and disbursements claimed by the Plaintiff, that in order to make paragraph 28 conform to the facts proved, the sum of non-taxable stenography costs proved in this case, be added. Those are the non-taxable costs of Messrs. Kenehan and Bush, which I think, amounted to something in the neighbourhood of \$1,100. They were proved in the case without objection by either side, and I find they were not included in the original preparation of that account, so your Lordship in dealing with paragraph 28 will have in the paragraph a mention of the accounts of Messrs. Kenehan and Bush for non-taxable stenography.

Mr. Ker: Just what do you mean by non-taxable stenography?

20 Mr. Scott: I refer to the copies of depositions we got day by day, and the transcript of the argument. Your Lordship will remember they were put in without objection from my friends at the time, and it has been proved, and I would like to move that this paragraph be amended by adding that item to agree with the facts. It is put in without any objection by my friends, and duly proved in the record, but it does not happen to have been included in this list enumerated. It is certainly one of the items of costs, fees and disbursements which the Plaintiff has had to incur. It was proved by Mr. Bush, when he gave evidence that we received day by day only one copy of the depositions and that the Defendant Company received day by day two copies of the transcript.

30 Mr. Ker: The Defendant is not asking you to pay for the two copies.

Mr. Scott: The controlling thought in the Act is, whatever disbursements, fees and costs incurred in the action, shall be paid if deemed proper by your Lordship, and those have been proved. Your Lordship can deal with them in whatever way you think the law requires they should be dealt with, but I want them to be added to paragraph 28 because they have been proved and have been put in without objection.

40 His Lordship: You can amend that. There is no objection to that.

Mr. Ker: I do not think there is. The only item is for the daily transcript, the copy of the evidence for my learned friend. I am sure it was merely a convenience for him to have a daily transcript, but strictly speaking I think it is a luxury to supply my learned

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friend with something which is not contemplated by the Act or the law.

His Lordship: That will be a matter for argument. I am not prepared to decide at once whether I shall allow it or not. It is a question of procedure just now, adding that paragraph to paragraph 28. You can make it paragraph 28-A.

10 Mr. Scott: Yes, my Lord.

That closes the case for the Plaintiff, my Lord.

Mr. Ker: Do I understand my learned friend has definitely closed his case.

Mr. Scott: Subject to my reserve.

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Superior Court*

No. 149.
Plaintiff's
Evidence.
In Rebuttal
(Supp. Hearing)
J. M. Robertson,
Examination

20 DEPOSITION OF JAMES M. ROBERTSON, A WITNESS
EXAMINED ON BEHALF OF THE PLAINTIFF
IN REBUTTAL

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

30 JAMES M. ROBERTSON,

already sworn, who being recalled as a witness on behalf of the Plaintiff in Rebuttal, deposes as follows:—

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

40 Q.—Will you file, as Plaintiff's Exhibit P-149, a statement of your account for professional services rendered in this case between August 9th, and November 17th, to Messrs. MacDougall, Macfarlane & Barclay, for account of Freeman T. Cross?

Mr. Ker: I object formally to those accounts in general, and I object in particular to the account now offered by the witness.

I like at all times to be courteous to your Lordship and to Counsel, and I trust I am not discourteous in saying that the accounts which were sent to me this morning by my learned friends

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Plaintiff's
Evidence.
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(continued)

10 are, in my opinion, absolutely unfair and unjustified as a charge against the Defendant in this case. As I have them up to now they amount to something like \$12,000, without the account of Messrs. MacDougall, Macfarlane & Barclay, or the account of Mr. St. Laurent. Those are accounts for witnesses, and the account now offered as an Exhibit is for the amount of \$1,890.00, for attendance in Court for a certain number of days at \$150.00 a day. I do not know what Mr. Robertson may have been doing in Court. As a matter of fact, he was not examined in Court at all, but was examined by my learned friend and cross-examined by myself at his house for half a day.

I submit it is absolutely unfair for my friend to attempt to produce an account of this character, and it is not justified either in the letter or the spirit of the Special Act to produce before the Court accounts for the attendance of witnesses who have not given evidence, just because it is believed those accounts will form a charge against a wealthy Corporation.

20 Mr. Scott: My friend has no right to make a statement of that kind, and I object to it.

Mr. Ker: I cannot conceive it possible that any ordinary litigant would go to the expense of having experts such as Mr. Robertson in Court for twelve and a half days without giving evidence.

30 We have also been given communication of an account from Mr. Langford, a geologist, for fifteen days, \$2,100.00. Mr. Langford was under examination only for a short time, and if he has any account at all I submit it could not possibly be for more than one day. If his evidence was necessary to the Plaintiff's case, he should have been called as an expert witness, and taxed accordingly.

In any event, I ask your Lordship's protection against such outrageous extra-judicial accounts as those which are now to be offered in evidence, and I would ask your Lordship, if you see fit to admit the accounts, that you should do so under reserve of my formal objection to them.

40 His Lordship: I suppose what will ultimately happen in regard to those accounts will depend upon the question of law?

Mr. Ker: We will argue the question of law later, but I felt I should be of record as objecting to the production of the accounts, because I believe the amounts they represent are simply outrageous.

Mr. Scott: You will have an opportunity of cross-examining the witness.

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Evidence.
In Rebuttal
(Supp. Hearing)
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Nov. 18th, 1932.
(continued)

Mr. Ker: How can I cross-examine him? He says, according to his account, that he has been in Court for twelve and a half days, and his charge is \$150.00 a day.

His Lordship: I will allow the evidence under reserve.

Mr. Scott: My learned friend has made a very long speech in support of his objection.

10 His Lordship: And he may be right.
I think you might prove the value of the services first, and then we may discuss the question of law later.

BY MR. SCOTT (continuing):

Q.—Your account is for twelve and one-half days?

A.—Twelve and one-half days; a total of \$1,890.50.

Q.—Does that include also a trip to Farm Point?

20 A.—That includes one trip to Farm Point, with the incidental expenses.

Q.—What did you do at Farm Point?

A.—The trip was made at that time for the purpose of determining the character of the soil underlying the piling ground, with some particular reference to checking up the observations which had been previously made, to assure ourselves that they had been accurate.

BY THE COURT:

30 Q.—You were there one day, I understand?

A.—One day, your Lordship.

Q.—What is your charge for that day?

A.—\$150.00. There is also an item of \$15.50 for expenses.

BY MR. SCOTT (continuing):

Q.—You have been a member of the Engineering profession for a number of years, and have practiced your profession in Montreal?

40 A.—I have been practising privately since 1908.

Q.—And is \$150.00 a day a charge you usually make to your clients?

A.—It is the charge I make to my friends or to clients who are to some extent associated with me in other businesses. It is a lower charge than I make to strangers, as a rule.

Q.—So your charge to Mr. Cross is lower than the charge you would make to an absolute stranger?

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(continued)

A.—Yes, it is.

Q.—Some reference has been made to your presence in Court. Were you here at my request?

A.—I was asked by you to be in Court on those occasions. I was unable to be in Court for a matter of two weeks, during which time I understand Mr. Beaubien was in attendance to advise you on such matters of engineering as might arise.

10 Q.—You noticed, I suppose, our friends the Defendants were not lacking in technical advisers to their Counsel during this trial?

Mr. Ker: I do not think that is a fair question.

Mr. Scott: My friend Mr. Ker has made the statement that it was unnecessary for Mr. Robertson to be in Court. It is my contention that with all those technical engineering questions coming up, on which my friends were being advised by Messrs. Beïque, Woollcombe, Ralph, Blue, and others, it was absolutely essential for us to have somebody here to advise us.

20 Witness: I understood it was because the Defendant was so well represented by engineering advisers that you felt it was necessary you should also be assisted.

BY MR. SCOTT (continuing):

Q.—When you say “represented by technical advisers” you mean assisted by technical advisers in Court?

A.—Yes.

30 Q.—Able to assist their Counsel?

A.—Able to assist their Counsel in developing their case, and in defending any statements they made and in taking exception to any statements which your witnesses might make.

Q.—Of course his Lordship knows the facts, but this case may go to a higher Court. With that in view, and for the sake of the record, can you recall some of those who were in constant attendance?

40 A.—I recall Mr. Woolcombe (who is here now) was in constant attendance. Mr. Beïque was here nearly all the time. Major Blue was here a large part of the time. Mr. Ralph was here a very large part of the time. Mr. Simpson was here a considerable part of the time, particularly during the hearing of the technical evidence.

Those are all I can recall on the spur of the moment. Of course there were others who came in, for shorter periods of time.

Q.—During the progress of the trial were you advising Mr. St. Laurent or myself in connection with matters that arose during the taking of evidence?

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Plaintiff's
Evidence.
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(continued)

A.—I was watching the progress of the case here, and advising you in the Court room, and at your office, in view of what had transpired.

Q.—With regard to the period of time occupied, is some of it represented by time spent at our office, or does it all represent time spent in Court?

His Lordship: Does not the account speak for itself?

10 Witness: Yes, your Lordship, it does.

In many instances there were conferences after Court hours, which lengthened the time, but those are only called part of the day.

BY MR. SCOTT (continuing):

Q.—Does this account represent Court days only, apart from conferences at our office?

20 A.—It represents days when I remained in Court for half a day, or the whole day. In several instances there were conferences either before Court or after. There were some other incidental conferences, which do not appear on this at all and for which I made no charge.

Q.—Those would be conferences at our office, or at your house?

A.—Conferences at your office. The days in Court, and the half-day at my house, are included in this account.

Cross-examination

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

30 Q.—I hope you will not think I am in any way deprecating your well-known ability as an engineer if I ask you a few questions on the account.

You said you had been to Farm Point once?

A.—Once in this period.

Q.—I notice that trip to Farm Point was in August last?

A.—Yes.

Q.—That was before this trial began?

A.—Before the trial began in Court, yes.

Q.—Were there any borings being made at that time?

A.—There had been, and there were being.

40 Q.—At that time, in August?

A.—Yes.

Q.—I see you have half a day in Court on October 5th. Did the Court sit on October 5th?

A.—The date was taken from my office record.

Q.—As a matter of fact, the Court did not sit on October 5th?

A.—Then I accept your correction. It must have been a conference, which, by error, has been marked as a day in Court.

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Superior Court*

No. 149.
Plaintiff's
Evidence.
In Rebuttal
(Supp. Hearing)
J. M. Robertson,
Cross-examination
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(continued)

Q.—You say you were asked to be in Court by Plaintiff's Attorneys, with a view to advising them on the various technical matters which might arise? Was Mr. Beaubien in Court all the time you were here?

A.—He was not in Court every day when I was here, but I understand he was in Court some days I was not here.

Q.—What days was he in Court when you were not?

A.—I can only tell you what I understand. You will notice there is no item on this account from October 7th to October 20th. I was incapacitated during that time, and I understand Mr. Beaubien was in Court. Of course, I cannot swear definitely to it.

Q.—I think you have explained that in your testimony in chief. On how many days when you were in Court was Mr. Beaubien also in Court?

A.—I cannot tell you that exactly because I made no note of it.

Q.—Is it not a fact he was in Court every day you were here?

A.—Not every day, but nearly all.

Q.—So that actually the Plaintiff was not without a technical adviser in the same line of professional activity as yourself during that time?

A.—No. When I was in Court the Plaintiff had whatever advantage there might be in my advice, and he may have felt he needed some further advice. Of course, it was not my business to question whether Mr. Beaubien should be in Court or not.

Q.—You have spoken of some of the witnesses who were in Court for the Defendant. A list of names was mentioned. Apart from Mr. Beïque, can you give me the names of any witnesses who were here on technical matters and who are not salaried officials of the Defendant Company?

A.—I have no special knowledge as to whether they were salaried officials of the Company or not.

Q.—Do you or do you not know they are employees of the Company?

A.—I know some of them are.

Q.—Do you not know that they are all salaried employees of the Company, apart from Mr. Beïque? Let me mention some of the names to you: Major Blue, Mr. Woollcombe, Mr. Ralph, Mr. Simpson?

A.—I did not know whether Mr. Ralph was or not, I know Mr. Woollcombe, Major Blue and Mr. Simpson were employees of the Company.

BY MR. SCOTT:

Q.—What about Mr. Lea?

A.—Mr. Lea was not. I know he was here.

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Superior Court*

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Plaintiff's
Evidence.
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(Supp. Hearing)
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Cross-examination
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(continued)

Q.—What about Mr. Chadwick?

A.—I do not believe he is connected with the Company.

BY MR. KER (continuing):

Q.—Mr. Lea was here half a day, and Mr. Chadwick was here only during the time he was under examination.

10 Witness: Mr. Chadwick, I know, is not an employee, but he was here.

(And further deponent saith not.)

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Superior Court*

No. 148.
Defendant's
Evidence.
In Sur-Rebuttal
(Supp. Hearing)
Carroll N. Simpson,
Examination
Nov. 17th, 1932.

DEPOSITION OF CARROL N. SIMPSON, A WITNESS PRODUCED ON BEHALF OF DEFENDANT IN SUR-REBUTTAL

20

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

CARROL N. SIMPSON,

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

30

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

Q.—Mr. Simpson, in your original examination you referred to giving a certain amount of horsepower to Mr. Cross to repay him for that which had been taken from him by reason of the reduction in his head. I understand that it is possible to inject that horsepower into Mr. Cross' system?

40

Mr. Scott: I object to Mr. Simpson being examined again. Mr. Simpson went into this evidence in his examination in chief and was cross-examined upon it. Mr. Beaubien yesterday met it with his evidence, and your Lordship will decide which evidence is the most weighty.

His Lordship: I will allow this evidence under reserve.

A.—Yes.

*In the
Superior Court*

No. 148.
Defendant's
Evidence.
In Sur-Rebuttal
(Supp. Hearing)
Carroll N. Simpson,
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(continued)

BY MR. KER:

Q.—Mr. Beaubien stated yesterday that it was a possibility, but that it would be an uneconomical possibility. Would you state what it would cost per horsepower—your estimate of Mr. Cross' loss was four horsepower, and Mr. Beïque's estimate was for twelve horsepower. Would you state what the Westinghouse apparatus for the purpose of bringing that power into Mr. Cross' lines would cost for four horsepower and for twelve horsepower?

10 A.—For four horsepower the cost would be \$350 ,and for twelve horsepower the cost would be \$650.

Q.—I suppose the question of whether you did that would depend on whether you merely took money and bought the power, or whether the power was put into the System itself?

A.—Yes.

Cross-examination

CROSS-EXAMINED BY MR. SCOTT, K.C.,
OF COUNSEL FOR PLAINTIFF,
20 UNDER RESERVE OF OBJECTION:

Q.—Do you know where this is being done?

A.—This is only a modified form of frequency changing apparatus as is being done in a dozen of the large Power Companies in the States that interchange power between different Systems.

Q.—But as regards Mr. Cross' System, do you know of any comparable situation in Canada, to your knowledge?

A.—I do not recall any just at present in Canada.

30 (And further deponent saith not.)

*In the
Superior Court*

No. 150.
Defendant's
Evidence.
In Sur-Rebuttal
(Supp. Hearing)
Marshall C. Small,
Examination
Nov. 17th, 1932.

DEPOSITION OF MARSHALL C. SMALL, A WITNESS PRO-
DUCED ON BEHALF OF DEFENDANT IN SUR REBUTTAL

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

MARSHALL C. SMALL,

10

a witness already examined, now called on behalf of the Defendant
in Sur Rebuttal, who being duly sworn doth depose and say as
follows:

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

20

Q.—Mr. Small, in your evidence you referred to the possibility
of utilizing land to the north and west of this red line marking the
piling ground, on plan D-160, and you spoke of relocating the C.P.R.
spur to make that available as a portion of the reclaimed piling
ground. The Plaintiff has produced as Exhibit P-131 a certain pro-
file indicating a spur which runs through rock, and costing \$16,000,
5,000 yards of rock cut. Will you examine Exhibits D-160 and P-131,
and state whether there is any connection between the spur which
you suggested and the spur which is suggested by Exhibit P-131?

Mr. Scott: I make the same objection, my Lord.

30

(Same reserve.)

A.—No. I spoke in my evidence of relocating the yard back
of 324 and arranging a siding by either raising the present one that
has been affected by the water, or locating the siding nearer to the
324, but not going around in the location.

BY MR. KER:

40

Q.—As a matter of fact, this siding shown on P-131 would
appear to go off Mr. Cross' property entirely?

A.—I could not say that. The sidings in our yard cost \$5,000
a mile. We have five miles of siding in our yard.

Mr. Chisholm: This is going far beyond the question Mr. Ker
asked the witness.

*In the
Superior Court*

No. 150.
Defendant's
Evidence.
In Sur-Rebuttal
(Supp. Hearing)
Marshall C. Small,
Examination
Nov. 17th, 1932.
(continued)

Cross-examination 10

Mr. Ker: I presume Mr. Small was making an amplification of his answer, because he says his own siding cost \$5,000 a mile, and here we have one of 1,200 feet which is \$16,000.

Witness: I was going to continue and say what I had in mind.

His Lordship: It is not necessary.

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

Q.—Under reserve of my objection, I would refer you first of all to your previous testimony at the bottom of page 799, in which you were asked:

20 “ 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 back of it, but the yard would have to be relocated.

BY THE COURT:

30 Q.—That would be north of the place?
A.—It would be northeast. It would be further away from the mill.”

A.—It is really directly north.

Q.—Then, by Mr. Ker later on:

“ Q.—Between 324 and the road practically?

A.—Between 324 and the road.”

40 Then you deal with the space that would be available. Then, there is a discussion about insurance matters, and at page 802 you come back to the subject of the new piling ground:

“ Q.—Would the use of the land that you spoke of without any reference to this red portion (that is the portion edged in red) 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 clear from the mill in a different manner. The trestle would not

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Marshall C. Small,
Cross-examination
Nov. 17th, 1932.
(continued)

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?

A.—The spur siding would also have to be brought over closer to the new piling space.”

10 I am asking you these questions under reserve of my objection to the admissibility of this testimony. You told us you were not an engineer?

A.—Will you continue?

“ Q.—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.”

20 You contemplated clearly by those answers putting a spur line on this property to the north of the piling ground edged in red. Can you suggest any other site for the spur line going in north of this red property than that suggested yesterday by the C.P.R. Engineer who was in the box?

A.—I said one part did not need to be raised, but the siding alone could be raised and still used.

Q.—You said relocated, “ The spur line would have to be relocated”?

30 A.—No, I do not think I said that.

Mr. Montgomery: “ The piling ground would be relocated.”

BY MR. SCOTT:

Q.—Do not let us play with the English language. “ The spur siding would also have to be brought over closer to the new piling space.”

How would you start bringing it over? That is at page 802 of your testimony. Bringing it over does not mean raising it?

40 A.—I really believe that railroad can be brought in by a spur nearer to where the new piling ground would be without going on other people's property.

Q.—Just what do you mean by that? Would that maintain the present curve of the spur?

A.—I could not tell you that from the map.

(And further deponent saith not.)

*In the
Superior Court*

No. 151.
Defendant's
Evidence.
In Sur-Rebuttal
(Supp. Hearing)
Claude E. Ralph,
Examination
Nov. 17th, 1932.

DEPOSITION OF CLAUDE E. RALPH, A WITNESS PRO-
DUCED ON BEHALF OF DEFENDANT IN SUR-
REBUTTAL.

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

CLAUDE E. RALPH,

10

a witness already examined, now called on behalf of Defendant in sur-rebuttal, who, being duly sworn, doth depose and say as follows:

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

Mr. Scott: I renew my objection to the examination of this witness.

20

(Same reserve.)

BY MR. KER:

Q.—You have already given testimony with respect to the piling ground?

A.—Yes.

Q.—Did you hear the testimony given yesterday by Mr. Stenhouse, Engineer of the Canadian Pacific Railway, with respect to a
30 proposed spur in on to the Cross property?

A.—Yes, I heard it.

Q.—In your opinion, is the location given by Mr. Stenhouse for such a spur a possible or wise engineering proposal?

(Same objection.)

(Same reserve.)

A.—It certainly is a possible proposition, but extremely unwise
40 from an economical standpoint.

Q.—There was also some question of spending \$60,000 on this piece north of the red line, in order to put it into a condition to be used as a piling ground. Will you just indicate to me what your idea of rearrangement of the spur would be, in order to make use of that piece north of the red line, and what the cost would be along the basis of Mr. Small's suggestion?

*In the
Superior Court*

No. 151.
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(continued)

Mr. Scott: Surely my friends in sur-rebuttal are not going to put in one of their own engineers again to start another theory about piling grounds and figures.

His Lordship: I have decided to allow it under reserve. Let us finish.

10 A.—This is a copy of D-160. I projected a line across the property above the 324.5 contour, that is, a spur line connecting with the C.P.R. main line and that sawmill, and I conform to Mr. Stenhouse's specification of a sixteen-degree curve. I will have to mark the beginning and the end on the Exhibit D-160.

BY MR. KER:

Q.—Mark it some way.

20 A.—I mark it X-K at the C.P.R. end and X-L at the mill end of the spur, and I draw in freehand a line joining these two points, roughly. This line is very roughly drawn.

BY MR. SCOTT:

Q.—I ask that you now rub out the line you have just put on D-160, because it makes the other line unintelligible.

BY MR. KER:

30 Q.—If it is going to help or simplify matters, put in your plan?
A.—It is on here already.

His Lordship: File the plan.

BY MR. KER:

Q.—Will you file your plan as Exhibit D-204?

A.—Yes.

Q.—What would the cost of a siding of that kind be?

A.—The cost would be \$2,325.

40 Q.—And what work would that require on the land north of the red line, to make it available as piling ground?

A.—You would have to do very little work, except grading the surface ground to conform to the new spur line.

Q.—It would not be a question of making great cuts in the rock. It would be a question of grading the land?

A.—According to the evidence yesterday, it would be extremely expensive railroad work comparable to a main line of any railroad,

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and not an industrial spur, to make a new piling ground, suggested, namely, of that average depth of 10.9 feet of solid rock. Mr. Beau-bien said he was figuring on one and one-quarter acres, which would give him 21,800 cubic yards of rock, and I figured it out to be an average of 10.9 feet of solid rock.

Q.—For the purpose of making the piling ground?

A.—For the purpose of making the piling ground.

10 Q.—Instead of filling it in and making it level to go up to the spur?

A.—To conform with doing it in an economical manner.

Cross-examination

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

20 Q.—Inasmuch as you have put in D-204, we have now decided to remove your pencil line that you have just placed on D-160, and you and Mr. MacRostie have marked Mr. Stenhouse's spur line location in yellow, superimposed upon the pencil line he had yesterday?

A.—And marked with an arrow, "Approximate location of proposed new spur", initialled "R.H.S.".

Q.—I am looking at D-204 and your proposed spur is marked with what you call

A.—A double dotted line.

His Lordship: That is a yellow line?

30 Mr. Scott: That is Mr. Stenhouse, on D-160. This is Mr. Ralph's.

BY MR. SCOTT:

Q.—You will notice that proposed new spur of yours is full of curves?

A.—Not any more so than the others.

Q.—Than the one proposed by Mr. Stenhouse?

A.—No.

Q.—Honestly? Look at the two?

40 A.—I saw this yesterday.

Q.—Seeing it today. They are both side by side in front of you?

A.—I am seeing it right now.

Q.—And you think your proposed new spur is as straight and easy to operate as the one of Mr. Stenhouse, who is the spur expert for the C.P.R.?

A.—The first 500 feet is on a continuous curve. The first 500 feet from the C.P.R. on Mr. Stenhouse's location is a continuous curve.

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Q.—And what do you call the degrees, or angles?

A.—Maximum curvature.

Q.—What is the maximum curvature?

A.—Sixteen degrees, as Mr. Stenhouse said yesterday, and I figure a sixteen-degree curve for my maximum on this Exhibit D-204. The only difference is, I have a reverse curve and Mr. Stenhouse has a continuous curve.

Q.—You have a reverse curve all the way up?

10 A.—Not all the way up. I curve to the right, and have a short tangent and then curve to the left.

Q.—Does that mean you are picking your way in and out in snake fashion between the outcroppings of the rocks?

A.—That is your description.

Q.—Does it mean that?

A.—No.

Q.—What does it mean?

A.—It means exactly what I say.

Q.—Why did you not set it straighter?

20 A.—Because I did not need to.

Q.—What is the length of your proposed spur as compared with the one put in by Mr. Stenhouse?

A.—Mine is about eighty feet longer.

Q.—Only eighty feet longer?

A.—That is all.

Q.—Will you just check that for me?

A.—With a scale?

Q.—Yes.

30 A.—Here is my scaling on here already. My scaling is marked 1,080 feet on D-204 to the centre line of the C.P.R., which is about eighty feet longer than the original spur joining Mr. Cross' mill to the C.P.R. Mr. Stenhouse said yesterday that his new location was about the same length as the old spur, and therefore I conclude mine is eighty feet longer.

Q.—Let us take this interesting spur of yours, which I suppose you have just planned out since you heard Mr. Stenhouse give evidence yesterday?

A.—Absolutely.

Q.—You made it all up since yesterday?

40 A.—Last night.

Q.—First of all, I notice that the spur would enter this upper portion of Mr. Cross' property in the reverse way from which the present siding does?

A.—Yes, in the reverse way.

Q.—Why did you do that?

A.—To fit my line to the ground available.

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(continued)

Q.—Do you imagine the C.P.R. would have accepted a siding being put, entering in the reverse position from the other one?

A.—Why wouldn't it?

Q.—Do you know that they would, and on the other side of the curve?

A.—Well, as a railroad engineer, I would recommend that they would, and I have been a railroad engineer.

Q.—I wonder why the original one went in from the reverse position?

10 A.—Because the original one is by far the best position in Mr. Stenhouse's, the original siding.

Q.—Or in yours would it not be the best position?

A.—No, of course not. The spur line as it is today is the best position.

Q.—Or as it was in 1926 perhaps?

A.—Or as it was in 1926, and is in 1932.

Q.—Is by far the best?

A.—Is by far the best location for a spur to this mill.

20 Q.—And you are not absolutely wedded, then, to this new proposed spur of yours, or of Mr. Stenhouse?

A.—I am certainly not wedded to either of them, but I am less wedded to Mr. Stenhouse's than I am to my own.

Q.—Following along this spur of yours, how many curves are there in it?

A.—There are three main curves.

Q.—What is the greatest degree?

A.—Sixteen degrees.

Q.—In curvature?

30 A.—There is a sixteen-degree curve. The maximum curvature is a sixteen-degree curve.

Q.—What is the minimum?

A.—About three or four degrees.

Q.—Did I understand you to say you had given the cost of that?

A.—Yes.

Q.—What was the figure?

A.—\$2,325.

Q.—And that was based upon the ground each side of it being used for piling lumber and ties and slabwood?

40 A.—Surely.

Q.—Or was it based on merely running the spur into the mill?

A.—It was based on a located line as easy as possible, and without taking any work heavier than necessary, and so as to be of practical use for the piling ground alongside of it.

Q.—Your proposal is based on making this spur in the cheapest way possible?

A.—Not necessarily the cheapest way.

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(continued)

Q.—I do not mean of the cheapest material, but in the most economical manner?

A.—In the most economical way.

Q.—You see these elevations on this plan?

A.—Yes.

Q.—Is not the reason for these curves due to the fact that you want to avoid rocky ledges?

A.—No.

10 Q.—That would mean going in and out of the rocks where it was feasible to do so?

A.—No, not necessarily within reason. I have 400 yards of rock.

Q.—Did you make an estimate of what it would cost if the line proposed by Mr. Stenhouse had been followed as to how much rock had to be blasted out?

A.—I looked at Mr. Stenhouse's estimate, and I did not check his quantities, but I am satisfied that if the grade of that spur was put where Mr. Stenhouse has put it, that it probably would cost that much.

20 Q.—And in making up this plan of your proposed spur line, did you take into account any levelling would have to be done on either side of the spur for piling purposes?

A.—Surely I did.

Q.—How much excavation would have to be done according to you to give a level piling ground?

A.—1,200 cubic yards of rock at \$2.00 a yard, \$2,400. I would have to level it at four different points.

Q.—At four different points?

30 A.—At four different points to make it a practical piling ground. I will correct that, my Lord. I estimated what work would have to be done to smooth out the surface of the ground on a rising slope, not to make it perfectly level. I did not think it was necessary.

Q.—Now we are getting to understand each other. Your proposed new piling ground would be a sloping piling ground?

A.—A gradual sloping piling ground.

Q.—And what would the grade be?

A.—The grade would possibly be three or four per cent—three or four feet in the hundred in some places.

Q.—And in other places?

40 A.—There would be no place any greater than that. It might go to six per cent.

BY MR. KER:

Q.—Is that any greater than the natural piling ground?

A.—No, there are places in the present piling ground where there is a different elevation.

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BY MR. SCOTT:

Q.—You have not made any estimates to build a level piling ground there?

A.—No, I have not.

Q.—And this whole testimony you have given just now was evolved by you, or suggested to you last evening?

A.—Suggested by whom?

10 Q.—I don't know, and I don't care, but you have worked out this whole scheme or proposal since last evening, have you not?

A.—Since I heard Mr. Stenhouse's evidence.

Q.—With this new spur line and this new piling ground, what would your average elevation be?

A.—The grade elevation of the piling ground?

Q.—You have said you are putting a spur line into the mill, and you are going to have a piling ground around it; what would the average elevation be, according to you?

A.—Of the spur or of the piling ground?

20 Q.—Of the piling ground?

A.—I cannot tell you that.

Q.—You cannot tell that?

A.—No, unless I get my notes, but I took very little off the surface. I levelled it from the spur to the back of the property.

Q.—You told us very frankly you are not wedded to Mr. Stenhouse's spur line, and you are not wedded to your spur line. Let us be perfectly frank?

A.—That is the truth. I think they are both absurd.

30 Q.—Are you wedded to that area being used as a piling ground at all, as compared with the piling ground prior to the flooding? Let us have an answer to that. Take your time in answering?

A.—You had better change the verb. That verb possibly is not a very good word. You asked me if I am wedded to it. Ask a straight question?

Q.—Are you wedded to that area on each side of the spur, or on Mr. Stenhouse's side of the spur being used as a piling ground?

Mr. Ker: The witness insists he is not wedded to anything. If you changed the word "wedded" he will answer the question.

40 BY MR. SCOTT:

Q.—Or would you recommend the area on the other side of Mr. Stenhouse's spur as a piling ground?

A.—Not if there were other piling grounds available.

Q.—Would the grade of your proposed spur line be below the level of the mill, or would it be about the same height or above the

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level of the mill. You told us you were going to take off very little at the top?

A.—You asked me if the proposed spur would be below the mill. You mean the mill site?

Q.—Yes.

A.—It would all be below it.

Q.—Putting your spur where you would put it, how much would it be below the level of the mill?

10 A.—The 200 feet joining the mill is the same as the spur that is there now.

Q.—But lower down?

A.—I will give you the grades all the way if you want to put it in the record.

Elevation 332.4, station 1, plus 100. That is 100 feet further down.

BY MR. KER:

20 Q.—That is going from the mill down?

A.—That is going from the mill down.

329 is at elevation 329.3. It is the same as the present spur on the ground. There has been no change as yet.

Station 2, elevation 327.1. That is 200 feet further down. The elevation of the ground is 327.1, practically the same as the present spur. From here we curve to the north.

Station 3, 327.1.

Station 4, 327.1.

Station 5, 327.1.

30 Station 6, 327.1.

Station 7, 325.0.

Station 8, 323.5.

Station 9, 325.4.

Station 10, 327.5—10 plus 80; the main line of the C.P.R. back to grade on 329.5.

BY MR. SCOTT:

40 Q.—How do the elevations of that proposed spur of yours compare with the elevations of the original spur line of Mr. Cross?

A.—If you take any certain point

Q.—Roughly speaking, then, your proposed new spur around the center of it would be five, six or seven feet higher than the spur presently used?

A.—Yes—say five feet in the center. The ends would be the same. The beginning and the end is the same.

Q.—Because the mill is from them both?

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Claude E. Ralph,
Cross-examination
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(continued)*

A.—Yes, and the C.P.R.

Q.—And the C.P.R. main line is from them both?

A.—Yes.

Q.—You conclude that this original area edged in red on Exhibit D-160 would be an infinitely better piling ground than the one you have been talking about just now?

A.—It is preferable, yes.

Re-examination 10

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

Q.—I take it then, that you adhere to your original device that the part coloured in red should be filled in and the other siding used?

A.—Undoubtedly.

Q.—And it is only in the event of this expensive alternative suggested by Mr. Stenhouse. . . .

Mr. Scott: Not suggested by Mr. Stenhouse, suggested by your witness, Mr. Small. 20

BY MR. KER:

Q.—You have made this proposal on plan D-204 to indicate that even if it were necessary to use the part north there could still be produced upon it a proper siding at the cost you have mentioned, instead of at a cost of \$16,000 mentioned by Mr. Stenhouse?

A.—That is approximately what I have done. I have tried to show if it were necessary, this portion of land north of 324.5 could be used at a much lower price than the prices suggested yesterday by Mr. Stenhouse and Mr. Beaubien. 30

Q.—But your original suggestion that this present siding is the ideal one still stands?

A.—Absolutely.

BY MR. SCOTT:

Q.—Of course, then you are dealing with one kind of piling ground, namely, a level piling ground?

A.—I am utilizing the only ground in an economical way. 40

Q.—With a graded piling ground?

A.—With a certain grade for piling ground, yes.

(And further deponent saith not.)

*In the
Superior Court*
No. 140.
Plaintiff's
Evidence.
(Supp. Hearing)
De Gaspé
Beaubien,
Examination
Nov. 18th, 1932.

DEPOSITION OF DeGASPE BEAUBIEN, A WITNESS
EXAMINED ON BEHALF OF THE PLAINTIFF

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

DeGASPE BEAUBIEN,

10

of the City and District of Montreal, already sworn, who, being
duly called as a witness on behalf of the Plaintiff, deposes as
follows:—

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

20 Q.—Will you file, as Plaintiff's Exhibit P-150, your account for
professional services rendered to Mr. F. T. Cross in connection with
the supplementary proceedings in this case?

Mr. Ker: This is subject to my objection.

His Lordship: It is taken under reserve of your objection,
and it is understood your objection will apply to all evidence of this
character.

Witness: Yes.

30 BY MR. SCOTT (continuing):

Q.—I see it covers sixteen and one half days attendance in
Court, at \$100.00 a day?

A.—Yes.

Q.—Then, there is a trip to Ottawa?

A.—Yes.

40 Q.—Then there are conferences with Messrs. Scott, Chisholm,
MacRostie, etc., three days; work in office two and one-half days;
expenses, telephoning, fare to Ottawa, etc.—a total of \$2,316.70?

A.—Yes.

Q.—I understand you are charging at the rate of \$100.00 a day?

A.—Yes. The same rate I have been charging for years.

Q.—And the same rate as you have been paid by your clients?

A.—Yes.

Q.—This account covers attendance in Court in connection
with these supplementary proceedings?

*In the
Superior Court*
No. 140.
Plaintiff's
Evidence.
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(continued)

A.—Yes, only that.

Q.—Did you attend in Court at my request?

A.—I did.

Q.—So that you might be of assistance to Mr. St. Laurent, Mr. Chisholm, or myself, in making suggestions with regard to the cross-examination of technical witnesses, and such matters?

A.—Yes.

Q.—For how many years have you been practising your profession as engineer in Montreal?

10 A.—Since 1908.

Q.—You know the technical matters discussed by the various witnesses examined by the Defendant covered quite a wide range of subjects?

A.—Yes, they did.

I might add that on one occasion certain evidence was made which did not seem to be of a technical nature, and I thought perhaps it would be unnecessary for me to remain in Court. I asked permission from the Attorneys for the Plaintiff to absent myself, and I left. I found afterwards I had to go over all the evidence because on that day a great deal of technical evidence came up in regard to which they needed advice.

20 Q.—In other words, unless you remained in Court and heard the evidence you would not be in a position to advise the Plaintiff's Attorneys?

A.—Exactly.

I might say also that, in general, the answers given by Mr. Robertson would apply to my case.

Cross-examination 30

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

Q.—How many times did you work in the evenings on this matter?

A.—I did not make any special account of the work I did during the evenings, because I did not intend to make any charge for it. If I had been in Court all day, I did not think it would have been justifiable to add any more, and it has not been my practice to add.

40 Q.—How many times in those sixteen and one-half days for which you are charging were you in conference with Counsel for the Plaintiff in the evening?

A.—As I say, I could not tell you exactly. I did not keep track of it. I suppose there would be conferences, either in the afternoon or the evening, about one-third of the time. That, of course, is only a guess.

Q.—The evidence in this case, as you know, was taken by two special reporters, and was transcribed from day to day as the case

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proceeded. Do you not think it would have been possible for you, using the transcript, to advise Counsel, without spending your day in Court?

A.—No, because very frequently my advice was needed immediately, or as the evidence went along, in order that Counsel might be in a position to cross-examine.

Q.—You made a trip to Ottawa, in addition to all the days you spent in Court hearing the evidence, and discussing it with Counsel?

A.—Yes.

10 Q.—What was that for?

A.—It was after certain borings had been made. My clients wanted me to look at the soil and the material in the piling ground.

Q.—And you did not find it necessary to testify on that point?

A.—My clients, perhaps, thought it was not necessary that I should.

Q.—Nor did Mr. Robertson testify upon it?

A.—That I cannot say.

20 Q.—And in addition to all this: expense connected with your trip to Ottawa; sixteen and one-half days' attendance in Court and in conference with Mr. Scott, and so on, you have conferences with Messrs. Scott, Chisholm and MacRostie, three days, \$300.00?

A.—Yes.

Q.—And two and one-half days in your office, \$250.00?

A.—Yes.

Q.—You gave evidence in the case?

A.—On different occasions, yes.

Q.—You only gave evidence once in this particular case?

A.—I gave evidence in chief, and in rebuttal.

30 Q.—In this Supplementary Action?

A.—Yes. I was examined in the first part of the case.

BY MR. SCOTT:

Q.—Since this branch of the case opened, in October, you have testified twice?

A.—Yes, and possibly three times.

40 BY MR. KER (continuing):

Q.—Once to prove your account?

A.—No, I mean apart from that. I gave testimony in the case in chief.

BY MR. SCOTT:

Q.—You gave evidence on October 11th?

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(continued)*

A.—Yes.

Q.—And you then gave evidence again in rebuttal?

A.—Yes.

Q.—On November 16th?

A.—Yes.

Q.—You were asked in regard to the conferences which took place after Court, or in the evening, for which you said you made no charge. As a matter of fact, did we not nearly always have a conference after Court adjourned?

A.—Generally, yes.

10 Q.—Practically every day?

A.—Practically, yes.

Q.—And some of the work you did was done on Sundays?

A.—Yes.

BY MR. KER:

Q.—I presume \$100.00 a day is on the basis of the hours in your ordinary working day—not Court hours?

20 A.—I am afraid I do not understand you.

Q.—Your fee is \$100.00 a day?

A.—Yes.

Q.—How many hours would a day represent?

A.—Six hours, normally. It has not, however, been calculated on that basis. I have taken a day as being a day, irrespective of whether it was six hours, eight hours, or ten hours, or whatever it may have been.

(And further deponent saith not.)

30

40

*In the
Superior Court*

No. 137.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Examination
Nov. 18th, 1932.

DEPOSITION OF NORMAN B. MACROSTIE, A WITNESS
EXAMINED ON BEHALF OF THE PLAINTIFF

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

10

NORMAN B. MACROSTIE,

already sworn, who, being called as a witness on behalf of the Plaintiff in rebuttal, deposes as follows:

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

20 Q.—Will you file, as Plaintiff's Exhibit P-151, your account against Mr. F. T. Cross for professional services and for expenses on the Supplementary Proceedings in this case?

Mr. Ker: Same objection.

His Lordship: Same reserve.

Witness: I do. I now file the account as Exhibit P-151.

BY MR. SCOTT (continuing):

30 Q.—At what rate per day are you charging?

A.—I charge \$100.00 per day for the time I was in Montreal—away from my office. I charge \$50.00 a day for work done at my office and at Farm Point, because when I was at Farm Point I was in touch with my office both morning and evening, and could direct affairs.

Q.—And you were not out of touch with your clientele?

A.—No.

Q.—Will you please tell his Lordship the number of days you spent, and the total figure?

40 A.—The days spent in assistance rendered to the solicitors in preparing the Supplementary Pleadings, preparation of plans, and information supplied to the Plaintiff, the examination and valuation of buildings, and preparing lists thereof

BY THE COURT:

Q.—(Interrupting) Are you now reading from the account?

A.—Yes, your Lordship.

In the
Superior Court

No. 137.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Examination
Nov. 18th, 1932.
(continued)

Fifty-six days, starting February 22nd, and up to date. This I charge at \$50.00 a day.

Then there are 19 days of my assistant engineer's time (Mr. White) at \$25.00, and four days of my draftsman's time, at \$6.00 per day.

Then there are the days' attendance in Court, and the days in conference in Montreal.

It is all in the particulars in the bill.

10 There are twenty-five days in all, in Montreal, in Court and in conference, at \$100.00 a day.

BY MR. SCOTT (continuing):

Q.—What is the total?

A.—It totals \$5,799.00.

Then there are \$314.75 expenses—actual disbursements, as set forth in the account.

20 Q.—Is the charge you have made for your professional services the charge you make to your ordinary clients, and which they pay you?

A.—For the same type of work, yes.

Q.—And did you incur the expenses set forth in your account?

A.—I did incur them, yes.

May I also say that any work that was done during those fifty-six days, and also in Court, was at the request of Mr. W. B. Scott, and with the consent of Mr. Cross.

Q.—As a matter of fact, it appears from your evidence that you were thoroughly familiar with Farm Point both before and after the flooding?

30 A.—Yes.

Q.—Apart from your attendance in Court, did you attend conferences after Court, in the afternoons and in the evenings, assisting the solicitors for the Plaintiff?

A.—Yes. I should say at least half of my evening I would be with them until somewhere around seven o'clock or so, and one or two evenings it would go to around twelve o'clock, at the hotel, or at your office, going over work.

Q.—And had you any Sunday work?

A.—I did Sunday work as well.

40 Q.—And do you consider the charge you make to be a fair charge?

A.—I do.

Cross-examination

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

Q.—You are a civil engineer?

A.—Yes.

*In the
Superior Court*

No. 137.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Nov. 18th, 1932.
(continued)

Q.—And an Ontario Land Surveyor?

A.—Yes, and a Dominion Land Surveyor.

Q.—You did not feel qualified to advise Counsel on the technical aspects of this case, without two other experts to help you?

10 Mr. Scott: That is hardly a fair question to put to the witness. It is not fair for my friend to ask Mr. MacRostie as to what engineering advice the Solicitors for the Plaintiff felt they needed. That is our responsibility.

Mr. Ker: From the inception of this case Mr. MacRostie has been the technical adviser of Mr. Cross. He is an engineer and a land surveyor. He prepared the Supplementary Declaration.

Mr. Scott: I beg my friend's pardon. Mr. MacRostie assisted in the preparation of it, which is quite a different thing.

Mr. Ker: I stand corrected.

20 Mr. MacRostie is a technical engineer, and he is thoroughly familiar with the whole matter. One of the justifications set forth for the presence of Mr. Robertson and some of the other experts is that a certain amount of technical advice was required by Plaintiff's Counsel in connection with the preparation of the case. Mr. MacRostie was their technical engineer, and his account runs up to \$6,113.00. He is charging for days and days—for instance, twenty-five days in Montreal, at \$100.00 a day. I suggest (and your Lordship will have the means of verifying the fact) that this case did not
30 last twenty-five days.

Witness: There are also conferences in that. The days in Court are specified, and the days in conference are specified.

Mr. Ker: In addition to that, there are 56 other days for which professional services are charged, and 19 days of assistants' time, and four days of draftsmen's time. What was all that for?

Witness: As stated in the bill.

40 BY MR. SCOTT:

Q.—At my request?

A.—At your request, yes.

BY MR. KER:

*In the
Superior Court*

No. 137.
Plaintiff's
Evidence.
(Supp. Hearing)
N. B. MacRostie,
Cross-examination
Nov. 18th, 1932.
(continued)

Q.—I see on your account an item of \$96.00, being a charge for the use of your motor car.

A.—Yes. Those are trips to Farm Point, and so on, with Mr. Scott, and taking Mr. Robertson and Mr. Beaubien up through there, and going up ourselves. We had to go up there.

Q.—And you have your expenses over and above that?

A.—In Montreal. As detailed.

10 just Q.—Did you give any testimony as to the fair, reasonable and valuation which should be given to Mr. Cross?

A.—I did.

Q.—What did you say was a fair compensation?

A.—It is in my evidence.

BY MR. SCOTT:

Q.—You noticed also, as did Messrs. Robertson and Beaubien, that the Defendant Company was well represented with different types of technical advisers throughout the trial?

20 A.—Yes. I also observed Mr. Scovil was here quite a number of days. He is not an employee of the Company.

BY MR. KER:

Q.—He was not here any longer than it was necessary for him to give his evidence.

A.—That is not for me to say.

(And further deponent saith not.)

30

40

*In the
Superior Court*

No. 152.
Plaintiff's
Evidence.
(Supp. Hearing)
F. T. Cross,
Examination
Nov. 18th, 1932.

DEPOSITION OF FREEMAN T. CROSS, A WITNESS EXAM-
INED ON BEHALF OF THE PLAINTIFF

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

FREEMAN T. CROSS,

10

already sworn, who, being recalled as a witness on behalf of the
Plaintiff, deposes as follows:

BY MR. SCOTT, K.C.:

Q.—I understand you have been present in Court each day of
the Supplementary Proceedings?

A.—Yes.

20 Q.—Will you file, as Plaintiff's Exhibit P-152, a statement of
your attendances and expenses in Montreal, either in Court or at
conferences with your lawyers, in connection with these Supplement-
ary Proceedings?

Mr. Ker: Same objection.

His Lordship: Same reserve.

Witness: I do.

30 BY MR. SCOTT (continuing):

Q.—What is the total?

A.—\$310.00.

Q.—I notice on Exhibit P-159 an item of " Incidentals ". I un-
derstand you have a telephone account in connection with that?

A.—Yes.

Q.—Will you show it to me, please?

A.—I show you the hotel and telephone bill for this week.

40 Q.—Will you file, as Exhibit P-153, your telephone bill, which
appears to be mostly for long distance telephone calls; this account
being rendered to you by the Windsor Hotel?

Mr. Ker: This is under reserve of the same objection.

His Lordship: Yes.

Witness: Yes.

*In the
Superior Court*

No. 152.
Plaintiff's
Evidence.
(Supp. Hearing)
F. T. Cross,
Examination
Nov. 18th, 1932.
(continued)

BY MR. SCOTT (continuing):

Q.—This amounts to \$36.90, and is a bill you received from the Windsor Hotel for telephone service from November 13th to November 17th?

A.—Yes.

Q.—What do those room calls represent?

A.—I telephoned to my house in Ottawa, to get into communication with my son, and my son would go around getting the witnesses together. He would be driving half the night getting them.

Q.—Those long distance telephone calls represent calls to or for witnesses?

A.—To get my witnesses rounded up, and have them brought down here for the following day, and so on.

Q.—This account also includes your room at the hotel?

A.—Yes. \$20.00 for the hotel, for five days.

Q.—That would leave \$16.90 for telephone calls, summoning witnesses?

A.—Yes.

Q.—I see you have 16 days at the hotel, in Montreal, at \$4.00?

A.—Yes.

Q.—And 18 days in Montreal, meals and incidentals, at \$7.00 a day; \$126.00?

A.—Yes.

Q.—And that is the expenditure you have incurred?

A.—Yes.

Q.—And Exhibit P-153 gives the details of the incidentals?

A.—Yes.

Q.—It does not, of course, include them all?

A.—No.

(Mr. Ker, K.C., of Counsel for Defendant, declares he has no cross-examination to make of the witness.)

(And further deponent saith not.)

*In the
Superior Court*

No. 153.
Plaintiff's
Evidence.
(Supp. Hearing)
William L. Scott,
Examination
Nov. 18th, 1932.

DEPOSITION OF WILLIAM L. SCOTT, A WITNESS EXAM-
INED ON BEHALF OF THE PLAINTIFF

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

WILLIAM L. SCOTT,

10 of the City of Ottawa, in the Province of Ontario, already sworn, who, being recalled as a witness on behalf of the Plaintiff, deposes as follows:

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

Q.—Will you file, as Exhibit P-154, your account for services rendered to our firm in connection with the Supplementary Proceedings?

20 Mr. Ker: Same objection.

His Lordship: Under reserve.

A.—I do.

BY MR. SCOTT (continuing):

Q.—What is the total figure?

A.—\$490.00 for fees, and \$21.15 for disbursements.

30 My former evidence as to the first account applies in all respects to this.

Q.—It is based on your usual scale of charges?

A.—Yes.

Q.—How were you acting in the matter?

A.—As your agent: under your instructions.

Q.—And, being on the spot, nearer to Farm Point than we were?

A.—Yes.

Q.—And many of the witnesses coming from that district?

A.—Yes, and from Ottawa.

Cross-examination 40

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

Q.—All this is agency work?

A.—Yes.

Q.—There is no item of attendance at the hearings?

A.—No.

(And further deponent saith not.)

*In the
Superior Court*

No. 154.
Plaintiff's
Evidence.
(Supp. Hearing)
William B. Scott,
Examination
Nov. 18th, 1932.

DEPOSITION OF WILLIAM B. SCOTT, A WITNESS EXAM-
INED ON BEHALF OF THE PLAINTIFF

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

WILLIAM B. SCOTT,

10

of the City and District of Montreal, Advocate and King's Counsel, already sworn and examined in this matter, who, being recalled as a witness on behalf of the Plaintiff, deposes as follows:

Witness: I wish to file the account of our firm.

Mr. Ker: Same objection.

20

His Lordship: Same reserve.

Witness: I now produce, as Plaintiff's Exhibit P-155, the account of Lafleur, MacDougall, Macfarlane and Barclay to Freeman T. Cross, for services on the Supplementary Proceedings. Those services commenced on March 8th, and carry through to November 17th.

The account amounts to the sum of \$7,963.00, plus disbursements. The disbursements amount to \$442.42. The total is \$8,405.42.

30

The evidence I gave in proving our accounts in connection with the first branch of this case applies to this account, and the disbursements have been incurred by us in connection with these Supplementary Proceedings.

Cross-examination

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

Q.—On what basis per day is this account?

A.—The same as before.

40

Q.—What is the basis, per day?

A.—We have it on the basis of \$175.00 a day for myself, Mr. Chisholm and Mr. Davis, when we were in Court, and \$100.00 a day in office preparation.

Your Lordship will appreciate that the office preparation in connection with this case was exceedingly laborious, and sometimes Mr. Chisholm and myself were engaged all day on it, and sometimes Mr. Chisholm, Mr. Davis and myself were engaged all day

*In the
Superior Court*

No. 154.
Plaintiff's
Evidence.
(Supp. Hearing)
William B. Scott,
Cross-examination
Nov. 18th, 1932.
(continued)

on it. The same charge, \$100.00, was for the three of us. If we had been dealing with an ordinary client, the amount would have been considerably in excess of that figure for the days Mr. Davis or Mr. Chisholm were working with me. A great many of those days we were all working together, and doing nothing else.

Under the Statute I did not feel justified in charging it to Mr. Cross.

10 Mr. Ker: I respectfully submit the Special Act has no application at all to this account.

Witness: Your Lordship will appreciate the seriousness of the matter of three of the members of our firm having to be in Court and attending to this case, in view of the heavy overhead and expense connected with our office.

BY THE COURT:

20 Q.—Who is Mr. Davis?

A.—He is a member of the Bar, and one of my partners.

Q.—And, so is Mr. Chisholm?

A.—Yes, your Lordship. Mr. Chisholm has been a member of the Bar for twelve years or more. Mr. Davis has been a member of the Bar for several years. I may say Mr. Davis has been of very material assistance in keeping the Record straight.

BY MR. KER:

30 Q.—Is this total of \$7,500 divided into days?

A.—Yes, as nearly as we could figure it.

Q.—Just what do you mean by that? Is it, or is it not?

A.—Yes, it is; taking it on the basis of \$100 a day.

Q.—How many days are included in this amount of \$7,500?

A.—If you divide it by 100, you will get the result.

Q.—That would be 75 days?

A.—Yes.

Q.—Were there 75 days involved in this matter?

40 A.—Yes, to the best of my knowledge and judgment. That is, of course, including days of preparation. When I say you can arrive at the number of days by dividing the total by 100, that is not, strictly speaking, correct, because the days in Court are charged at \$175 a day, and there is an item in connection with a visit made by Mr. Chisholm and myself to Ottawa, which occupied two days. We were there seeing witnesses. For those two days, out of town, we charge \$400.00.

Q.—This account is somewhat of a puzzle to me, taken in con-

*In the
Superior Court*

No. 154.
Plaintiff's
Evidence.
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Nov. 18th, 1932.
(continued)

junction with the account you filed previously. For instance, in the month of April I notice seven different dates: the 1st, 4th, 6th, 7th, 14th, 25th, and 27th, representing work on those days in connection with this case. The only entry for April 1st is a long distance telephone call?

A.—And a letter from Mr. St. Laurent.

Q.—Those would be telephone calls and letters?

A.—Yes.

10 Q.—On the 4th you were engaged all morning with Mr. St. Laurent?

A.—Yes.

Q.—The only entry on the 6th is a letter to Mr. W. L. Scott. The entry for the 7th is the preparation of Particulars. The entry for the 14th is a letter from Mr. Scott, and a telephone. The entry for the 25th is a letter to Mr. Ker, forwarding Particulars. The entry for the 27th, is a letter to Mr. W. L. Scott. How do you convert those small letter entries into days?

20 A.—In some cases I made no change at all, and in others I put down a matter of a couple of dollars or something of the kind. You could not attempt to make those entries into days. In this account there are some minor entries of letters received, or answered. In computing the time spent in preparation I did not count them as a day, or part of a day. I might make a charge of a couple of dollars, or \$3.00 or so.

BY THE COURT:

Q.—Is the detail in your account?

30 A.—Yes, your Lordship, it is all detailed.

Q.—Is there an entry of the days you charge?

A.—Yes, your Lordship. To the best of my knowledge, when a charge is made for a full day, or half a day, it so appears. Of course, I do not punch a clock, or keep a time sheet.

(And a further deponent saith not.)

Mr. Scott: With regard to the cruise that was made to count the trees and calculate the number of feet board measure, evidence 40 in connection with which was made in rebuttal, may I say this: it is in evidence that fourteen professional scalers were employed, and each scaler had one assistant. Mr. McCuaig and Mr. Hamilton were there. I do not know exactly how many days they were occupied. It has been impossible for me to get any of those accounts in for this afternoon, and I do not propose to bother further with the matter. I would respectfully offer the suggestion that your Lord-

*In the
Superior Court*

No. 154.
Plaintiff's
Evidence.
(Supp. Hearing)
William B. Scott,
Cross-examination
Nov. 18th, 1932.
(continued)

ship might take into account the fact that twenty-eight men were engaged during a certain length of time.

My attention is called to the fact that it is in the evidence they were three days on the job.

That certainly is a disbursement which would be incurred by Mr. Cross. He has to pay for it.

10 I also submit that your Lordship will find it is very material evidence. I do not know the rate of pay of scalers, but it is probably around \$4.00 or \$5.00 a day, and if your Lordship would take the whole gang in on the basis of, say, \$2.00 a day, and added it to the amount of expenditure, it would be satisfactory.

His Lordship: So, you would say 28 men at \$2.00 a day each?

Mr. Scott: Twenty-eight men, at \$2.00 a day each, for three days.

His Lordship: What would that figure out?

20 Mr. Scott: \$168.00.

I imagine that is probably about one-half what Mr. Cross will have to say, because I understand those scalers get something like \$5.00 a day. At the same time, I am not in a position to prove the fact at the present moment.

His Lordship: Of course, if it is not in the Record I cannot take cognizance of it.

30 Mr. Scott: Perhaps my friend Mr. Ker would not object to it, subject, of course, to his objection that it is not properly chargeable.

Mr. Ker: I do not know what was the object of the evidence attempted to be made by those scalers. In any event, serious objection was taken to it at the time, and your Lordship stated you would allow it inasmuch as there might be a possibility of this Record going to a higher Court. I respectfully suggest that your Lordship did not feel it was, strictly speaking, rebuttal evidence when you
40 allowed it under reserve.

In fairness I cannot see I can allow it to go into the Record against my client. The Plaintiff might have sent a thousand men through that property for no earthly reason whatever, and then attempted to charge their wages against us. It is my submission that this is not a fair charge against us, in any sense. It is also my submission that all the accounts put in the Record today are unfair, and absolutely irregular, as against the Company Defendant, and I

*In the
Superior Court*

No. 154.
Plaintiff's
Evidence.
(Supp. Hearing)
William B. Scott,
Cross-examination
Nov. 18th, 1932.
(continued)

simply cannot consent to any testimony or statement of expenditure in regard to any scalers who have not been brought before the Court and whose charges or work we do not know anything about.

Mr. Scott: There is an admission in the Record that if they were examined they would give testimony similar to the testimony already in.

10 Mr. Ker: Possibly so.

Mr. Scott: And if his Lordship should come to the conclusion that their evidence was valuable, it would be a matter of appreciating the amount.

20 Mr. Ker: I should think his Lordship would tax against us the two witnesses who actually gave evidence, and the others who were not examined should not be taxed. If Mr. Cross thought fit to send out thirty-five men to count the trees, after a forestry engineer had made a cruise according to law, that is a matter for him, and I do not think the Company Defendant should have to pay for it, especially inasmuch as it has added nothing but confusion to the case, and dealt with timber limits miles away from the water and on which the water had no effect whatever.

Mr. Scott: Of course, that is a matter of argument.

30 As I take it, my friend is not prepared to make any admission at all in connection with this; either that Mr. Cross incurred the expenditure for those scalers, or in any other sense.

Mr. Ker: Not the slightest.

40 Mr. Scott: I have two bills from Mr. Langford, in connection with the evidence he gave in the first part of the case (which included 10 days' work in examining the Farm Point property, and subsequent attendance in Court and giving evidence) and a supplementary account from him for the four days he was here in November. His rate of charge per day as a geologist is the same as Mr. Robertson's, namely \$150.00. I have not been able to bring Mr. Langford here today. I do not know whether my friend is prepared to admit that if Mr. Langford were examined he would say the usual charge he would make to a client for work of that nature would be \$150.00 a day; of course, under reserve of the objection as to whether the charge is an admissible one or not.

Mr. Ker: I think Mr. Langford told us he had about five years' experience as a geologist.

*In the
Superior Court*

No. 154.
Plaintiff's
Evidence.
(Supp. Hearing)
William B. Scott,
Cross-examination
Nov. 18th, 1932.
(continued)

Mr. Scott: Oh, no.

Mr. Ker: His charge of \$150.00 a day may be in accordance with the geological tariff, but I am afraid I cannot make any admission at all in regard to the account. It will have to be proven.

Mr. Scott: It is certainly an expenditure that Mr. Cross will have to pay.

10 Mr. Ker: I certainly do not at all believe that as a statement of fact.

Mr. Scott: My friend is not prepared to admit that if Mr. Langford were examined he would swear he spent a total of 14 days in connection with this case? Mr. Langford lives in Timmins, Ontario, and he had to come down here.

20 Am I to take it my friend is not prepared to admit that Mr. Langford, if examined, would testify that he would render a total bill of \$2,100?

Mr. Ker: No, I am not.

DEPOSITION OF FREEMAN T. CROSS, A WITNESS
RECALLED ON BEHALF OF THE PLAINTIFF.

*In the
Superior Court*

No. 152.
Plaintiff's
Evidence.
(Supp. Hearing)
F. T. Cross,
(Recalled)
Examination
Nov. 17th, 1932.

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

FREEMAN T. CROSS,

already sworn, who, being recalled on behalf of the Plaintiff, deposes as follows:

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

Q.—Did you receive two accounts from Mr. Langford for his professional services rendered in this case?

A.—Yes, I did.

Q.—Will you please file them as Plaintiff's Exhibits P-156 and P-157?

*In the
Superior Court*
No. 152.
Plaintiff's
Evidence.
(Supp. Hearing)
F. T. Cross,
(Recalled)
Examination
Nov. 17th, 1932.
(continued)

Mr. Ker: I object to the production of the accounts, on the same grounds as my objection to the production of the other accounts; and, in the second place, inasmuch as the best evidence of the accounts would be the evidence of the gentleman who did the work.

His Lordship: This evidence is just to prove that the bills were received. I will reserve your objection, Mr. Ker.

10 Witness: Yes.

BY MR. SCOTT (continuing):

Q.—Exhibit P-156 is for ten days, at \$150.00 a day, making a total of \$1,500?

A.—Yes.

Q.—And Exhibit P-157 is for four days, at \$150.00 a day, making \$600?

A.—Yes.

20 Q.—What do Government scalers get a day around the Ottawa district?

A.—\$5.00 to \$6.00 a day.

Q.—And what do their helpers get?

A.—\$2.00 a day.

BY MR. KER:

Q.—When did you first hear of Mr. Langford?

A.—About five or six years ago.

30 Q.—Did you engage him personally?

A.—Yes.

Q.—Did you get in touch with him personally?

A.—Yes.

Q.—When?

A.—This summer.

Q.—How long was he in Court?

A.—He was hanging around here three or four days.

BY MR. SCOTT:

40 Q.—And he was also up at Farm Point?

A.—Yes.

BY MR. KER:

Q.—How long was he in Court on the last occasion?

A.—One day, I think.

*In the
Superior Court*

No. 152.
Plaintiff's
Evidence.
(Supp. Hearing)
F. T. Cross,
(Recalled)
Examination
Nov. 17th, 1932.
(continued)

Q.—He is charging for four. His bill amounts to \$2,100.

Mr. Scott: He was in Montreal more than one day.

Witness: Yes, that is right. He came in here before he was examined.

10 Mr. Scott: I also have Mr. St. Laurent's bill. My friend said we could put it on Monday. Mr. St. Laurent has been before the Supreme Court all week, and I have asked his office to send up his account. Mr. St. Laurent will be here on Monday.

His Lordship: I do not think there will be any objection to putting in Mr. St. Laurent's bill on Monday.

You will be prepared to proceed with your argument on Monday?

20 Mr. Scott: Yes, your Lordship.

DEPOSITION OF ERNEST W. BUSH, A WITNESS EXAMINED ON BEHALF OF THE PLAINTIFF

*In the
Superior Court*

No. 155.
Plaintiff's
Evidence.
(Supp. Hearing)
Ernest W. Bush,
Examination
Nov. 18th, 1932.

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

ERNEST W. BUSH,

of the City and District of Montreal, Official Court Reporter, already sworn and examined on behalf of the Plaintiff, who, being recalled, deposes as follows:

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

40 Q.—Will you please tell me the amount of the account of yourself and Mr. Kenehan, who have been furnishing the Plaintiff with a copy of the transcript of the evidence in this case each day?

A.—The total amount, up to last night, is \$1,425.50. That includes the original depositions, a copy of Plaintiff's evidence, copy of the evidence on discovery, and copy of the Defendant's evidence.

Q.—The cost of reporting and transcribing the evidence on behalf of the Plaintiff would form part of the taxed costs in the case?

*In the
Superior Court*
No. 155.
Plaintiff's
Evidence.
(Supp. Hearing)
Ernest W. Bush,
Examination
Nov. 18th, 1932.
(continued)

A.—Yes.

Q.—What does that amount to?

A.—\$648.80.

Q.—So the cost of the copy would be \$776.70?

A.—Yes.

Q.—That is, for the copy you supplied each morning to the Plaintiff's Attorneys?

A.—Yes.

10 BY THE COURT:

Q.—Is the \$776.70 for the original?

A.—No, your Lordship, it is for the copy.

Q.—So the original would be the difference between that amount and \$1,425.50?

A.—Yes, your Lordship.

Q.—Therefore, the original would be \$648.80?

A.—Yes, your Lordship.

20 Q.—That is taxable?

A.—Yes.

BY MR. SCOTT:

Q.—There were some witnesses who were examined in the French language?

A.—The figures I give include the French testimony.

Q.—You obtained the bills from the French stenographers?

A.—Yes. Their accounts are included.

30 Q.—Are their accounts correct?

A.—Yes.

BY THE COURT:

Q.—How do you know it?

A.—I go by the tariff. I checked the pages the French stenographers gave us.

40 Mr. Scott: I understand my friend Mr. Ker does not desire us to have the French stenographers establish the amount of their accounts? I think we may take Mr. Bush's word for it.

Mr. Ker: I understand the taxable costs would include the reporting and transcribing of the depositions. We object to being asked to pay for a copy of the transcript for my friends.

His Lordship: The taking and transcribing of the depositions given in French will also form part of the taxed costs.

*In the
Superior Court*

No. 155.

Plaintiff's
Evidence.
(Supp. Hearing)
Ernest W. Bush,
Examination
Nov. 18th, 1932.
(continued)

Mr. Scott: We have also been furnished with a copy of the depositions taken in French.

Witness: That is included in the \$648.80.

BY MR. SCOTT:

10 Q.—\$648.80 covers the cost of reporting and transcribing the original depositions for the Plaintiff?

A.—The French and the English depositions.

Q.—And the charges of the French stenographers for the extra copy are included in the amount of \$776.70?

A.—Yes.

Q.—You and Mr. Kenehan furnished the Plaintiff with only one copy?

A.—Yes.

Q.—How many has the Defendant been getting?

A.—Two.

20 Mr. Scott: I understand my friend Mr. Ker waives the necessity of our bringing the French stenographers to establish their accounts and the fact that they are included with the accounts of Messrs. Kenehan and Bush?

Mr. Ker: Yes.

Cross-examination

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

30 Q.—How does it happen that the cost of the copy is more than the cost of the original? Does the figure you have given for the cost of the original represent the cost of taking the notes?

A.—No. There is the deposition of Mr. Cross on discovery as well.

Q.—How much is that?

A.—\$124.20.

Q.—Did you also supply the Plaintiff with a copy of the deposition on discovery?

40 A.—Yes.

Q.—How much did that cost?

A.—\$124.20, for two copies; but we only made one copy of the evidence at the trial.

Q.—You made a copy of the examination on discovery for the Records?

A.—The original would be for the Record.

Q.—That deposition was taken some time ago?

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Plaintiff's
Evidence.
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(continued)

A.—Yes.

Q.—And the Plaintiff asked you to make another copy, for his own use?

A.—Yes.

Q.—While the original was still of Record?

A.—We made the copies at the same time as we made the original.

BY MR. SCOTT:

10

Q.—And at the same time you made two copies for the Defendant?

A.—Two copies for each side; two copies of the Discoveries for you, and two for Mr. Ker.

Q.—The Discovery was made at the instance of the Defendant?

A.—Yes; the original deposition was at the instance of Mr. Ker. We made four copies, apart from the original, two copies for you, and two copies for Mr. Ker.

20

Q.—We only got one copy.

A.—We made two, and delivered them to your office.

Q.—What would be the cost of one copy of the examination on Discovery?

A.—\$62.10.

Q.—\$62.10 for each copy?

A.—Yes.

BY MR. KER:

30

Q.—And, you gave Mr. Scott two copies?

A.—Yes.

Q.—You make a charge of \$124.00 for copies of the examination on Discovery, which was already in the Record?

A.—Yes: the original is in the Record.

BY MR. SCOTT:

Q.—You have only been furnishing the Plaintiff's Attorneys with one copy of the evidence taken during the trial?

A.—Yes.

40

Q.—And, you furnished them with two copies of Mr. Cross' examination on Discovery?

A.—Yes.

Q.—The figures you have given include the cost of the copies of the examination on Discovery?

A.—Yes.

Mr. Ker: I am sure my friend will not think of asking us to

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Plaintiff's
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pay for two copies of an examination on Discovery the original of which has been in the Record and available to him at any time. If the cost of those copies is included in the amount of the account, I ask that it be deducted.

Mr. Scott: I may say I had to send one copy to Mr. MacRostie, in Ottawa, for his information in the preparation of the case.

10 His Lordship: Even if you ordered only one copy, would the Defendant be responsible for it??

Mr. Ker: We maintain we are not.

Mr. Scott: Your Lordship will, of course, appreciate the fact that we could not use the original. We could not take it from the Record and send it out of town.

20 His Lordship: Of course, that would be your own affair. You could have had it copied in your own office.

Mr. Scott: But, we could not have marked the original. We had to send a copy to Mr. MacRostie in connection with the preparation of the case. Your Lordship has not had an opportunity of seeing the deposition yet, but you will find it was a very lengthy examination, which took approximately two days.

His Lordship: I never saw it.

30 Mr. Ker: It is a most important deposition, and I have had to refer it several times during the course of the trial, and I shall have to refer to it in argument.

His Lordship: Where is it now?

Mr. Ker: I presumed the original was in the Record. I asked several times if it had gone to your Lordship.

BY THE COURT:

40

Q.—Where is it?

A.—It is with the original deposition.

Mr. Scott: I took it for granted my friend Mr. Ker would have sent the original to your Lordship before the case opened, but apparently he did not do so; therefore, I had one copy made for our own use as Counsel, and another to be sent to Mr. MacRostie. This

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was a very important deposition, extending over two days, and Mr. Cross was examined very closely by my friend Mr. Ker with his usual vigor and thoroughness.

His Lordship: In any event, I will have communication of the deposition when I am studying the case.

10 Mr. Ker: I think Mr. Kenehan and Mr. Bush will bear me out when I say the original deposition is complete, and will be placed before your Lordship together with all the evidence taken at the trial.

His Lordship: And I trust I will have them for the opening of the argument, because we will have occasion to refer to them.

Mr. Ker: We will, your Lordship.

20 Witness: May I offer a word of explanation to your Lordship: the reason the cost of the copy may appear relatively high in comparison with the cost of the original is this—the amount of \$648.80 represents the cost of reporting and transcribing the original evidence on behalf of the Plaintiff, whereas the cost of \$776.70 represents the cost of the copy of the evidence on behalf of the Plaintiff and on behalf of the Defendant.

(And further deponent saith not.)

30 We, the undersigned, J. H. Kenehan and E. W. Bush, Official Court Reporters of the Superior Court of the City and District of Montreal, do hereby certify under our oath of office:

That the foregoing pages hereunto annexed, numbered consecutively 1 to 1,132, and being in all 1,132 pages, are and contain a true and faithful transcript in typewriting of the testimony of the witnesses examined herein on behalf of the Plaintiff, as by us taken by means of stenography upon their respective examinations herein.

The whole in manner and form as required by and according to law.

40 And we have signed:

J. H. KENEHAN,
E. W. BUSH,
Official Court Reporters.

Montreal, November 21st, 1932.

The Court reconvened at 10.15 a.m., pursuant to adjournment.

*In the
Superior Court*

Declaration on
Behalf of
Defendant.

Mr. Ker: With your Lordship's permission I would like to make a declaration on behalf of the Defendant.

10 Your Lordship will observe a reference in Paragraph 6 of the Special Act which governs this case:

“ The Court shall, in the judgment to be rendered in the said case, determine what properties and rights shall, on payment of said compensation, interest and costs become vested in the Gatineau Power Company ”, etc.

20 It occurs to me this may present a difficulty to your Lordship in the consideration of your Judgment. There is no direct description of the property which is being affected, but there is a pretension on the part of the Plaintiff that the Defendant should be obliged to take over everything he owns. On the other hand, the Company maintains that certain remedial works can be done—the filling in of the piling ground, for instance—which will put the Plaintiff back into exactly the same position as he was before. That filling in, of necessity, would be done upon land which might conceivably in your Lordship's Judgment become vested in the Defendant. Consequently the Defendant desires to make a Declaration with regard to Para-
30 graph 6 of the Special Act.

His Lordship: I have the French version of the Act before me, and it is to the effect:

“ Le tribunal devra, dans le jugement qui sera rendu dans cette cause, déterminer quels biens et droits devrons être, sur paiement de la dite indemnité, de l'intérêt et des frais, dévolus à la Gatineau Power Company. . . . ” etc.

40 Mr. Ker: That is only the authority to pay the indemnity to which that part applies. I take the section to mean that it is entirely within your Lordship's discretion to state what property or rights in respect of the Plaintiff's property shall be exercised by or belong to the Defendant, and the Declaration I make for the Defendant is this:

“Whereas the Act 22 George V, Chapter 128, provides the Court shall determine what property or rights shall, upon pay-

*In the
Superior Court*
Declaration on
Behalf of
Defendant.
(continued)

ment of the indemnity to the Plaintiff, become vested in the Defendant in this case;

10 “ Now, therefore, should this Honourable Court find with respect to Plaintiff’s claims that a just and fair compensation, or any part thereof, would be a sum sufficient to enable Plaintiff to carry out remedial works, filling in or work of reconstruction upon any property in a manner to restore same in whole or in part, the Defendant declares it abandons in favour of Plaintiff any right of ownership upon any such property as may be so made the subject of any such remedial works, and limits its rights thereon to a right of real servitude permitting Defendant to maintain the level of the Gatineau River upon the said properties at any controlled elevation not exceeding 321.5 above mean sea level as set out in the Act 22 George V, Chapter 128; or, alternately, in case of such finding by this Honourable Court on the subject of remedial works and the right of ownership of property found to be susceptible to such remedial works to be granted to the Defendant, then Defendant undertakes to create 20 upon such land a real servitude permitting the use thereof for the construction and maintenance of such remedial works, filling in or renovation, and the use and enjoyment of said property to the Plaintiff and his successors in perpetuity.”

I think this is a necessary Declaration, which should go into the Record.

30 By Section 6 of the Act your Lordship clearly has the right to state what properties and what rights shall become vested in the Gatineau Power Company; but your Lordship is not obliged to say that we must take everything the Plaintiff has. Dealing with the piling ground, for instance, we have established that it can be filled in, and that the cost of filling it in would be the fair and just indemnity. The filling in would necessarily be the amount above elevation 318 that is affected.

40 My learned friends will, no doubt, argue that we should take all the property, and that the Plaintiff is not obliged to do any filling in. I am submitting the Declaration I have just read so that in considering Paragraph 6 of the Act your Lordship will have on record the fact that the Company is quite prepared that those remedial works or the filling in of this piling ground should be made, and in case your Lordship desires to leave the ownership of the land with the Plaintiff we limit ourselves to a right of servitude to have the water at the height provided for by the Act. If your Lordship finds we should become the owners of the property upon the payment to the Plaintiff, we tender the right to the Plaintiff to use the land in perpetuity. The idea is merely to fill a technical gap, so to speak, left by Section 6

*In the
Superior Court*
Declaration on
Behalf of
Defendant.
(continued)

of the Act, because, no doubt, my learned friends will contend we cannot do anything of this kind but that we have to take all the Plaintiff's properties. That has been the object of the Plaintiff for many years, and I have no doubt it is what will be argued for now.

His Lordship: Your Declaration will be worth what it is worth.

10 Mr. St. Laurent: I object to the filing of this Declaration as being contrary to the terms of the Statute, and because no Joint Stock Company can alienate or abandon real property in the manner and form of such a declaration.

His Lordship: I will take it under reserve. I imagine Counsel will cover the objections in argument and in the factums.

20

30

40

*In the
Superior Court*
Final Judgment,
Mr. Justice
de Lorimier.
June 28th, 1933.

CANADA
PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

No.—C. 80504

COUR SUPERIEURE

10 Ce 28ième jour de juin, 1933
PRÉSENT: l'honorable juge Albert de Lorimier.

FREEMAN T. CROSS,

Demandeur

v.

GATINEAU POWER COMPANY,

Défenderesse.

20

LA COUR, après avoir entendu les parties par leur procureurs respectifs, ainsi que leurs témoins, sur le mérite de cette cause; après avoir examiné le dossier, la procédure, les pièces produites, et sur le tout murement délibéré:—

30 ATTENDU que par son action pétitoire, intentée, le 2 mars 1931, le demandeur conclut, en résumé, à ce qu'il soit déclaré propriétaire des immeubles désignés dans sa déclaration; à ce qu'il soit de plus enjoint à la compagnie défenderesse d'avoir à baisser le niveau des eaux de la rivière Gatineau qui, par un barrage élevé par elle, ont inondé certaines de ses propriétés, à son grand désavantage, et à ce que, enfin, elle cesse, sous toute peine que de droit, de submerger les susdites immeubles, à moins que la défenderesse préfère lui payer, avec intérêt au taux de 6% par année à partir du 12 mars 1927 la somme de \$600,000.00 qu'il est prêt à accepter en paiement desdites propriétés et en règlement des dommages passés, présents et futurs soufferts par lui; le tout de la manière indiquée dans les
40 conclusions de l'action;

ATTENDU que la défenderesse, après avoir admis certains faits de la déclaration, en nie pratiquement tous les autres et plaide, en résumé, qu'elle a toujours été prête à payer au demandeur tous dommages causés par elle et cela tout en se réservant le droit de continuer les procédures produites par elle à la "Commission des Services publics de Québec";

*In the
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—
Final Judgment,
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(continued)

ATTENDU que contestation a été liée par une réponse et une réplique;

ATTENDU que, le 15 janvier 1932, cette action pétitoire a été prise en délibéré, après preuve et audition;

ATTENDU que, le 19 février 1932, alors que la présente action avait été prise en délibéré, par cette Cour, la Législature de Québec a passé une Loi spéciale, 22 Georges V, 1931-1932, chapitre 128 qui s'applique uniquement aux droits des parties en cette cause;

ATTENDU que, par la section 5 de cette Loi, " les parties subordonnément au contrôle du tribunal " pouvaient amender leurs procédures, " produire de nouveaux plaidoyers et soumettre une preuve additionnelle, relativement aux nouveaux moyens soulevés à cet égard, qui sembleront opportuns au tribunal, afin de donner plein effet aux dispositions de cette loi " ;

ATTENDU que le demandeur, se prévalant de ces dispositions, a fait d'abord une déclaration supplémentaire et ensuite une déclaration supplémentaire amendée, par lesquelles il réclame \$1,058,826.02 comme " indemnité juste et équitable pour tous les biens et droits qui lui seront enlevés ou qui seront atteints " par l'exploitation des forces que la défenderesse a aménagées aux chutes Chelsea, " en maintenant le niveau de la rivière Gatineau au-dessus de ces chutes à toutes élévation contrôlée n'excédant pas 321.5 pieds au-dessus du niveau de la mer, à Farm Point, tel que déterminé par le point de repère (bench mark) géodésique établi sur l'Eglise-Unie du Canada, au village de Wakefield, pourvu qu'une juste indemnité lui soit accordée et lui soit payée," telle que voulu par ladite loi (allégation 27 desdites déclarations supplémentaires) ;

ATTENDU que le demandeur, en vertu de la même Loi, réclame aussi une somme de \$54,104.21 pour déboursés, honoraires et frais détaillés à l'allégation 28 de la première déclaration supplémentaire et la somme de \$27,527.98 pour déboursés, honoraires et frais encourus détaillés à l'allégation 28a de la déclaration supplémentaire amendée;

ATTENDU que ces différents montants s'élèvent à la somme totale de \$1,140,458.21 et doivent porter intérêts;

ATTENDU que la défenderesse, de nouveau, nie pratiquement tous les faits tels qu'allégués dans les trois déclarations produites par le demandeur;

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ATTENDU que la défenderesse plaide, toutefois, et déclare qu'elle consent à payer au demandeur une compensation juste et équitable telle qu'alléguée au paragraphe 57 de son plaidoyer du onze mai 1932 comme suit:

10 " That with respect to all the property and rights claimed both in Plaintiff's original declaration and in his Supplementary Declaration, Defendant declares its willingness to pay and/or satisfy to Plaintiff fair compensation as follows:

(a) As full compensation for all the rights and properties of Plaintiff affected at the site referred to herein as the " Cascades " the sum of \$9,000 with interest at 5 per cent from the 12th March, 1927;

20 (b) With respect to Plaintiff's hydro-electric system at Meach Creek to pay Plaintiff the sum of \$2,500 as compensation for reduction in power output plus the sum of \$1,500 for cost of power house rearrangement as set out in paragraph 41 hereof, with interest as aforesaid;

(c) With respect to the portion of Plaintiff's transmission line which was on the public road between Cascades and Kirk's Ferry to pay Plaintiff the sum of \$4,500 with interest at 5 per cent from the 12th March, 1927;

(d) With respect to Plaintiff's alleged saw mill property at " Mileage 12 " to pay Plaintiff \$1,800 with interest as aforesaid;

30 (e) With respect to Plaintiff's saw mill industry at Farm Point (Meach Creek) to pay Plaintiff the sum of \$6,000 which is more than sufficient to pay for the work of reclaiming the portion of Plaintiff's piling ground which might be affected and to remedy the effect on the Railway spur as set out in paragraph 37 hereof, with interest as aforesaid;

40 (f) To pay Plaintiff the sum of \$12,500 with interest as aforesaid as compensation for land and buildings in the vicinity of Meach Creek referred to in paragraph 38 hereof;

(g) With respect to the land on the east side of the river mentioned in paragraph 21 of Plaintiff's Supplementary Declaration to pay Plaintiff the sum of \$100 with interest as aforesaid;

(h) With respect to the gravel referred to in Plaintiff's Declaration as having been hauled from the west side of the river to pay Plaintiff the sum of \$500 with interest as aforesaid;

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(i) To pay Plaintiff or his nominees the total sum of \$10,000 in respect of extra judicial fees, disbursements and costs referred to in paragraph 55 hereof;

CONSIDERANT que l'inscription en droit du 11 mai 1932 faite par la défenderesse étant mal fondée, est renvoyé avec dépens;

10 CONSIDERANT que de la loi et des faits prouvés il ressort ce qui suit:

Le demandeur était, comme il l'est encore, propriétaire des biens-meubles et immeubles décrits dans ses déclarations;

20 Il en avait la possession légale lorsque la défenderesse s'est emparée de quelques-uns en les inondant des eaux qu'elle a refoulées par le barrage construit par elle sur la rivière Gatineau à Chelsea et cela sans lui offrir, consigner et payer au préalable, une indemnité juste et équitable pour les dommages soufferts par lui (C. civ. 1472, 1478 et 407; S.R.Q. 1925, chap. 46, art. 12);

C'est de cet état de chose que, dans le but de disposer du présent procès qui en est résulté, nos législateurs ont passé la Loi 22 Georges V 1931-1932, chap. 128, qui a été vraisemblablement le résultat d'un compromis entre les parties, loi qui ordonne au demandeur de ne pas troubler la défenderesse dans l'exploitation de ses forces hydrauliques aux chutes Chelsea et qui oblige la défenderesse de payer au demandeur une indemnité juste et équitable;

30 Il est peut-être utile, pour éviter la référence au statut, d'en citer, ici, les deux premiers articles, à savoir:

40 " La Gatineau Power Company ne doit pas être troublée par ledit Cross, ses successeurs ou ayants cause dans l'exploitation des forces qu'elle a aménagées aux chutes Chelsea, en maintenant le niveau de la rivière Gatineau au-dessus de ces chutes à toute élévation contrôlée n'excédant pas 321.5 pieds au-dessus du niveau de la mer à Farm Point, tel que déterminé par le point de repère (benchmark) géodésique établi sur l'église de l'Eglise-Unie du Canada, au village de Wakefield, pourvu qu'une juste indemnité soit accordée audit Cross et lui soit payée, tel que ci-après déterminé ".

" La Gatineau Power Company devra payer audit Cross une indemnité *juste et équitable* pour tous les biens et droits qui lui seront enlevés ou qui seront atteints par ledit aménagement jusqu'audit niveau et par leur exploitation ".

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Cette loi est claire et exige formellement que la défenderesse paie au demandeur une *indemnité juste et équitable* non seulement pour *tous les biens* et droits qui auront été enlevés au demandeur, mais encore pour tous les biens et droits du demandeur, qui auraient été atteints ou affectés par l'aménagement et l'exploitation de l'énergie hydraulique développée par lesdites chutes et cela jusqu'au susdit niveau 321.5;

10 Or les parties sont incapables de s'entendre sur ce qui peut constituer dans l'espèce une indemnité juste et équitable;

20 Il s'ensuit qu'il incombe à cette Cour de fixer et accorder au demandeur une indemnité juste et équitable pour les dommages, en capital, intérêts, déboursés et frais soufferts par lui, à raison de l'exploitation de l'industrie de la défenderesse, suivant les termes de ladite Loi 22 Georges V, 1931-1932, chapitre 128, qui permet à la compagnie défenderesse d'exploiter, sans entraves et troubles de la part du demandeur, les forces hydrauliques aménagées par elle aux chutes Chelsea et qui lui ordonne de payer au demandeur une juste et équitable compensation pour toutes pertes subies par lui en rapport avec ses terrains et droits affectés par ladite exploitation et ledit aménagement, le tout avec intérêts, en y ajoutant " le montant qu'elle jugera équitable pour les déboursés, honoraires et frais encourus dans cette action ainsi que ceux " se rattachant à l'adoption de la présente loi " ;

30 Qu'il soit dit desuite que la preuve est des plus contradictoire, bien que faite par des hommes distingués dans leurs professions d'ingénieurs-civils, d'arpenteurs, de savants et d'experts;

Ainsi, les témoins de la demande évaluent tous les dommages à la somme de \$1,140,458.21 tandis que ceux de la défense les fixent à la somme de \$48,400.00 soit un écart de \$1,092,058.21;

Il en est de même pour le *premier item* du compte du demandeur intitulé " Cascades Undeveloped Water Power ", qui s'élève à la somme de \$600,000.00 alors que la défenderesse lui offre pour le solder la somme de \$9,000.00, soit un écart de \$591,000.00;

40 Il est difficile d'expliquer ces divergences d'opinion;

Le demandeur avoue, toutefois, par son avocat M. St-Laurent, que cette somme de \$600,000.00 doit être réduite à celle de \$420,000.00, faisant une différence, en moins, de \$180,000.00 (voir argument de ce dernier, du 21 novembre 1932, pp. 30, 31, 32 et 78) ;

Il y a un autre fait qui attire l'attention à ce sujet;

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Dans sa première déclaration, le demandeur a consenti d'accepter \$600,000.00 en règlement de son action au pétitoire, bien que dans sa déclaration supplémentaire amendée, il exige \$1,058,826.02, montant qui semble élevé, même si on prend en considération que l'élévation contrôlée des eaux soit, dans le cas de l'action pétitoire, moindre que l'élévation des eaux mentionnée dans la déclaration supplémentaire;

10 Quoiqu'il en soit, cette Cour est liée non seulement par l'article 407 de notre code, mais aussi et plus particulièrement par les dispositions de la loi spéciale, y compris le préambule qui en explique le but et la raison d'être suivant lesquelles elle doit nécessairement juger la présente cause;

20 Les législateurs insistent sur ces deux points essentiels à savoir (a) que la défenderesse ne devra pas être troublée dans l'exploitation des forces hydrauliques aménagées par elle et (b) qu'une indemnité *raisonnable, juste et équitable* devra être fixée en faveur du demandeur et lui être accordée par les tribunaux;

Quant à tous les déboursés, honoraires, frais d'experts et d'avocats, auxquels réfère la même loi, la Cour a le pouvoir d'en accorder le quantum, suivant qu'elle le jugera équitable et à propos;

Alors, que faut-il entendre par indemnité équitable?

30 On trouve dans Larousse du XXème siècle, volume III, au mot "Equity":

"Disposition à faire à chacun part égale, à respecter les droits de chacun;

"Justice exercée, *non plus selon la lettre de la loi*, mais d'après un sentiment intime de droiture naturelle, d'après les principes de la loi naturelle. (Justice naturelle par opposition à justice légale)".

40 The Century Dictionary and Cyclopedia définit "Equity" comme suit:

"Equity,

In law:

(a) Fairness in the adjustment of conflicting interests; the application of the dictates of good conscience to the settlement of controversies: often called natural equity;

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(a) Fairness on the adjustment;

(e) Equity of a statute, effect given to a statute in accordance with what is deemed its reason and spirit, which might not be given to it by a strictly literal reading;

Nous trouvons aussi au Répertoire de Jurisprudence de Guyot, tôme 7, p. 6, ce qui suit:

10 “ Il est vrai qu'on doit en tout considérer particulièrement l'Équité; *in omnibus æquitas maxime spectanda*: mais cette règle de droit n'a d'application, comme nous l'avons dit, qu'aux cas particuliers qui n'ont reçu la décision d'aucune loi: quand il s'agit de prononcer sur des difficultés embarrassantes, pour reconnaître juste, *il faut être équitable* ”.

20 Il n'y a pas de doute que la preuve faite en cette cause soulève des difficultés embarrassantes et que pour être juste, dans le cas, il faut être équitable; la tâche n'est pas facile: elle impose une responsabilité redoutable;

Voyons d'abord le premier item de \$600,000.00 concernant, *The Cascades-Undeveloped Water Power*, (voir paragraphe 27 de la déclaration amendée);

30 Il est bon d'observer ici que ce pouvoir d'eau ne devenait susceptible d'être apprécié d'une manière certaine et non douteuse, que du jour de son entier développement; jusque là, on ne pouvait faire, sur sa valeur, que des conjectures, des suppositions et donner des opinions fondées sur des probabilités et des possibilités;

Il s'en suit que le pouvoir des chutes aux Cascades n'était que potentiel qui n'existait, quand le demandeur en avait la possession et propriété, qu'en puissance et non en réalité;

40 Cependant les experts témoins des deux parties attribuent à ces forces hydrauliques une potentialité qu'ils évaluent avec les terrains submergés, le demandeur, à la somme de \$600,000.00 réduite par lui à \$420,000.00 et la défenderesse à la somme de \$9,000.00;

La différence d'opinion sur ces deux évaluations est tellement grande qu'elle n'est pas seulement embarrassante, mais presque inexplicable;

Quoiqu'il en soit, la Cour, pour être juste envers les deux parties en cette cause, trouve qu'il est équitable, vu la preuve contradictoire,

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d'accorder au demandeur pour la force hydraulique potentielle qu'il aurait développée aux Cascades, la somme de quatre-vingt-dix mille dollars (\$90,000.00) c'est-à-dire dix fois plus que la somme offerte par la défenderesse;

10 Cette dernière n'aura pas à s'en plaindre puisque c'est elle qui a créé cet état de chose en s'emparant arbitrairement de la propriété du demandeur qu'elle a submergée, sans offrir au préalable, con-
signer et payer une juste et équitable indemnité; de plus, il est établi qu'il a été payé même par la défenderesse, des prix plus élevés pour des pouvoirs d'eau moins importants que celui du demandeur;

Il est vrai que le demandeur n'a pas fait preuve qu'il avait ou aurait pu avoir les moyens de financer cette affaire et de la mener à bonne fin; en effet, avant d'arriver au succès, dans ces grandes entreprises, il y a beaucoup d'aléa et de grands risques à courir;

20 Cependant, il est reconnu que les forces hydrauliques aux Cascades avaient de la valeur pour le demandeur à la date de l'ordre en conseil du 20 mai 1926;

D'ailleurs, tous les faits prouvés dans la cause au sujet de la valeur du pouvoir d'eau aux chutes Chelsea, le démontrent;

Il est à noter que la valeur du pouvoir hydraulique dont il s'agit doit être considérée au point de vue du propriétaire;

Lord Dunedin résume la question comme suit;

30 " For the present purpose it may be sufficient to state two brief propositions:—(1) The value to be paid for is the value to the owner as it existed at the date of the taking, not the value to the taker. (2) The value to the owner consists in all advantages which the land possesses, present or future, but it is the present value alone of such advantages that falls to be determined." (Cedar Rapids Manufacturing & Power Company v. Lacoste, 1914, L.R. App. Cases, p. 569);

40 La Cour croit donc devoir accorder au demandeur, pour son premier item, la somme de \$90,000.00 au lieu de \$600,000.00 réduit par lui à \$420,000.00;

Les montants des autres items mentionnés à l'allégation 27 de la déclaration amendée, ont été résumés à la page 113 du factum du demandeur comme suit:

" Value of the hydro-electric plant et distribution system \$80,000 less \$9,237.10 " (voir ladite page 113 du factum);

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Etant donné la preuve contradictoire, la Cour est disposée à accorder au demandeur la somme de \$60,000.00 comme étant une juste et équitable compensation pour la perte subie à tout le système hydro-electric;

10 Quant à la valeur de l'industrie de bois du demandeur, (y compris " Mileage 12 "), elle a été fixée dans l'allégation 27 de la déclaration-amendée à la somme de \$265,112.78 et à celle de \$13,913.24 y compris le terrain faisant un total de \$279,026.02 moins \$53,000.00, soit en tout la somme de \$226,026.02, que le demandeur, par son avocat M. St-Laurent, a réduit à la somme de \$115,000.00 (voir son argument du 21 novembre 1932, pp. 50 in fine et 51);

La Cour accorde au demandeur ce dernier montant de \$115,000.00;

20 Pour l'item de la dépréciation des limites à bois, maître St-Laurent, dans son même argument (pp. 63 in fine et 64), la fixe à la somme de \$54,000.00; c'est trop, la Cour, toujours à raison de la preuve contradictoire, en accorde 10%, soit \$5,400.00;

Pour le " Gravel Pit " les parties consentent à l'évaluer à \$100.00; et enfin la Cour détermine le prix du charvoyage du gravois à la somme de \$1,000.00 (voir même argument de maître St-Laurent et factum du demandeur pp. 106 in fine et s.);

Les différents montants ci-dessus mentionnés s'élèvent à la somme de \$271,500.00 comme suit:

30

(1) Pour le pouvoir hydraulique potentiel aux Cascades	\$ 90,000.00
(2) Pour " hydro-electric Plant et distribution System "	60,000.00
(3) Pour valeur de l'industrie du bois du demandeur y compris " Mileage 12 "	115,000.00
40 (4) Pour la dépréciation des limites à bois ...	5,400.00
(5) Valeur du Gravel Pit	100.00
(6) Gravois perdu	1,000.00
	<hr/>
Soit	<u>\$271,500.00</u>

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Cette somme doit porter intérêt à 5% à partir du 12 mars 1927; c'est admis;

Nous arrivons maintenant aux articles 4 et 5 de la loi spéciale, qui se lisent comme suit:

10 “ En fixant l'indemnité qui doit être accordée audit Cross, la Cour supérieure devra inclure le montant qu'elle juge équitable pour les déboursés, honoraires et frais encourus dans cette action pendante et ceux se rattachant à l'adoption de la présente loi.”

20 “ Cette indemnité devra être fixée et accordée audit Cross, dans ladite action pendante contre la compagnie, avec l'intérêt que la Cour jugera à propos et les parties en cette cause pourront, subordonnement au contrôle du tribunal, apporter à leur plaidoyer les amendements et/ou produire les plaidoyers supplémentaires et soumettre la preuve additionnelle, relativement aux nouveaux moyens soulevés à cet égard, qui sembleront opportuns au tribunal afin de donner plein effet aux dispositions de la présente loi ”.

En vertu de ces dernières dispositions, nos législateurs imposent encore à la Cour l'obligation d'accorder, avec l'indemnité réclamée, ce qu'elle jugera équitable en autant que les déboursés, honoraires et frais encourus en cette cause sont concernés, le tout au taux d'intérêt qu'elle considèrera à propos de fixer;

Le demandeur a prouvé, l'item de \$52,512.64 mentionné à l'allégation 28 de sa déclaration supplémentaire amendée;

30 Il a également prouvé jusqu'à concurrence de \$24,468.58 l'item de \$26,568.58 de l'allégation 28a de la même déclaration; ces deux montants se montent à la somme totale de \$76,981.22;

La différence entre \$24,468.58 et \$26,568.58 représente \$2,100.00, montant du compte de George B. Langford qui n'a pas été établi par une preuve satisfaisante, qui n'a pas été assermenté par ledit G. B. Langford (voir pp. 1119 et s. déposition Cross, vol. 2 de la preuve du demandeur);

40 La preuve de la somme de \$76,981.22 n'a pas été contredite par la défenderesse, en sorte que la Cour ne peut mettre de côté des comptes qui ont été assermentés par des témoins qui n'ont pas été contredits par la défense et décider que ce qui a été régulièrement établi sans preuve contraire n'est ni légal ni équitable;

Les susdites sommes de \$76,981.22 et \$271,500.00 forment celle totale de \$348,481.22;

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10 CONSIDERANT que s'il est vrai que le demandeur ne doit pas troubler la défenderesse dans l'exploitation des forces hydrauliques que cette dernière a aménagées aux chutes Chelsea, en maintenant le niveau de la rivière Gatineau au-dessus de ces chutes à toute élévation contrôlée n'excédant pas 321.5 pieds au-dessus du niveau de la mer à Farm Point, tel que déterminé par le point de repère (bench mark) géodésique établi sur l'église de l'Eglise-Unie du Canada au village Wakefield, il n'est pas moins vrai qu'une juste et équitable indemnité doit être accordée audit Cross et lui être payée;

CONSIDERANT que la défenderesse n'a ni payé, ni déposé, ni consigné les montants qu'elle a offerts par son plaidoyer du onze mai 1932 (paragraphe 57) privant d'autant le demandeur de l'emploi de ces sommes durant tout le temps du procès;

20 CONSIDERANT que le demandeur a droit d'avoir de la défenderesse ladite somme à titre d'indemnité juste et équitable, avec intérêt comme susdit;

CONSIDERANT que sur paiement de ladite indemnité avec intérêts susdits, la Cour peut, jusqu'à toute élévation contrôlée n'excédant pas 321.5 pieds au-dessus du niveau de la mer à Farm Point tel que ci-dessus déclaré, attribuer à la défenderesse avec tous droits s'y rapportant, les immeubles désignés comme suit dans le dispositif du présent jugement;

30 CONSIDERANT que si la défenderesse ne paie pas au demandeur ladite indemnité dans les quinze jours de la signification du présent jugement, la Cour peut ordonner l'abaissement du niveau de ladite rivière;

CONSIDERANT que le demandeur réclame de la défenderesse la somme de \$144,000.00 pour la valeur de l'usage desdites propriétés ainsi qu'il est allégué aux paragraphes 35, 36, 37, 38 et 39 de la déclaration du demandeur au pétitoire et qu'il a droit d'avoir de ce chef une somme de \$50,000.00 en plus des montants de \$76,981.22 et \$271,500.00 ci-dessus mentionnés;

40 VU les articles de ladite loi spéciale et l'article 407 du Code civil;

CONSIDERANT que le demandeur a fait sa cause et que la défenderesse n'a pas établi la sienne;

Par ces motifs, déclare le demandeur propriétaire des immeubles mentionnés dans ses déclarations et spécialement ceux ci-dessous

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décrits dans le présent jugement; condamne la défenderesse à payer au demandeur, à titre de dommages-intérêts pour toutes pertes quelconque qu'il a pu souffrir dans l'espèce, la somme de trois cent quarante-huit mille quatre cent quatre-vingt-un dollars et vingt-deux centins (\$348,481.22) avec intérêt à 5% sur la somme de deux cent soixante-et-onze mille cinq cents dollars (\$271,500.00), à partir du douzième jour de mars 1927 (12 mars 1927) et avec intérêt à 5% sur la somme de soixante-seize mille neuf cent quatre-vingt-un dollars et vingt-deux centins (\$76,981.22) à partir de la date du présent jugement; déclare attribuer à la défenderesse, sur paiement par elle au demandeur des susdites sommes et intérêts, la pleine propriété, avec les droits s'y rapportant, des immeubles ci-après désignés qui lui sont dévolus par ledit "géodetic survey datum" et tel que voulu par ladite loi spéciale, c'est-à-dire en par la défenderesse maintenant le niveau de la rivière Gatineau au-dessus desdites chutes à toute élévation contrôlée n'excédant pas 321.5 pieds au-dessus du niveau de la mer à Farm Point, tel que déterminé par le point de repère (bench mark) géodésique établi sur l'église de l'Eglise-Unie du Canada, au village de Wakefield, à savoir;

Premièrement: "Lot 21B in the 15th Range of the Township of Hull on the Official Plan and Book of Reference of said Township, and all of those parts of Lots 21C and 21D on the said Official Plan and Book of Reference between the right-of-way of the Canadian Pacific Railway and the Gatineau River and that part of the bed of the Gatineau River contained within the boundaries of the South half of original Lot No. 21 of the 15th Range of the survey of the Township of Hull" (voir paragraphe 1, 2, 3 et 4 de la première déclaration au pétitoire);

Deuxièmement: "That part of Lot 2C in the 3rd Range of the Township of Wakefield commencing at the intersection of two trails, one leading to the bridge at the head of La Pêche Rapids and the other to the gravel pit and running South from said intersection along the trail leading to the gravel pit for a distance of 225 ft., thence at right angles Easterly to high water mark on the bank of the Gatineau River and bounded as follows: South, partly by the Gatineau River and the residue of Lot 2C; Easterly by the Gatineau River; Northerly by the trail leading from the bridge at the head of La Pêche Rapids; West by the trail leading from the gravel pit" (voir paragraphe 13 de la première déclaration au pétitoire);

Troisièmement: "(A) All that parcel of land and premises situated, lying and being in the Township of Hull composed of parts of lots 24 in the Fifteenth Range of the said Township of the Official Plan and Book of Reference of said Township, 23A in the said

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Fifteenth Range on said Plan and Book of Reference and 24C in the Sixteenth Range on said Plan and Book of Reference; bounded to the North partly by the right-of-way of the Canadian Pacific Railway and by the remainder of said Lot 24C, to the West partly by the remainder of said Lot 24C and partly by the remainder of said Lot 24, to the South partly by the remainder of said Lot 24 and partly by the remainder of said Lot 23A, and to the East by the remainder of said Lot 23A, and enclosed within a boundary line more particularly described as follows:

10

Commencing at a point on Lot 23A being the intersection of the southwesterly limit of the right-of-way of the Ottawa Northern and Western Railway with the division line between the properties of Stephen Cross and Freeman T. Cross; thence North fifty-five degrees and thirty-one minutes West (N.55-31'W.) astronomic and following said division line eight hundred and ninety-six (896') feet; thence North seventy-nine degrees and twenty-eight minutes West (N.79-28'W.) astronomic four hundred and forty-five (445') feet; thence North eighty-nine degrees and twenty-eight minutes West (N.89-28'W.) astronomic one hundred and fifty-two and five tenths (152.5') feet; thence South fifty-three degrees and twenty-nine minutes West (S.53-29'W.) astronomic one hundred and thirty-five (135') feet; thence North six degrees and forty-two minutes West (N.6-42'W.) astronomic four hundred and ninety-eight (498') feet; thence northerly two hundred and eighty (280') feet, more or less, to the northwesterly angle of the property conveyed in Deed of Sale from The Royal Bank of Canada to Michael Joseph Hendrick registered in the Registry Office for the County of Hull, November 18th, 1925, in B. 47 as No. 48504; thence southerly and following the westerly limit of the property described in the said deed seventy-eight and five-tenths (78.5') feet; thence southeasterly and following the southerly limit of the property described in the said deed one hundred and eighteen (118') feet; thence southeasterly and following the westerly limit of the property described in the said deed forty-four (44') feet; thence southeasterly and following the southerly limit of the land described in the said deed eighty-nine (89') feet, more or less, to the southwesterly limit of the right-of-way of the Ottawa Northern and Western Railway; thence southeasterly and following the said southwesterly limit one thousand one hundred and twenty-five (1,125') feet, more or less, to the point of commencement. Containing by admeasurement 17.65 acres more or less.

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(B) All that parcel of land and premises situate, lying and being in the Township of Hull and being part of Lot 24C in the Sixteenth Range of the said Township on the Official Plan and Book of Reference of said Township; bounded to the South-West by the right-of-way of the Canadian Pacific Railway; to the North by

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Mulveyhill Road; to the East by the Gatineau Highway, and to the South-East by the remainder of said Lot 24C, and enclosed within a boundary line more particularly described as follows:

Commencing at the intersection of the southeasterly limit of the right-of-way of the Ottawa Northern and Western Railway with the division line between Lots 23A and 24 in the Sixteenth Range of the said Township, thence northwesterly and following the said Southeasterly limit of the said right-of-way one thousand two hundred and thirty (1,230') feet more or less to the Public Road crossing said lot; thence easterly and following said southerly limit of said Public Road four hundred and ninety-five (495') feet more or less to the westerly limit of the Gatineau Highway; thence southeasterly and following the said westerly limit of the Gatineau Highway nine hundred and twenty-five (925') feet more or less to the division line between Lots 23A and 24; thence southerly and following said division line one hundred and twenty (120') feet more or less to the point of commencement. Containing by admeasurement 5.3 acres more or less" (voir allégation 8 de la déclaration du demandeur dans l'action au pétitoire);

(A) All that parcel of land and premises situate, lying and being in the Township of Hull and being part of lot 24C in the Fifteenth Range of said Township on the Official Plan and Book of Reference of said Township; bounded to the West by the right-of-way of the Canadian Pacific Railway; to the East by the Gatineau Highway; to the South-East by another part of said Lot 24C, and enclosed within a boundary line more particularly described as follows:

Commencing at a point on the easterly limit of the right-of-way of the Ottawa Northern and Western Railway distant four hundred and forty (440') feet measured northerly and along the said easterly limit of said right-of-way from the northerly limit of the Public Road crossing said Lot 24C; thence North thirty-seven degrees and forty-five minutes East (N.37-45'E.) astronomic three hundred and twenty-five (325') feet, thence North thirty-six degrees West (N.36-00'W.) astronomic sixty (60') feet, thence North fifty-one degrees and thirty minutes East (N.51-30'E.) astronomic three hundred and five (305') feet more or less to the westerly limit of the Gatineau Highway, thence northerly and along said westerly limit nine hundred and five (905') feet more or less to the southerly limit of the Public Road leading to the Farm Point station, thence westerly and following said southerly limit of said Public Road seventy-two (72') feet more or less to the easterly limit of the right-of-way of the Ottawa Northern and Western Railway; thence southerly and following said easterly limit two hundred and twenty-nine (229')

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feet more or less to where said right-of-way jogs westerly; thence westerly and following said jog fifty (50') feet more or less to the said easterly limit of said right-of-way; thence southerly and following said right-of-way nine hundred and ten (910') feet more or less to the point of commencement; containing by admeasurement 7.80 acres more or less" (voir paragraphe 10 de la même déclaration);

10 *Quatrièmement*: "All parts of Lot 24 in the 15th Range and 24C in the 16th Range on the Official Plan and Book of Reference of the Township of Hull owned by the Plaintiff."

Cinquièmement: "All that parcel or tract of land and premises situate, lying and being in the Township of Hull and in the County of Hull and Province of Quebec being composed of parts of Lots 16B in the 13th Range of the said Township, containing by admeasurement 1.3 acres more or less and being more particularly described as follows:

20 Commencing at the intersection of the division line between Lots 16B and 17B and the southwesterly limit of the old location of the right-of-way of the Ottawa Northern and Western Railway; thence South forty-eight minutes East (S.0-48'E.) astronomic and following said division line ninety (90') feet; thence South sixty-nine degrees and thirty minutes East (S.69-30'E.) astronomic two hundred (200') feet; thence South thirty-one degrees East (S.31-00'E.) astronomic one hundred and five (105') feet; thence North eighty degrees and thirty minutes East (N.80-30'E.) astronomic one hundred and twenty (120') feet; thence South forty-five degrees and ten minutes East (S.45-10'E.) astronomic one hundred and twenty-five (125') feet more or less to the southerly limit of the property of Freeman T. Cross; thence northeasterly and following said southerly limit one hundred and forty-five (145') feet more or less to the southwesterly limit of the old location of the right-of-way of the Ottawa Northern and Western Railway; thence Northwesterly and following the said southwesterly limit five hundred and thirty-four (534') feet more or less to the point of commencement" (voir paragraphe 13 de la déclaration-supplémentaire);

40 *Sixièmement*: "A piece or parcel of land forming part of Lot Twenty-three B (23B) in the Sixteenth Range of the Township of Hull, measuring by superficies five or six acres, more or less, and bounded as follows: westerly by the Gatineau River; northerly by the property of Stewart Stevenson; easterly by a fence and gravel pit extending twenty-five feet out from the fence; southerly by an old log fence" (voir paragraphe 21 de la déclaration-supplémentaire);

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La Cour, dans le cas que la défenderesse ferait défaut de payer au demandeur la susdite indemnité de \$348,481.22 avec intérêts dans les quinze jours de la date de la signification du présent jugement, ordonne à la défenderesse (a) de baisser le niveau de ladite rivière Gatineau jusqu'à l'élévation 304 dudit "géodetic survey datum" sur ou vis-à-vis la susdite propriété du demandeur ci-dessus désignée au paragraphe 2 du dispositif du présent jugement, commençant par les mots: "Premièrement: Lot 21B in the 15th range of the Township of Hull . . . etc." (voir allégations 1, 2, 3 et 4 de la première déclaration au pétitoire); (b) de baisser ledit niveau de ladite rivière jusqu'à l'élévation 312 dudit "géodetic survey datum" sur ou vis-à-vis la propriété du demandeur ci-dessus désigné au paragraphe quatre du dispositif du présent jugement commençant par les mots: "Troisièmement: (A) All that parcel of land and premises situated, lying and being in the Township of Hull . . . etc.") (voir paragraphe 8 et 10 de la déclaration au pétitoire); et (c) de baisser le niveau de la même rivière jusqu'à l'élévation 304 dudit "géodetic survey datum" sur ou vis-à-vis la propriété du demandeur ci-dessus désignée ainsi: "Cinquièmement: All that parcel or tract of land and premises situate, lying and being in the Township of Hull . . . etc." (voir allégation 13 de la déclaration-supplémentaire); et à défaut par la défenderesse de baisser les susdits niveaux de la rivière Gatineau dans les quinze jours de l'expiration des susdits quinze jours et à défaut par la défenderesse de payer la susdite indemnité en capital intérêt et frais, le demandeur est autorisé, sous le contrôle de la Cour, de baisser ledit niveau, en ouvrant les portes, digues et barrage de l'aménagement desdites forces hydrauliques de la défenderesse à Chelsea et de faire ce qui sera nécessaire pour abaisser ledit niveau jusqu'aux élévations ci-dessus mentionnées de 312 et 304; dans laquelle éventualité, la Cour condamne la défenderesse à payer au demandeur la somme de cinquante mille dollars avec intérêts à cinq pour cent par année, à titre de dommages additionnels qui seront ajoutés aux somme ci-dessus de \$271,500.00 avec intérêts au taux de cinq pour cent (5%) par année du douzième jour de mars mil neuf cent vingt-sept (12 mars 1927) et \$76,981.22 avec intérêts au taux de cinq pour cent (5%) par année de la date du présent jugement, comme si-dessus mentionné, le tout avec dépens taxables et intérêts.

40

ALBERT De LORIMIER,
J. C. S.