62, 1936

No. 655

CANADA
—
PROVINCE OF QUEBEC
—
MONTREAL

Court of King's Bench

(APPEAL SIDE)

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

GATINEAU POWER COMPANY,

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

(Defendant in the Superior Court),

APPELLANT,

— AND —

FREEMAN T. CROSS,

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

(Plaintiff in the Superior Court),

RESPONDENT.

THE CASE

VOLUME 1

INDEX AND PLEADINGS

RECORD OF PROCEEDINGS. VOL. I.

I N D E X

PART I

PLEADINGS

PART II

PLAINTIFF'S EXHIBITS

PLAINTIFF'S EXHIBITS—Continued

No.	Item	Volume	Page
P-3	Deed of Rectification—Dame Bridget Smith and Freeman T. Cross, dated January 5, 1931.	2	3
P-4	Letters Patent granting to David Moore the south half of Lots 20 and 21, Range XV, Hull, dated November 11, 1867	2	5
P-5	Deed of Donation—David Moore to Thos. Moore, south halves of Lots 20 and 21, Range XV, Hull, dated August 17, 1875	2	7
P-6	Certificate of Search of the Hull Registry Office against Lot 21C, Range XV, Hull, March 10, 1927	2	9
P-7	Deed of Sale—Wm. Cross to Freeman T. Cross, North part of Lot 24, North-west part of Lot 23 and South part of Lot 24C, dated October 27, 1906	2	24
P-8	Deed of sale by Mrs. John E. Cox to Freeman T. Cross, re part of Lot 24C, dated December 18, 1923	2	26
P-9	Deed of Sale—H. H. Selwin to Freeman T. Cross re part of Lot 21C, Wakefield, dated May 11, 1927	2	28
	B. At Enquette.		
P-10	Plan of the Dept. of the Interior prepared by the Topographical Survey of Canada showing Ottawa—Gatineau District	Spec. Ex. Book	No. I
P-11	Certified copy of Proclamation by His Majesty, George III creating the Township of Hull, dated January 3, 1806	2	30
P-12	Certified copy of the official diagram of the Township of Hull	Spec. Ex. Book	No. I
P-13	Certified copy of instructions for survey and subdividing the front of the Township of Hull, dated August 17, 1802	2	47
P-14	Official plan of the Township of Hull, dated November 28, 1881	Spec. Ex. Book	No. I
P-15	Official plan of the Township of Hull, dated November 28, 1881	Spec. Ex. Book	No. I
P-16	Probate and certified copy of Last Will and Testament of Thos. Moore, dated September 27, 1889	2	49
P-17	Plan by G. J. Papineau showing part of Lots 23A, 24, Range XV, Hull, and 24C, Range XVI, Hull, dated September 19, 1931	Spec. Ex. Book	No. I
P-18	Deed of Sale—John E. Cox to Freeman T. Cross re part of Lot 24C, Range XVI, Hull, dated September 28, 1921	2	53

PLAINTIFF'S EXHIBITS—Continued

No.	Item	Volume	Page
P-19	Plan by Gatineau Power Company showing Part of Lots 21B, 21C and 21D, Range XV, Hull, dated November 22nd, 1926	Spec. Ex. Book	No. I
P-20	Plan by G. J. Papineau showing division of river bed and Lots 21B, part 21C and 21D, Range XV, Hull, dated January 8, 1931	Spec. Ex. Book	No. I
P-21	Letters Patent conveying Lot 24, Range XV, Hull, to Robert Sully, dated May 22, 1831	2	58
P-22	Letters Patent conveying south half of Lot 24, Range XVI, Hull, to Robert Sully, dated September 8, 1841	2	62
P-23	Letters Patent conveying north end of Lot 23, Range XV, Hull, to Robert Sully, dated September 26, 1838	2	65
P-24	Deed of Sale—Thos. Moore to Ottawa and Gatineau Valley Railway, re parts of Lots 21C, 22C and 20D, Range XV, Hull, dated April 11, 1891	2	68
P-25	Plan of right of way of Ottawa and Gatineau Valley Railway, dated May 30, 1888	Spec. Ex. Book	No. I
P-26	Book of Reference accompanying above plan (Exhibit P-25)	2	71
P-27	Plan by S. E. Farley, Q.L.S., with description annexed, of Lots 23A, 24, Range XV, Hull, and 24C, Range XVI, Hull	Spec. Ex. Book	No. I
P-28	Profile of part of Gatineau River prepared by Quebec Streams Commission, dated December, 1923	Spec. Ex. Book	No. I
P-29	Panoramic Photograph of Farm Point, September 21, 1926	Spec. Ex. Book	No. IV
P-30	Order of Quebec Public Service Commission dated September 3, 1927	2	77
P-31	Panoramic Photograph showing church, woodpile and railway at Farm Point	Spec. Ex. Book	No. IV
P-32	Photograph showing lumber piles at Farm Point.	Spec. Ex. Book	No. IV
P-33	Photograph showing lumber piles at Farm Point.	Spec. Ex. Book	No. IV
P-34	Photograph showing part of flooded land at Farm Point	Spec. Ex. Book	No. IV
P-35	Plan prepared by S. E. Farley showing lands affected by Chelsea Development dated March 23, 1926. (This is the same as Exhibit D-10 and is not reproduced)	2	78
P-36	Plan by Fraser Brace Engineering Co. for Canadian International Paper Company showing general features of Chelsea Development, dated March 1, 1926	Spec. Ex. Book	No. I
P-37	Deed of Sale—Gatineau Company Ltd. to James McLaren Co. Ltd., dated June 4, 1930.	2	79

PLAINTIFF'S EXHIBITS—Continued

PLAINTIFF'S EXHIBITS—Continued

PLAINTIFF'S EXHIBITS—Continued

PLAINTIFF'S EXHIBITS—Continued

No.	Item	Volume	Page
P-103	Photograph of part of end of tailrace at Farm Point power plant	Spec. Ex. Book	No. IV
P-104	Cash book produced by Perry from June 1920 to April 1921 (page 208). Not printed.		
P-105	Extended Cash Book filed by Perry covering the same period (Page 210). Not printed.		
P-106	Various statements of account for light and power supplied by F. T. Cross	3	116
P-107	Revision of figures with respect to items in P-65 and P-66 and P-96 and P-98 showing the totals arrived at for fair value	3	120
P-108	Small book used by Frederick, being "information used in estimate on transmission line" (page 356)—Not printed.		
P-109	Valuation of buildings at Farm Point based on numbering of Mr. MacRostie	3	121
P-110	Valuation of Hydro Electric Plant at Farm Point by Marchand	3	122
P-111	Record of load reading produced by Marchand showing peak load of 108 H.P.	3	123
P-112	Profile prepared by Langford and duplicate of P-94	Spec. Ex. Book	No. IV
P-113	Deed of Sale from John Dean to F. T. Cross, dated March 23, 1916	3	130
P-114	Valuation by MacRostie of items in P-67, less depreciation	3	131
P-115	Statement of amounts expended for operation of electric system, other than cost of power, from July 10, 1930, to October 10, 1932	3	131
P-116	Assembly Bill 170, entitled "An Act to Amend the Water Course Act"	3	134
P-117	Assembly Bill 170, entitled "An Act respecting certain water powers on the Gatineau River."	3	136
P-118	Assembly Bill 170, entitled "An Act to amend the Public Service Commission Act."	3	139
P-119	Plan showing property Cross acquired from Dean by Deed P-113	Spec. Ex. Book	No. I
P-120	Statement of account of Bush and Kenehan, February 8, 1932	3	140
P-121	Statement of account of Bush and Kenehan, February 9, 1932	3	142
P-122	Estimate by Macrostie of replacement, fair and salvage value of lumber business and electric system	3	143
P-123	Purchase order of cedar poles by Hull Electric Company from F. T. Cross, dated May 21, 1927	3	144
P-124	Photostatic copy of sketch by Farley of valve in Penstock, at Farm Point	Spec. Ex. Book	No. IV

PLAINTIFF'S EXHIBITS—Continued

PART II

DEFENDANT'S EXHIBITS

DEFENDANT'S EXHIBITS—Continued

DEFENDANT'S EXHIBITS—Continued

DEFENDANT'S EXHIBITS—Continued

DEFENDANT'S EXHIBITS—Continued

DEFENDANT'S EXHIBITS—Continued

No.	Item	Volume	Page
D-104	Plan showing general features of Chelsea development constructed for headwater level of 316	Spec. Ex. Book	No. III
D-105	Plan showing comparison of general features of Chelsea and Farmer's power houses	Spec. Ex. Book	No. III
D-106	Plan showing general features of Chelsea development constructed for headwater level of 295	Spec. Ex. Book	No. III
D-107	Graph showing actual Chelsea daily headpond levels for months of September, October and November, 1930	Spec. Ex. Book	No. III
D-108	Profile of C.P.R. from Cascades to Wakefield	Spec. Ex. Book	No. III
D-109	Photograph of Meach Creek	Spec. Ex. Book	No. IV
D-110	2 photographs showing relationship of C.P.R. right-of-way fence at Cascades with Gatineau River	Spec. Ex. Book	No. IV
D-111	4 photographs of Farm Point Workmen's cottages	Spec. Ex. Book	No. IV
D-112	Power Contract between Ottawa and Hull Power and Manufacturing Company and Canada Cement Company, January 31, 1920	4	292
D-113	Agreement between Canada Cement Company and Gatineau Power Company, August 20, 1928	4	298
D-114	Deed of Sale from Rev. Peres Oblats to Gatineau Power Company, January 3, 1928	5	1
D-115	Deed of Rectification of Deed of Sale, D-114, November 5, 1931	5	5
D-116	Deed of Sale—Gilmour and Hughson to I. W. Killam, April 27, 1920	5	7
D-117	Plan prepared by P. Beique, Q.L.S., showing division of river bed and properties at Cascades	Spec. Ex. Book	No. III
D-118	Sketch by P. Beique, Q.L.S., showing division of river bed by method of prolongation of lot lines	Spec. Ex. Book	No. III
D-119	Agreement between F. T. Cross and Hull Electric Company, September 7, 1917	5	28
D-120	Deed of Sale—Arthur Lafontaine to Gatineau Power Co., August 10, 1926	5	31
D-121	Profile of part of Gatineau River prepared by Quebec Streams Commission	Spec. Ex. Book	No. III
D-121a	Letter—Gatineau Power Co. to Dalton McCarthy, February 25, 1927	5	34
D-122	Department of the Interior water resources bulletin No. 58	Spec. Ex. Book	No. V
D-122a	List of customers in 1926 of F. T. Cross' electric distribution system	5	35
D-123	List of customers in 1931 of F. T. Cross' electric distribution system	5	42

DEFENDANT'S EXHIBITS—Continued

DEFENDANT'S EXHIBITS—Continued

No.	Item	Volume	Page
D-148	Deed of Sale—Vankleek Hill Electric Company Ltd. to Ottawa-Montreal Power Company, December 30, 1926	5	109
D-149	Deed of Sale—Corporations of Hudson and Hudson Heights to Ottawa-Montreal Power Company, July 12, 1927	5	114
D-150	Deed of Sale—K. Marston to Ottawa-Montreal Power Company, February 1, 1927	5	122
D-151	Deed of Sale—Argenteuil Lumber Co., to Gatineau Electric Light Co., March 5, 1930	5	126
D-152	Deed of Sale from Dame Senecal to Gatineau Power Co., November 17, 1931	5	130
D-153	Estimated cost of raising F. T. Cross' power house for operation with tailwater at 321.5	5	136
D-154	Estimated replacement and depreciated value of F. T. Cross' Penstock, Power House and Machinery	5	137
D-155	Photograph showing disintegration of Meach Creek Dam	Spec. Ex. Book	No. IV
D-156	Another photograph showing disintegration of Meach Creek Dam	Spec. Ex. Book	No. IV
D-157	Photograph showing floor of sluice way in Meach Creek Dam	Spec. Ex. Book	No. IV
D-158	Estimated replacement and depreciated value of dam and penstock leading to saw mill at Farm Point	5	138
D-159	Government instruction for preparing applications for approval of plans under the Water Course Act	5	139
D-160	Plan prepared by S. E. Farley, Q.L.S., showing Farm Point property of Plaintiff and areas affected by W.L. 321.5	Spec. Ex. Book	No. III
D-161	Sketch made by S. E. Farley, Q.L.S., of draft tube and tailrace at Farm Point Power House	Spec. Ex. Book	No. IV
D-162	Aerial photograph of Farm Point and Gatineau River taken November 23, 1926	Spec. Ex. Book	No. IV
D-163	Plan of Part of Lot 23B, Range 16, Hull, on East side of river, at Farm Point	Spec. Ex. Book	No. III
D-164	Same Exhibit as P-92, for which see	Spec. Ex. Book	No. I
D-165	Photograph of saw mill at Mileage 12	Spec. Ex. Book	No. IV
D-166	Plan of materials found in borings at Farm Point	Spec. Ex. Book	No. III
D-167	Plan showing construction of C.P.R. Bridge over Meach Creek at Farm Point	Spec. Ex. Book	No. III
D-168	Detailed estimate of cost of proposed remedial works at Farm Point	5	145
D-169	Photograph showing part of Meach Creek and lumber piles taken October 8, 1932	Spec. Ex. Book	No. IV

DEFENDANT'S EXHIBITS—Continued

DEFENDANT'S EXHIBITS—Continued

PART III

EVIDENCE

EVIDENCE—Continued

EVIDENCE—Continued

EVIDENCE—Continued

EVIDENCE—Continued

EVIDENCE—Continued

EVIDENCE—Continued

EVIDENCE—Continued

EVIDENCE—Continued

EVIDENCE—Continued

EVIDENCE—Continued

EVIDENCE—Continued

EVIDENCE—Continued

EVIDENCE—Continued

EVIDENCE—Continued

EVIDENCE—Continued

PART IV

In the Superior Court

No. 1.

Writ and Declaration

March 2nd, 1931.

PART I — PLEADINGS

No. 1

WRIT AND DECLARATION

PROVINCE OF QUEBEC
District of Montreal
SUPERIOR COURT
for the Province of Quebec

No. C80504

GEORGE THE FIFTH, by the Grace of God, of Great Britain, Ireland and the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India.

To any of the Bailiffs of Our said Superior Court, duly appointed for the District of Montreal,

GREETING:

WE COMMAND YOU to summon

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,

to be and appear before our said Superior Court in the Court House, in the City and district of Montreal, within a delay of six days from the date of service upon it of the present writ when the distance from the place of service to the place where the Court is held does not exceed 50 miles (when the distance exceeds 50 miles the delay is increased one day for each additional 50 miles; provided always that the delay must never exceed 20 days, whatever distance), to answer the demand of

FREEMAN T. CROSS, of the Village of Farm Point, in the Province of Quebec, Lumber Merchant,

contained in the declaration (or requête libellée) hereunto annexed.

IN default by the defendant (s) to appear within the said delay, judgment may be rendered against him (or them) by default.

And have, there and then or before, this writ and your proceedings thereon.

In the Superior Court

No. 1.

Writ and Declaration.

March 2nd, 1931. (*continued*)

In witness whereof, we have caused the Seal of our said Superior Court to be hereunto affixed at Montreal, this second day of March, in the year of Our Lord one thousand nine hundred and thirty-one.

(Signed) T. DEPATIE,
Deputy-Prothonotary of the said Court.

(Seal)

I, the undersigned, residing in Montreal, in the district of Montreal, one of the sworn bailiffs of the Superior Court for the Province of Quebec, duly admitted for the said District, do hereby certify under my oath of office that on the second day of March, one thousand nine hundred and thirty-one, between the hours of three and four of the clock in the afternoon, I did serve the present writ and declaration thereto annexed on the defendant, Gatineau Power Company, by leaving a duly certified copy thereof for it, by speaking to and leaving the same with a grown and reasonable person in charge and at its chief office and principal place of business in the City and district of Montreal.

Moreover, that the distance from my residence to the place of such service is mile and from the Montreal Court House to the place of service on the said defendant mile .

Dated at Montreal this 2nd of March, 1931.

(Signed) R. LEBLANC,
B.S.C.

$1.70.

PLAINTIFF'S DECLARATION

Plaintiff declares:

1. THAT he is the owner of Lot 21B in the Fifteenth Range of the Township of Hull on the Official Plan and Book of Reference of said Township and of all 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 Fifteenth Range on the survey of the Township of Hull, the whole as shown by photostatic copy of plan filed as Plaintiff's Exhibit P-1;

In the Superior Court

No. 1.

Writ and Declaration.

March 2nd, 1931. *(continued)*

2. THAT Plaintiff acquired the said properties mentioned in the foregoing paragraph, from Dame Bridget Smith, wife of Michael Byrnes, by Deed of Sale passed the 11th October, 1916, before Louis Bertrand, N.P., and registered in the Registry Office for the County of Hull under the Number 27165, and in virtue of a Deed of Rectification between him and the said Dame Bridget Smith passed the 5th January, 1931, before Louis Bertrand, N.P., and registered in the said Registry Office under the Number 62597, copies of which said deeds are filed herewith respectively as Plaintiff's Exhibits P-2 and P-3;

3. THAT the ownership of the said properties and the said part of the bed of the Gatineau River includes the ownership of a waterpower of an average natural force of over 200 H.P.;

4. THAT the above described properties are situate at Cascades in the Province of Quebec, and for brevity will be hereinafter referred to as " the Cascades ";

5. THAT by grant from Her Majesty the Queen to David Moore dated the 11th November, 1867, there was conveyed to the said David Moore, his heirs and assigns forever, the South Halves of Lots Nos. 20 and 21 in the Fifteenth Range of the Township of Hull, as appears by certified copy of such grant, with notation of its registration thereon, filed as Plaintiff's Exhibit P-4;

6. THAT by Deed of Donation passed the 17th August, 1875, the said David Moore gave to his son Thomas Moore the said South halves of Lots Nos. 20 and 21 in the Fifteenth Range of the Township of Hull, as appears by copy of said Deed of Donation filed as Plaintiff's Exhibit P-5, which said deed was duly registered in the said Registry Office the 18th August, 1875, under the Number 10222, and re-registered in the said Registry Office the 6th September, 1902, under the Number 5398;

7. THAT by his Will executed the 27th September, 1899, of which probate was granted by judgment of the Superior Court for the District of Ottawa the 2nd November, 1904, the late Thomas Moore bequeathed all his property to his wife, Dame Bridget Smith, constituting her his universal legatee, which said Will and Probate thereof was registered in the said Registry Office the 12th November, 1903, under the Number 8852, as appears by Certificate of Search of the said Registry Office filed as Plaintiff's Exhibit P-6;

8. THAT Plaintiff is also the owner of the following immoveable properties situate at Farm Point, in the Province of Quebec,

In the Superior Court

No. 1.

Writ and Declaration.

March 2nd, 1931. (*continued*)

through which Meach Creek runs into the Gatineau River about one mile above the Cascades:

(A) All that parcel of land and premises situate, lying and being in the Township of Hull composed of parts of Lots 24 in the Fifteenth Range of the said Township on the Official Plan and Book of Reference of said Township, 23A in the said 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:

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′)

In the Superior Court

No. 1.

Writ and Declaration.

March 2nd, 1931. *(continued)*

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.

(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 Southwest by the right-of-way of the Canadian Pacific Railway; to the North by Mulveyhill Road; to the East by the Gatineau Highway, and to the Southeast 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.

9. THAT Plaintiff acquired the properties described in the preceding paragraph and greater extent from his father, William Cross, by Deed of Sale passed the 27th October, 1906, before N. Tetreau, N.P., and registered in the Registry Office for the County of Hull under the Number 11450, a copy of which deed is filed herewith as Plaintiff's Exhibit P-7;

10. THAT Plaintiff is also the owner of the following immoveable properties, also situate at Farm Point, and described as follows:

(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

In the Superior Court

No. 1.

Writ and Declaration.

March 2nd, 1931. *(continued)*

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 Southeast 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′) 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 the 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.

(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 West by the Gatineau Highway, to the East by the Gatineau River, to the South by Lot 23B in the said Sixteenth Range, and to the North by another part of said Lot 24C. Containing by admeasurement 1.6 acres, more or less.

11. THAT Plaintiff acquired the properties described in the preceding paragraph and greater extent from Dame Bertha Hamilton, widow of John E. Cox, by Deed of Sale passed the 18th December, 1923, before Louis Bertrand, N.P., and registered in the said Registry Office the 24th January, 1924, under the Number 43591—a copy of which deed is filed herewith as Plaintiff's Exhibit P-8;

In the Superior Court

No. 1.

Writ and Declaration.

March 2nd, 1931. (*continued*)

12. THAT the properties referred to in Paragraphs 8, 9, 10 and 11 are situate at Farm Point in the Province of Quebec, and for brevity will be hereinafter referred to as " Farm Point property ";

13. THAT Plaintiff is also the owner of the West portion of La Pêche Rapids on the Gatineau River situate as Lot 2C in the Third Range of the Township of Wakefield, his property being described as follows:

" That part of Lot 2C in the Third 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 such intersection along the trail leading to the gravel pit for a distance of 225 feet; 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, and West by the trail leading from the gravel pit."

14. THAT Plaintiff acquired the property described in the preceding paragraph from Herbert Harley Selwyn by Deed of Sale passed the 11th May, 1927, before F. Albert Labelle, N.P., and registered in the said Registry Office the 13th May, 1927, under the Number 53832, a copy of which deed is filed as Plaintiff's Exhibit P-9;

15. THAT the properties of Plaintiff mentioned in the foregoing paragraphs were granted to his auteurs prior to 1st June, 1884;

16. THAT the Gatineau River is a non-navigable and non-floatable river with respect to Plaintiff's said properties;

17. THAT by reason of Plaintiff's ownership at the Cascades, he could have made and intended to make a hydro-electric developrent with a fourteen-foot head capable of producing 15,000 H.P., and said emplacement had a value of not less than $600,000,00, that is, 15,000 H.P. at $40.00 per H.P.

18. THAT on the said emplacements at Farm Point, described in Paragraph 8 hereof, Plaintiff owns and from 1912 operated a hydro-electric power plant on Meach Creek which runs across the property into the Gatineau River;

19. THAT Plaintiff owns and for many years operated a saw-

In the Superior Court

No. 1.

Writ and Declaration.

March 2nd, 1931. (*continued*)

mill on the said property and had a lumber yard and workmen's cottages thereon;

20. THAT by means of Plaintiff's power plant, prior to the encroachment, trespass and illegal action of the Defendant as hereinafter mentioned, Plaintiff generated electricity which was distributed and sold in the Villages of Wakefield, Cascades, Kirk's Ferry and Alcove, in the Township of Hull and the surrounding district;

21. THAT Plaintiff further owns and formerly operated on the said property an underground aqueduct, by means of which he supplied water to the inhabitants of the Village of Farm Point;

22. THAT during the year 1926 the Defendant commenced the construction of a dam and hydro-electric power plant at Chelsea, Quebec, on the Gatineau River, about 8 miles below the property belonging to the Plaintiff at Cascades;

23. THAT the erection and operation of the said dam has had the effect of backing up the waters of the Gatineau River to an elevation varying between 318 and 320 (which elevations and the elevations hereinafter referred to are based upon bench mark No. 469 established by the Geodetic Survey of Canada and located at the stone foundation of the north side wall of the United Church at Wakefield in the Province of Quebec, the elevation of said bench mark being established as 332.429 feet above mean sea level), and flooding and damaging all the immoveable property above described; submerging the water power at Cascades and prejudicially affecting Plaintiff's power plant, penstock, workmen's cottages, aqueduct and transmission line;

24. THAT the damages to his distribution system between Kirk's Ferry and Cascades have reduced his lighting business by about one-third without any substantial diminution in the cost of exploiting his business;

25. THAT as a result his power plant was put out of commission and in order to conserve his customers he has been obliged at different times and continually since August, 1930, to purchase electric power at the rate of over $250.00 per month;

26. THAT from Cascades to La Pêche Rapids, there was available at least 14 feet of head which was adaptable for and lent itself to inclusion in a larger scheme of power development and, in fact, this head has been included in the Chelsea development of the Defendant;

In the Superior Court

No. 1.

Writ and Declaration

March 2nd, 1931. (*continued*)

27. THAT this 14-foot head for the purposes of such inclusion had an actual value of not less than $900,000.00, being at the rate of $60.00 per H.P. for 15,000 H.P.

28. THAT Defendant owns and operates another development at Farmers' Rapids on the Gatineau River below the Chelsea development, and the inclusion of the said 14-foot head in the Chelsea development made available pondage for the benefit of the Chelsea development and the Farmers' Rapids development, having an annual value of not less than $10,000.00;

29. THAT the said flooding and submersion of Plaintiff's water power and property began on or about the 12th March, 1927;

30. THAT in the year 1927 the Defendant Company applied to the Quebec Public Service Commission for leave to expropriate that part of Lot 24 in the Fifteenth Range of the Township of Hull on the Official Plan and Book of Reference thereof and part of Lot 24C in the Sixteenth Range of the said Township, belonging to the Plaintiff and forming part of the properties described in Paragraph 8A and upon which the power plant and dependencies were erected;

31. THAT the Quebec Public Service Commission refused to give the authorization applied for inasmuch as the Defendant had no power to expropriate the property in question;

32. THAT the Defendant appealed from the said decision of the Quebec Public Service Commission and the Court of King's Bench dismissed the said appeal (46 K.B., page 65);

33. THAT subsequently Defendant appealed to the Supreme Court of Canada and the appeal was dismissed (1929 S.C.R., page 35);

34. THAT the Defendant Company, notwithstanding the fact that it had no right to expropriate or otherwise interfere with the said properties, at Farm Point, flooded it and appropriated to itself the benefit of the use thereof since March, 1927;

35. THAT although Defendant had no right to expropriate Plaintiff's above described property at Cascades or interfere with it any way, having done so in fact to its own great advantage as aforesaid, Plaintiff on the 5th April, 1929, petitioned the Public Service Commission to assess and fix the damages and indemnity to be paid to him for and in lieu of the said property, but Defendant contested this said petition, denying Plaintiff's title and the consequences

thereof and, though admitting that property belonging to Plaintiff had been interfered with and that Plaintiff had never been indemnified, alleged that he suffered no damage other than the submersion of small portions of Lots 21B and 21C and that Plaintiff had been offered therefor the sum of $1,290.00 as being its full value, and Plaintiff having then been advised that the Public Service Commission was without jurisdiction to deal with the matters involved in the said proceedings, desisted from the said proceedings and paid the costs which had been incurred thereon on or about the 27th day of February, 1931;

36. THAT the annual value of such use of Plaintiff's above described properties has been not less than $36,000.00, equivalent to 6 per cent per annum on $600,000.00, and has had to Defendant a value of not less than $64,000.00 a year, equivalent to 6 per cent on $900,000.00, or $54,000.00 plus about $10,000.00 for pondage.

37. THAT Defendant has refused to operate its dam at Chelsea so as to allow the waters of the Gatineau River to resume their normal level at Cascades, Farm Point and La Pêche, although it is perfectly possible for it to do so;

38. THAT Plaintiff is entitled to an order restraining the Defendant from operating its development at Chelsea in a manner which would interfere with any of Plaintiff's said properties; that is to say, an order restraining it from backing water above elevation 304 with respect to Plaintiff's property described in Paragraph 1 hereof at Cascades, and from backing water above elevation 312 with respect to Plaintiff's property described in Paragraph 8A hereof at Farm Point;

39. THAT the elevation of the water of the Gatineau River by Defendant and the submerging and flooding of Plaintiff's properties has caused him damages at the rate of $36,000.00 per annum, equivalent to 6 per cent on $600,000.00, or $144,000.00 as and for the actual value of the use of the said properties since the 12th March, 1927.

WHEREFORE Plaintiff, under reserve of all his rights to sue for damages hereafter to be sustained, prays that by the judgment to be rendered herein the Plaintiff be declared the proprietor of the said immoveable properties and that the Defendant is unlawfully infringing on the rights of the Plaintiff to the peaceful enjoyment of his property and premises, and that the Defendant, its officers, representatives, agents and employees be ordered within fifteen days to lower the level of the water on the Gatineau River at its dam

In the Superior Court

No. 1.

Writ and Declaration

March 2nd, 1931. (*continued*)

at Chelsea so that the above described immoveable property of the Plaintiff will no longer be illegally submerged, inundated or otherwise affected or interfered with by the operation of the Defendant's power plant at Chelsea, namely, down to elevation 304 of the said Geodetic Survey Datum in connection with Plaintiff's property described in Paragraph 1 hereof at Cascades, and at least down to elevation 312 in connection with Plaintiff's property described in Paragraph 8A hereof at Farm Point, and that the said Company Defendant, its officers, representatives, servants, agents and employees be perpetually commanded and enjoined to refrain from any continuation of the submersion, inundation or interference with the said immoveable properties, or any of them, the whole under the pains and penalties provided by law, unless the Defendant shall prefer to pay Plaintiff as and for the value of the said properties flooded to elevation 318 of the said Geodetic Survey Datum the sum of $600,000.00, with interest thereon from the 12th March, 1927, at 6 per cent per annum—which amount and interest Plaintiff hereby declares his willingness to accept in full settlement for the said properties up to elevation 318 of the said Geodetic Survey Datum and all damages past, present and future resulting from the said illegal use made thereof by the Defendant; the said option thus given to the Defendant to be exercised within fifteen days from the date of the judgment herein, and in the event that the said Company Defendant shall not exercise the said option, that it be further adjudged and condemned to pay Plaintiff the sum of $144,000.00, with interest from the date of service and with costs.

MONTREAL, February 27th, 1931.

MacDougall, Macfarlane & Barclay,
Attorneys for Plaintiff.

In the Superior Court

No. 2.

Plea of the Defendant.

April 10th, 1931.

No. 2

DEFENDANT'S PLEA

Defendant for plea to the present action states:

1. Defendant denies Plaintiff's ownership of the properties mentioned in Paragraph One of Plaintiff's Declaration and with respect to the exhibit referred to therein, Defendant, without admitting the accuracy or authenticity of the said plan, or the correctness of the matter thereon inscribed, states that the said plan speaks for itself.

In the Superior Court

No. 2.

Plea of the Defendant.

April 10th, 1931. (*continued*)

2. That the exhibits mentioned in Paragraph Two speak for themselves, but Defendant denies the sufficiency thereof as evidencing title in the Plaintiff to the properties mentioned.

3. Paragraph Three is denied.

4. Defendant is ignorant of the facts alleged in Paragraph Four of Plaintiff's Declaration.

10

5. That the exhibit referred to in Paragraph Five of Plaintiff's Declaration speaks for itself.

6. That with regard to Paragraphs Six and Seven the exhibits referred to therein speak for themselves, but Defendant denies the sufficiency of said exhibits as evidencing title in the Plaintiff to the property mentioned therein.

20 7. Defendant is ignorant of the facts contained in Paragraph Eight of Plaintiff's Declaration.

8. That the exhibit referred to in Paragraph Nine of Plaintiff's Declaration speaks for itself, but Defendant denies the sufficiency thereof as evidencing title in the Plaintiff to the properties referred to therein.

9. Defendant is ignorant of the facts contained in Paragraph Ten of Plaintiff's Declaration.

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10. With regard to Paragraph Eleven, Defendant states that the exhibit referred to therein speaks for itself, but Defendant denies the sufficiency thereof as evidencing title in the Plaintiff to the properties referred to.

11. Defendant is ignorant of the facts contained in Paragraph Twelve.

12. Paragraph Thirteen is denied.

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13. With regard to Paragraph Fourteen, that the exhibit referred to therein speaks for itself, but Defendant denies the sufficiency thereof as evidencing title in the Plaintiff to the property mentioned therein.

14. Defendant is ignorant of the facts set out in Paragraphs Fifteen and Sixteen.

In the Superior Court

No. 2.

Plea of the Defendant.

April 10th, 1931. (*continued*)

15. Paragraph Seventeen of Plaintiff's Declaration is specially denied.

16. Defendant is ignorant of the facts alleged in Paragraphs Eighteen and Nineteen.

17. Paragraph Twenty is denied as drawn.

18. Defendant is ignorant of the facts alleged in Paragraph Twenty-one.

19. Paragraph Twenty-two is admitted.

20. Paragraph Twenty-three is denied as drawn.

21. Paragraph Twenty-four is denied.

22. With regard to Paragraph Twenty-five, Defendant is ignorant of the facts set out therein, but denies that Plaintiff's plant was put out of commission as a result of the Defendant's acts.

23. Paragraph Twenty-six is denied as drawn.

24. Paragraph Twenty-seven is denied.

25. With regard to Paragraph Twenty-eight, Defendant admits that it is the owner of a power development at Farmer Rapids, but denies the balance of the said paragraph.

26. Paragraph Twenty-nine is denied as drawn.

27. Paragraphs Thirty, Thirty-one, Thirty-two and Thirty-three are denied as drawn, and insofar as same contain statements not consistent with Paragraphs Thirty-seven, Thirty-eight and Thirty-nine of the present plea.

28. Paragraph Thirty-four is denied as drawn.

29. With regard to Paragraph Thirty-five, Defendant states (a) that the first four lines thereof are denied, (b) Defendant prays acte of the admission contained in said paragraph to the effect that Plaintiff has already elected to have the question of damages, if any, assessed by the Public Service Commission and that Plaintiff desisted from said proceedings and Defendant states that the proceedings before the Public Service Commission speak for themselves, and Defendant denies that the Public Service Commission

In the Superior Court

No. 2.

Plea of the Defendant.

April 10th, 1931. (*continued*)

had no jurisdiction in said proceedings, which proceedings and the legality thereof are especially pleaded herein by the Defendant.

30. Paragraph Thirty-six is denied.

31. With regard to Paragraph Thirty-seven, Defendant admits that it has refused to operate its dam in a manner to allow the waters of the Gatineau River to resume their natural level at Cascades, Farm Point and La Pêche, but denies the balance of said paragraph.

32. Paragraphs Thirty-eight and Thirty-nine are denied.

And Defendant further pleads:

33. That the Defendant is the owner of developed water powers at the places known as Chelsea Falls and Farmers' Rapids on the Gatineau River and said two power developments produce over two hundred thousand horsepower of electrical energy, and said developments are in the public interest and were constructed and are being maintained in all respects according to law and pursuant to Orders-in-Council of the Lieutenant-Governor of the Province of Quebec duly passed after the filing and approval of plans by Defendant's auteur Canadian International Paper Company, as required by the Water Course Act, R.S.Q., 1925, Ch. 46 and Amendments, and copies of said Orders-in-Council are produced herewith as Defendant's Exhibits D-1 and D-2.

34. That the approval of Defendant's plans for said developments was given and the said Orders-in-Council were passed after Plaintiff had made known to the authorities his pretensions as to the effect the said developments would have upon Plaintiff's property.

35. That said approval covered the construction of Defendant's dams and the raising of the waters of the said river above Chelsea to their existing levels, in order that the water power concentration at Chelsea Falls should be utilized to the best advantage in the public interest.

36. That by virtue of the said approval the Defendant is entitled to avail itself of all the rights and privileges provided in the Water Course Act, both as regards the actual taking in ownership by expropriation of lands required, and also as regards the assessment of damage caused to property not taken in ownership by expropriation, but which might be affected by the works.

In the Superior Court

No. 2.

Plea of the Defendant.

April 10th, 1931. (*continued*)

37. That the Defendant was duly authorized by Order-in-Council of the Lieutenant-Governor of the Province of Quebec to take in ownership by expropriation certain lands purporting to belong to the Plaintiff as appears by copy of said Order-in-Council produced herewith as Defendant's Exhibit D-3, and Defendant did take such proceedings in the manner and form required by law, but was prevented by an order of the Quebec Public Service Commission from pursuing the same to a conclusion, and the propriety and soundness of said order Defendant did not and does not admit.

38. That Defendant did appeal from said Order to the Court of King's Bench, which Court, upon a motion to reject the appeal, decided that said Court had no jurisdiction to hear an appeal.

39. That Defendant endeavored to appeal to the Supreme Court of Canada from the judgment of the Court of King's Bench, but said Court decided upon a motion to quash, that it had no jurisdiction to order said Court of King's Bench to hear an appeal.

40. That after said developments were completed it is true that the waters of the Gatineau River did submerge small strips of land purporting to belong to Plaintiff, and in particular parts of lots numbers Twenty-one B and Twenty-one C, Range Fifteen; and Plaintiff did proceed in a proper manner and as by law required to institute proceedings in arbitration before the Quebec Public Service Commission, which said proceedings bear the number 1921 of the Official Records of the said Commission, and which proceedings as aforesaid are specially pleaded herein by Defendant.

41. That the Defendant has never denied the jurisdiction of the said Quebec Public Service Commission under the provisions of the Water Course Act to pass upon and determine the damage, if any, caused to Plaintiff by said developments, and issue was joined by Defendant with Plaintiff in said proceedings upon the question of the damage so alleged to have been suffered by the Plaintiff.

42. That immediately before the date fixed for the hearing of the said matter by the Quebec Public Service Commission, the Plaintiff, without assigning any reason therefor, desisted from his said proceedings and Defendant thereupon did serve Plaintiff with a written objection to the said desistement and did call upon Plaintiff to continue his said proceedings, which Plaintiff has refused to do.

43. That the said Quebec Public Service Commission is the proper tribunal to fix the indemnity, if any, due to Plaintiff, and said Commission has jurisdiction so to do, and Plaintiff did himself

In the Superior Court

No. 2.

Plea of the Defendant.

April 10th, 1931. *(continued)*

admit said jurisdiction by submitting himself thereto, and Plaintiff is now without right to deny said jurisdiction or to proceed against Defendant by way of the present action.

44. That if the Plaintiff owns the properties situated at Cascades as described in his declaration, which is not admitted, said properties or the ownership thereof do not include any water power capable of economic or commercial development or of a nature or kind which could be scientifically and profitably exploited or developed either alone or in conjunction with any property owned by said Plaintiff either at the time of or before or since the raising of the waters of the Gatineau River by Defendant.

45. That if Plaintiff is the owner of the property referred to in Paragraph Thirteen in his Declaration, which is not admitted, said properties were, as set out in Paragraph Fourteen of his Declaration, acquired by him over a year after the filing of Defendant's plans, and the giving of public notice of its intention to construct and several months after the Defendant's development was completed and the waters raised, and Plaintiff well knew that said properties controlled no water power on the said river and could not have been included in any pretended development to be made by Plaintiff on the Gatineau River.

46. That although Plaintiff alleges that the so-called Cascades properties were purchased by him in the year 1916, no plans for their development were ever projected, and Plaintiff did nothing to carry out his pretended intention of developing the same, and could not, in fact, have secured the approval required by law for a water power development.

47. That the value of $600,000 alleged in Plaintiff's Declaration for the said Cascades properties is grossly exaggerated and exorbitant, and said properties, if they ever yielded any revenue to Plaintiff, which is not admitted, have not yielded revenue which has in any way been diminished or affected by the operations of Defendant.

48. That if the Plaintiff owns a developed water power on the so-called Farm Point properties, which is not admitted, the same is a small development producing less than two hundred horsepower of electrical energy and being irregular and unreliable in its operations by lack of water, especially in the dry seasons of the year, and Defendant has not interfered with or prevented the operation of said water power nor with the operation of the other alleged industries of the Plaintiff.

In the Superior Court

No. 2.

Plea of the Defendant.

April 10th, 1931. (*continued*)

49. That it is not true, as alleged in Paragraph Twenty-six of Plaintiff's Declaration, that there was available at least fourteen (14) feet of head between Cascades and La Pêche Rapids, but, if the same were true, such fact would not give rise to any claim on the part of Plaintiff against the Defendant, seeing that the riparian land and bed and foreshore along this stretch of the said river, above the Cascades and up to and including the Pêche Rapids, and the land riparian to said rapids, are the property of the Defendant.

50. That Defendant is justified in, and has approval for, the inclusion in its development of the head of water in the said river between the Cascades and La Pêche Rapids, but it is not true that such inclusion is worth to Defendant the amount of $900,000 referred to in Paragraph Twenty-seven of Plaintiff's Declaration; on the contrary, said stretch of the river was much more costly to develop than the balance of the river below, and said stretch, even if it had been owned by Plaintiff and not by Defendant, would have been valueless to Plaintiff and could not have been scientifically or economically utilized by him in connection with any pretended development at Cascades.

51. That if the Plaintiff is the owner of properties referred to in his Declaration, such properties are not worth the sum of $600,000, as alleged in Plaintiff's Declaration, and Plaintiff has not suffered the damage claimed in his action.

52. That to deny to Defendant all the rights and privileges granted by law to those who develop and turn to account their water properties and in particular to deny to Defendant the right in case damage has been caused to land not expropriated, to have such damage assessed by the proper tribunal or to deprive Defendant of the right to maintain the waters of said river at the level authorized in the public interest, when Defendant is and has always been ready to pay Plaintiff the full amount of the damage proven to have been caused, would be to render null and inoperative the approval of plans and the Orders-in-Council concerning its said works, and would be against public policy and illegal and not consistent either with the letter or spirit of the Water Course Act governing such matters.

53. That the damage, if any, which Plaintiff may have suffered by reason of the Defendant's works is not irreparable, but is susceptible of being made the subject of a money indemnity, and Plaintiff is not entitled to an order restraining Defendant from operating its water power at Chelsea and from backing the waters of the said river up to their existing levels, seeing that said development is in the public interest and was duly authorized as aforesaid, and Defendant has always been and is still ready to proceed to have the

In the Superior Court
No. 2.
Plea of the Defendant.
April 10th, 1931.
(continued)

indemnity, if any, due to Plaintiff, fixed by the proper tribunal, and Defendant prays acte of Plaintiff's declaration of his readiness to accept the money value of the property which would be found to be affected by Defendant's works, Defendant denying, however, that such value is the sum of $600,000 as set forth in Plaintiff's Declaration and the conclusions thereof.

54. That Defendant's action is bad in law and in fact and should be dismissed.

WHEREFORE Defendant, reserving all rights which to it may appertain in respect of continuance of the proceedings instituted by the Plaintiff before the Quebec Public Service Commission and hereby renewing its said offer to continue said proceedings and to pay to Plaintiff such damages as may be lawfully found to have been caused to Plaintiff by Defendant's works, prays for the dismissal of Plaintiff's action with costs, including costs of exhibits and including a special allowance for costs of experts which Defendant may require to retain for purposes of the present action.

MONTREAL, 10th April, 1931.

BROWN, MONTGOMERY & MCMICHAEL,
Attorneys for Defendant.

No. 3

ANSWER TO PLEA

In the Superior Court
No. 3.
Plaintiff's Answer to Defendant's Plea.
April 15th, 1931.

1. Plaintiff joins issue with Defendant as to Paragraph 1 of the Plea;

2. Plaintiff denies Paragraph 2 in so far as it does not conform to the allegations of Paragraph 2 of the Declaration;

3. Plaintiff denies Paragraph 6 in so far as it does not conform to the allegations of Paragraphs 6 and 7 of the Declaration;

4. Plaintiff denies Paragraph 8 in so far as it does not conform to the allegations of Paragraph 9 of the Declaration;

In the Superior Court

No. 3.

Plaintiff's Answer to Defendant's Plea.

April 15th, 1931. (*continued*)

5. Plaintiff denies Paragraph 10 in so far as it does not conform to the allegations of Paragraph 11 of the Declaration;

6. Plaintiff denies Paragraph 13 in so far as it does not conform to the allegations of Paragraph 14 of the Declaration;

7. Plaintiff denies Paragraph 29 in so far as it does not conform to the allegations of Paragraph 35 of the Declaration;

8. Plaintiff prays acte of the admission contained in Paragraph 31;

9. In answer to Paragraph 33, Plaintiff says he is ignorant of the amount of electrical energy produced at Chelsea Falls and Farmers' Rapids and otherwise denies each and every the allegations of the said Paragraph as drawn, including Defendant's right to rely on said Orders-in-Council, Exhibits D-1 and D-2;

10. Plaintiff denies Paragraphs 34 and 35;

11. Plaintiff denies Paragraph 36 as drawn;

12. In answer to Paragraph 37, Plaintiff says that the Order-in-Council and the Order of the Public Service Commission speak for themselves, but otherwise denies the said Paragraph;

13. In answer to Paragraphs 38 and 39, Plaintiff says that the proceedings therein referred to are of record and speak for themselves;

14. In answer to Paragraph 40 Plaintiff prays acte of the admission therein contained and says that the proceedings before the Public Service Commission speak for themselves, but otherwise denies the Paragraph as drawn;

15. In answer to Paragraphs 41 and 42, Plaintiff says that the proceedings therein referred to speak for themselves;

16. Paragraphs 43 and 44 and 45 are denied;

17. Plaintiff denies Paragraph 46 and says that in any event it is irrelevant whether Plaintiff has developed the Cascades properties or not;

18. Paragraphs 47, 48, 50 and 51 are denied;

19. Paragraph 49 as drawn is denied. Plaintiff was in treaty for the acquisition of the riparian rights, bed and foreshore which he did not already own along this stretch of the said river, from the

In the Superior Court

No. 3

Plaintiff's Answer to Defendant's Plea.

April 15th, 1931. (*continued*)

owners thereof, to the knowledge of Defendant and Canadian International Paper Co. Limited, and such of these rights as were acquired by Defendant and/or Canadian International Paper Co. Limited were so acquired surreptitiously and in breach of faith while negociating with Plaintiff for the acquisition of his own properties;

20. In answer to Paragraph 52, Plaintiff says that the approval of plans and the Orders-in-Council were given without prejudice to the rights of riparian owners or third parties in the event that such rights might be prejudicially affected by the construction, maintenance or operation of the project, and otherwise denies the said Paragraph;

21. Plaintiff denies Paragraph 53 as drawn; Plaintiff's Declaration and the conclusions thereof speak for themselves;

22. Paragraph 54 is denied.

WHEREFORE Plaintiff reiterating the allegations and conclusions of his Declaration prays for the dismissal of Defendant's Plea and the maintenance of his action with costs.

MONTREAL, April 15th, 1931.

MACDOUGALL, MACFARLANE & BARCLAY,
Attorneys for Plaintiff.

In the Superior Court

No. 4.

Defendant's Replication to Plaintiff's Answer to Defendant's Plea.

Sept. 16th, 1931.

No. 4

DEFENDANT'S REPLICATION TO PLAINTIFF'S ANSWER TO DEFENDANT'S PLEA

1. Defendant joins issue with Plaintiff on paragraphs 1 to 16 inclusive of Plaintiff's Answer to Plea.

2. Paragraph 17 of said Answer is denied.

3. Defendant joins issue with Plaintiff as to paragraph 18 of the said Answer.

4. Paragraph 19 of the Plaintiff's Answer to Plea is denied.

5. With regard to paragraph 20 Defendant states that the Order-in-Council therein referred to speaks for itself.

In the Superior Court

No. 4.

Defendant's Replication to Plaintiff's Answer to Defendant's Plea.

Sept. 16th, 1931. *(continued)*

6. Defendant joins issue with Plaintiff as to paragraphs 21 and 22 of the said Answer.

WHEREFORE Defendant prays for the dismissal of the said Answer and the maintenance of the Defendant's Plea with costs.

MONTREAL, 16th September, 1931.

BROWN, MONTGOMERY & MCMICHAEL,
Attorneys for Defendant.

In the Superior Court

No. 5.

Motion of Defendant to be Allowed to File Supplementary Plea.

Dec. 31st, 1931.

No. 5

MOTION OF DEFENDANT TO BE ALLOWED TO FILE SUPPLEMENTARY PLEA, AFFIDAVIT AND NOTICE

1. Inasmuch as since the joining of issue between the Plaintiff and the Defendant in this case and the commencement of the enquête herein a new fact has arisen which is essential to the decision of the present case, to wit, that Defendant has by petition to the Quebec Public Service Commission under the date the 30th December, 1931, prayed the said Commission to determine and fix the amount of damage that the Plaintiff may be entitled to by reason of the flooding of the property of the said Plaintiff as set out in the present action.

2. Inasmuch as the said fact is one which it is essential the Defendant should plead and prove in the present case as a supplementary plea, in addition to its plea already made and filed herein.

That Defendant be permitted to file the supplementary plea annexed hereto in the present case, the whole with costs to follow the result of the present suit.

MONTREAL, December 31, 1931.

BROWN, MONTGOMERY & MCMICHAEL,
Attorneys for Defendant.

In the Superior Court

No. 5.
Motion of Defendant to be Allowed to File Supplementary Plea.

Dec. 31st, 1931.
(continued)

AFFIDAVIT

Affidavit of Edward M. Woollcombe, of 314 First Avenue, Ottawa, Ontario.

1. I am Assistant to the Manager of Development of the Company Defendant.

2. All the facts alleged in the above motion and the supplementary plea annexed thereto are true.

3. The facts alleged in said supplementary plea are essential to the Defendant's case.

And I have signed:

EDWARD M. WOOLLCOMBE.

SWORN to before me at the City of Montreal, Province of Quebec, this 31st day of December, 1931.

T. R. KER,
A Commissioner of the Superior Court for the Province of Quebec.

NOTICE

[Not Printed]

(Judgment on this motion as endorsed thereon.)

Take nothing by this motion—12 January, 1933.

A. de L., J.C.S.

In the Superior Court

No. 5 (a).

Supplementary Plea Filed with Motion.

Jan. 11th, 1932.

No. 5(a)

DEFENDANT'S SUPPLEMENTARY PLEA FILED WITH FOREGOING MOTION

That upon the 30th day of December, 1931, Defendant did file with the Quebec Public Service Commission in the manner and form provided by the rules thereof a Petition praying the said Commission to determine and fix the indemnity for all damages which Plaintiff herein may have suffered by reason of the backing up of

In the Superior Court

No. 5 (a).

Supplementary Plea Filed with Motion.

Jan. 11th, 1932. *(continued)*

the water upon the properties of the Plaintiff referred to herein, the whole pursuant to the provisions of the Water Course Act R. S. Q. 1925, Chapter 46 as amended by Act 18 George V, Chapter 29 and the said matter is at present pending before the said Commission.

Wherefore Defendant reiterates the conclusions of its original plea and prays for the dismissal of Plaintiff's action with costs.

MONTREAL, 11th January, 1932.

BROWN, MONTGOMERY & MCMICHAEL,
Attorneys for Defendant.

QUEBEC PUBLIC SERVICE COMMISSION

No. 5 (b)

In the Superior Court

No. 5 (b).

Defendant's Petition to Quebec Public Service Commission.

Dec. 30th, 1931.

DEFENDANT'S PETITION TO QUEBEC PUBLIC SERVICE COMMISSION FILED WITH FOREGOING MOTION TO AMEND.

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
No. .....

QUEBEC PUBLIC SERVICE COMMISSION

IN RE WATER COURSE ACT R.S.Q., 1925, Ch. 46 and amendments.

GATINEAU POWER COMPANY, a body politic and corporate, having its head office at Montreal,

Petitioner.

—AND—

FREEMAN T. CROSS, Lumberman, of Farm Point, County of Hull, P.Q.,

Respondent.

TO THE QUEBEC PUBLIC SERVICE COMMISSION—

The Petition of the above mentioned Petitioner respectfully represents:—

In the Superior Court

No. 5 (b).

Defendant's Petition to Quebec Public Service Commission.

Dec. 30th, 1931. (*continued*)

1. That the Company Petitioner is the owner of developed water powers on the Gatineau River at the places known as Chelsea Falls and Farmers' Rapids, which said water powers together develop over Two hundred thousand (200,000) H.P. of electrical energy available for industrial and commercial purposes.

2. That the power house, dam and other works of the Petitioner at Chelsea Falls have caused a backing up of the Gatineau River with the result that certain properties of the Respondent have been affected by flooding.

3. That the Petitioner has been informed that properties of the Respondent so affected consist of the following:—

(a) Lot 21 (b) and portions of Lot 21 (c) in the Fifteenth Range of the County of Hull which said properties are situate at the place commonly known as Cascades on the Gatineau River;

(b) Certain other property of the Respondent situate at the place known as Meach Creek approximately one mile above the properties aforementioned, which said Meach Creek properties your Petitioner is informed comprise parts of Lots 24 and 23 (a) in the Fifteenth Range and part of Lot 24 (c) in the Sixteenth Range all on the Official Plan and Book of Reference of the County of Hull;

(c) A piece of land forming part of Lot 2 (c) in the Third Range in the Township of Wakefield, which said piece of property Petitioner believes was purchased by Respondent after the same was flooded by the works of Petitioner as hereinabove alleged.

4. That the Petitioner has been unable to agree with Respondent as to the extent and amount of damage caused to the said properties by reason of the backing up of the water as aforesaid.

5. That with respect to the properties mentioned at paragraph 3 (a) above (Cascades) the Respondent did as Petitioner to this Commission in the year 1929 institute proceedings in arbitration before this Commission to have the damages he claimed to have suffered in respect of said property fixed and determined by this Commission pursuant to the provisions of the Water Course Act R.S.Q. 1925, Chapter 46 and amendments, the said proceedings bearing the number 1921 of the Commission's Records, and the Company Petitioner herein did join issue with the Respondent upon the question of damages alleged in said proceedings to have been suffered by him, and did offer Respondent the sum of One thousand two hundred and ninety dollars ($1,290) in respect thereof, and Peti-

In the Superior Court

No. 5 (b).

Defendant's Petition to Quebec Public Service Commission.

Dec. 30th, 1931. (*continued*)

tioner did submit to the jurisdiction of the said Commission in those proceedings.

6. That immediately before the date fixed for the hearing of the aforementioned proceedings said Cross, without assigning any reason therefor, desisted from such proceedings and your Petitioner did serve said Cross with a written objection to the said desistment and did call upon him to continue the said proceedings which he has refused to do.

7. That your Petitioner is equally interested with Respondent in having the damages to Respondent's aforesaid property determined, and your Petitioner is entitled to ask that the nature and extent of the damages alleged to have been suffered by Respondent be determined and the amount of compensation payable therefor by the Petitioner fixed by this Honourable Court pursuant to the provisions of the aforementioned Act.

8. That your Petitioner is further entitled to have the nature and extent of the damages caused to the properties mentioned in paragraphs 3 (b) and 3 (c) hereof assessed and determined by this Honourable Commission and Petitioner hereby declares its willingness to pay unto Respondent the sum of Ten thousand four hundred and twenty-seven dollars ($10,427) as compensation for the damages caused to said properties mentioned at paragraphs 3 (b) and 3 (c) hereof.

WHEREFORE your Petitioner through the undersigned its attorneys declaring its readiness to pay to Respondent the sum of Eleven thousand seven hundred and seventeen dollars ($11,717) with interest from the 12th March, 1927, for the damages caused to all the properties mentioned in paragraph 3 hereof, prays that this Honourable Commission do proceed to fix and determine the amount of said damage and the money value thereof as by law required and that acte be granted to the Petitioner of the offer herein made and that in the event of said offer being found sufficient the costs of these proceedings be adjudicated against Respondent and your Petitioner will ever pray.

MONTREAL, 30th December, 1931.

(Sgd.) BROWN, MONTGOMERY & MCMICHAEL,
Attorneys for Petitioner.

TRUE COPY:

BROWN, MONTGOMERY & MCMICHAEL,
Attorneys for Petitioner.

In the Superior Court

No. 5 (c).

Plaintiff's Answer to Defendant's Petition to Quebec Public Service Commission.

January 8th, 1932.

No. 5 (c)

PLAINTIFF'S ANSWER TO DEFENDANT'S PETITION TO QUEBEC PUBLIC SERVICE COMMISSION FILED WITH DEFENDANT'S MOTION TO AMEND

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
No. 2829.

QUEBEC PUBLIC SERVICE COMMISSION

GATINEAU POWER COMPANY,

Applicant.

—vs—

FREEMAN T. CROSS,

Respondent.

ANSWER OF THE RESPONDENT TO THE PETITION

1. Respondent is ignorant of the allegations contained in paragraph 1 of the Application;

2. Respondent admits that the power house, dam and other works of the Company Petitioner at Chelsea Falls have caused a backing up of the Gatineau River with the result that certain water powers, properties and rights belonging to Respondent have been submerged and destroyed and otherwise interfered with;

3. That the properties and rights so submerged, destroyed and otherwise interfered with by the Petitioner are described at length in a certain action now pending between Respondent and Petitioner in the Superior Court for the District of Montreal and bearing the Number C-80504 of the records of that Court, and the descriptions contained in paragraphs a, b, and c of paragraph 3 of the Petition do not fully describe and set out the nature and extent of such properties and rights of the Respondent;

4. Paragraph 4 is denied as drawn for the reasons hereinafter set forth;

5. As to paragraph 5, Respondent says that the proceedings before the Quebec Public Service Commission speak for themselves;

In the Superior Court

No. 5 (c).

Plaintiff's Answer to Defendant's Petition to Quebec Public Service Commission.

January 8th, 1932. (*continued*)

6. As to paragraph 6, Respondent says that the proceedings before the Quebec Public Service Commission speak for themselves;

7. Paragraph 7 is denied;

8. Paragraph 8 is denied;

And for further answer the Respondent says:

9. That at the present time there is pending before the Superior Court in Montreal a petitory action wherein the present Respondent is Plaintiff and the present Petitioner is Defendant;

10. That Respondent begs leave to refer this Honourable Commission to such action;

11. That by such action the Respondent asserts his ownership to the properties therein described and prays that the Defendant be ordered to cease operating a development at Chelsea on the Gatineau River in a manner which interferes with Plaintiff's ownership;

12. That issue has been joined on such action and already there have been twelve days of enquête in the Superior Court and Plaintiff has made its case, Defendant its defence and there remains only some rebuttal evidence and the argument before such case is concluded in the Superior Court;

13. That the Company Defendant in such action has denied the Plaintiff's ownership of part of his properties and rights, has denied the nature and extent thereof and even the area and boundaries of his properties;

14. That the Company Defendant did not take any declinatory exception to the jurisdiction of the Superior Court which is at present seized of all the matters therein pleaded;

15. That in the year 1927 the Petitioner applied to this Honourable Commission for leave to expropriate that part of Lot No. 24 in the 15th Range of the Township of Hull and part of Lot No. 24 (c) in the 16th Range of the said Township belonging to the Plaintiff and forming part of the properties described in paragraph 8 (a) of Plaintiff's Declaration in the said action and upon which there existed an established industry and other dependencies belonging to the Respondent;

In the Superior Court

No. 5 (c).

Plaintiff's Answer to Defendant's Petition to Quebec Public Service Commission.

January 8th, 1932. (*continued*)

16. That this Honourable Commission refused to permit an expropriation of the said property;

17. That the Petitioner appealed from the said decision to the Court of King's Bench which dismissed the Appeal, and subsequently the Petitioner appealed to the Supreme Court of Canada and the Appeal was dismissed;

18. That Petitioner also in 1927 gave notice of expropriation proceedings against the properties mentioned in paragraph 3 (a) and part of the property mentioned in paragraph 3 (b) of its application and other properties belonging to Respondent and did not proceed to expropriation or get permission for possession but nevertheless illegally and without any right to do so submerged and destroyed Respondent's properties, industry and dependencies in the manner set forth in Respondent's Declaration in the said action;

19. That the only question of damages before the Superior Court is the value of the illegal use of Respondent's properties since the 12th of March, 1927;

20. That if the Respondent's action is maintained by the final judgment rendered in the said case now pending in the Superior Court, the petitioner could not obtain any order from the Quebec Public Service Commission because Petitioner's present illegal occupation and usurpation of Respondent's properties and rights would be forbidden and forever restrained;

21. That it has been proved in the said action that the Respondent is the owner of over 200 horsepower;

22. That unless and until the Superior Court has decided the nature and extent of Plaintiff's ownership, properties and rights, the Quebec Public Service Commission cannot, even if it had jurisdiction (which is not admitted but denied), adjudicate upon any application to fix damages;

23. That under all these circumstances the Quebec Public Service Commission has no jurisdiction to entertain the present application which is frivolous, vexatious and unfounded in fact and in law;

24. That the present application is in effect an attempt to stay proceedings now pending in the Superior Court as aforesaid;

WHEREFORE your Respondent prays that this Honourable Commission do dismiss the present application, with costs.

MONTREAL, January 8th, 1932.

(Sgd.) MacDougall, Macfarlane & Barclay,
Attorneys for Respondent.

TRUE COPY:

MacDougall, Macfarlane & Barclay,
Attorneys for Respondent.

In the Superior Court

No. 6.
Plaintiff's Motion to be Allowed to File Supplementary Declaration.

March 4th, 1932.

No. 6

PLAINTIFF'S MOTION

WHEREAS since the completion of the trial and hearing herein and while the case was under advisement the Defendant arranged to have introduced in the Legislative Assembly of the Legislature of the Province of Quebec two Public Bills bearing Nos. 170 and 171 for the purpose of amending The Water-Course Act and The Public Service Commission Act respectively; and

WHEREAS the said Bills were after second reading thereof referred to the Public Bills Committee where the Defendant's Counsels were heard in respect thereof and expressly admitted that the said Bills had been introduced at their instance to deal with the situation arising out of the facts with which this action has to do; and

WHEREAS the adoption of the said Bills was opposed by Counsel for Plaintiff and after discussion thereof Bill No. 171 was abandoned and Bill No. 170 in its original form was replaced by a Special Act to govern the matters involved in this case under the following title and in the following form:

ASSEMBLY BILL NO. 170

An Act respecting certain water-powers on the Gatineau River

WHEREAS the Gatineau Power Company has developed certain water powers at Chelsea Falls, on the Gatineau River, and has, by its works erected for that purpose, raised the level of the river above the said Falls and thereby submerged in whole or in part, since the 12th March, 1927, certain properties of which one Freeman T. Cross claims to be the owner and with respect to which he claims to have suffered serious loss and damage;

WHEREAS the said Cross has instituted in the Superior Court, in the district of Montreal, a petitory action against the said company with respect to some of the said properties, which action is still pending;

WHEREAS the said Cross has opposed certain proposed amendments to the Water-Course Act as being apt to affect the rights asserted by him in the said petitory action, but has expressed his willingness to allow the said Gatineau Power Company to acquire all of his said properties submerged or affected by the said development provided he be paid fair compensation;

In the Superior Court

No. 6.
Plaintiff's Motion to be Allowed to File Supplementary Declaration.

March 4th, 1932.
(continued)

WHEREAS the said company has expressed its desire to expropriate the said properties;

WHEREAS it appears that the parties are unable to agree as to what would be fair compensation;

WHEREAS it appears proper, under the circumstances, to provide by special legislation that the said company shall not be disturbed in the operation of its said power development and that fair compensation to the said Cross shall be assessed in his favour and awarded to him by the Courts in the said pending case;

THEREFORE, His Majesty, with the advice and consent of the Legislative Council and of the Legislative Assembly of Quebec, enacts as follows:

1. The Gatineau Power Company shall not be disturbed by the said Cross, his successors or assigns, in the operation of its power development at Chelsea Falls by maintaining the level of the Gatineau River above the said Falls at any controlled elevation not exceeding 321.5 feet above sea level at Farm Point as determined by the geodetic survey bench mark on the church of the United Church of Canada at Wakefield Village, provided fair compensation to the said Cross shall be assessed and paid as hereinafter determined.

2. The Gatineau Power Company shall make just and fair compensation to the said Cross for all his properties and rights taken for or affected by the said development up to the said elevation and by the operation thereof.

3. The date with reference to which valuation shall be made shall be the date of the Order-in-Council approving the plans for such development.

4. 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.

5. 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 the said case may, under the control of the said Court, make such amendments to their pleadings and/or fyle such sup-

In the Superior Court

No. 6.
Plaintiff's Motion to be Allowed to File Supplementary Declaration.

March 4th, 1932.
(continued)

plementary 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.

6. The Court shall in the judgment to be rendered in the said case determine what properties and rights shall, on payment of the said compensation, interest and costs, become vested in the Gatineau Power Company, and make such order for the lowering of the level of the said river on or opposite the properties of the said Cross and for the payment of damages, interest and costs as may appear to be proper in the event the said company should fail to pay the amounts awarded as full compensation, interest and costs.

7. On payment or deposit in full of the amount awarded, the said properties and rights shall be vested in the company and the compensation shall stand in lieu of such properties and rights.

8. The judgment to be rendered in the said case shall be deemed for all purposes of appeal or otherwise a judgment of the said Court.

9. This act shall come into force on the day of its sanction.

and

WHEREAS the said Act was sanctioned on the 19th day of February, 1932, and is now in force as Chapter 128 of the Statutes of Quebec, 22 Geo. V; and

WHEREAS in order to comply with the said Act 22 Geo. V, Chap. 128, it is necessary that the Plaintiff should fyle the Supplementary Declaration annexed hereto, that the *delibéré* be discharged and the case re-opened for trial and hearing of the facts alleged in the said Supplementary Declaration.

THAT Plaintiff be allowed to fyle the Supplementary Declaration annexed hereto as a supplementary pleading provided for in Section 5 of the said Act 22 Geo. V, Chapter 128; that Defendant be required to make answer thereto and that subsequently both parties be required to fyle such other supplementary pleadings as may be necessary to join the issues and within such delay as may be determined by this Honourable Court; that the trial and hearing of the new issues be fixed for and commence on such date as this Honourable Court may order; the whole under the control of this Honourable Court with such other conditions as may please

In the Superior Court

No. 6.

Plaintiff's Motion to be Allowed to File Supplementary Declaration.

March 4th, 1932. (*continued*)

this Honourable Court to order to give full effect to the provisions of the said Act 22 Geo. V, Chap. 128; the whole with costs.

MONTREAL, March 4th, 1932.

MACDOUGALL, MACFARLANE & BARCLAY,
Attorneys for Plaintiff.

AFFIDAVIT AND NOTICE

[Not Printed]

(Judgment on this motion as endorsed thereon.)

Motion accordée, la défenderesse devant plaider dans les délais légaux, et le demandeur devant répondre dans les mêmes délais légaux, sous toutes réserves que de droit: par Hon-Juge de Lorimier, ce 10 mars 1932, dans l'après-midi.

ALBERT DeLORIMIER,
J.C.S.

In the Superior Court

No. 7.

Plaintiff's Supplementary Declaration.

March 5th, 1932.

No. 7

PLAINTIFF'S SUPPLEMENTARY DECLARATION

1. Since the completion of the trial and hearing herein and while the case was under advisement, the Defendant arranged to have introduced in the Legislative Assembly of the Legislature of the Province of Quebec, two Public Bills bearing Numbers 170 and 171 in the following form:

Bill No. 170—An Act to amend the Water-Course Act.

His Majesty, with the advice and consent of the Legislative Council and of the Legislative Assembly of Quebec, enacts as follows:

1. Section 18 of the Water-Course Act (Revised Statutes, 1925, chapter 46) is replaced by the following:

" 18. No expropriation under this division shall take place except in the case of a waterpower of an average natural force

In the Superior Court

No. 7.

Plaintiff's Supplementary Declaration.

March 5th, 1932. *(continued)*

of at least two hundred horse-power, and large enough for industrial purposes.

" Such expropriation must, previously, be authorized by the Quebec Public Service Commission, when it is exercised to the prejudice of waterpowers, whether developed or not, or to that of an industry already established or of a waterworks system, provided that it be shown satisfactorily to the Commission that the expropriation asked for is in the public interest.

" In the case of the expropriation of a waterworks system or of an established industry or of developed water-powers, the Commission may grant a special indemnity and prescribe such terms and conditions as it may deem proper to secure the continuation or replacement of an existing public service.

" Notwithstanding the provisions of this section, no feeder of a waterworks system may be expropriated unless another feeder, approved by the Quebec Public Service Commission, has previously been developed so as to assure an uninterrupted supply of water."

2. The said act is amended by inserting therein, after section 23 thereof, the following section:

" 23a. In the event of an application for the expropriation of land liable to be flooded through the carrying out of work for the development of water-powers, the owner of such land may require that, instead of the right of ownership, the company which has made such application obtain merely a servitude over such land, the nature and duration whereof to be determined by the Quebec Public Service Commission."

3. Section 62 of the said act, as amended by the act 17 George V, chapter 66, section 13, is again amended by replacing the last paragraph thereof by the following paragraphs:

" No expropriation may be held under this section, save for the construction or maintenance of a work which is intended, either alone or with other works, to supply a fall or a rapid giving an average natural force of at least two hundred horse-power, or a waterworks system for domestic or industrial purposes.

" Such expropriation must, previously, be authorized by the Quebec Public Service Commission, when it is exercised to the

In the Superior Court

No. 7.

Plaintiff's Supplementary Declaration.

March 5th, 1932. *(continued)*

prejudice of water-powers, developed or not, or to that of an industry already established or of a waterworks system, provided that it be shown satisfactorily to the Commission that the expropriation asked for is in the public interest.

" In the case of the expropriation of a waterworks system or of an established industry or of developed water-powers, the Commission may grant a special indemnity and prescribe such terms and conditions as it may deem proper to secure the continuation or replacement of an existing public service.

" Notwithstanding the provisions of this section, no feeder of a waterworks system may be expropriated unless another feeder, approved by the Quebec Public Service Commission, has previously been developed so as to assure an uninterrupted supply of water."

4. The said act is amended by inserting therein, after section 62 thereof, the following section:

" 62a. In the event of an application for the expropriation of any land liable to be flooded through the carrying out of work for the storage of water, the owner of such land may require that, instead of a right of ownership, the company which has made such application obtain merely a servitude over such land, the nature and duration whereof to be determined by the Quebec Public Service Commission."

5. This act shall come into force on the day of its sanction.

Bill No. 171—An Act to amend the Public Service Commission Act.

His Majesty, with the advice and consent of the Legislative Council and of the Legislative Assembly of Quebec, enacts as follows:

1. Section 28k of the Public Service Commission Act (Revised Statutes, 1925, chapter 17), as enacted by the act 16 George V, chapter 16, section 6, and amended by the act 17 George V, chapter 16, section 3, is repealed.

2. This act shall come into force on the day of its sanction.

2. The said Bills were, after second reading thereof, referred to the Public Bills Committee where the Defendant's Counsels were

In the Superior Court

No. 7.

Plaintiff's Supplementary Declaration.

March 5th, 1932. (*continued*)

heard in support thereof and expressly admitted that the said Bills had been introduced at their instance to deal with the situation arising out of the facts with which this action has to do;

3. The adoption of the said Bills was opposed by Counsel for Plaintiff and after the discussion thereof Bill No. 171 was abandoned and Bill No. 170 in its original form was replaced by a Special Act to govern the matters involved in this case, under the following title and in the following form:

(Assembly Bill No. 170)

An Act respecting certain Water-Powers on the Gatineau River.

Whereas the Gatineau Power Company has developed certain water-powers at Chelsea Falls, on the Gatineau River, and has, by its works erected for that purpose, raised the level of the river above the said Falls and thereby submerged in whole or in part, since the 12th March, 1927, certain properties of which one Freeman T. Cross claims to be the owner and with respect to which he claims to have suffered serious loss and damage;

Whereas the said Cross has instituted in the Superior Court, in the district of Montreal, a petitory action against the said company with respect to some of the said properties, which action is still pending;

Whereas the said Cross has opposed certain proposed amendments to the Water-Course Act as being apt to affect the rights asserted by him in the said petitory action, but has expressed his willingness to allow the said Gatineau Power Company to acquire all of his said properties submerged or affected by the said development provided he be paid fair compensation;

Whereas the said company has expressed its desire to expropriate the said properties;

Whereas it appears that the parties are unable to agree as to what would be fair compensation;

Whereas it appears proper, under the circumstances, to provide by special legislation that the said company shall not be disturbed in the operation of its said power development and that fair compensation to the said Cross shall be assessed in his favour and awarded to him by the Courts in the said pending case;

In the Superior Court

No. 7.

Plaintiff's Supplementary Declaration.

March 5th, 1932. *(continued)*

Therefore, His Majesty, with the advice and consent of the Legislative Council and of the Legislative Assembly of Quebec, enacts as follows:

1. The Gatineau Power Company shall not be disturbed by the said Cross, his successors or assigns, in the operation of its power development at Chelsea Falls by maintaining the level of the Gatineau River above the said Falls at any controlled elevation not exceeding 321.5 feet above sea level at Farm Point as determined by the geodetic survey bench mark on the church of the United Church of Canada at Wakefield Village, provided fair compensation to the said Cross shall be assessed and paid as hereinafter determined.

2. The Gatineau Power Company shall make just and fair compensation to the said Cross for all his properties and rights taken for or affected by the said development up to the said elevation and by the operation thereof.

3. The date with reference to which valuation shall be made shall be the date of the Order-in-Council approving the plans for such development.

4. 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.

5. 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 the said case may, under the control of the said Court, make such amendments to their pleadings and/or fyle 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.

6. The Court shall in the judgment to be rendered in the said case determine what properties and rights shall, on payment of the said compensation, interest and costs, become vested in the Gatineau Power Company, and make such order for the lowering of the level of the said river on or opposite the properties of the said Cross and for the payment of damages, interest and costs as may appear to be proper in the event the said company should fail to pay the amounts awarded as full compensation, interest and costs.

In the Superior Court

No. 7.

Plaintiff's Supplementary Declaration.

March 5th, 1932. *(continued)*

7. On payment or deposit in full of the amount awarded, the said properties and rights shall be vested in the company and the compensation shall stand in lieu of such properties and rights.

8. The judgment to be rendered in the said case shall be deemed for all purposes of appeal or otherwise a judgment of the said Court.

9. This act shall come into force on the day of its sanction.

4. The said Act was sanctioned on the 19th day of February, 1932, and is now in force, a certified copy of said Bill being fyled herewith as Plaintiff's Exhibit P-63;

5. In order that the provisions of the said Act may be complied with, Plaintiff declares that the following are facts which are required to be considered in addition to the allegations of the original pleadings, that is to say:

6. That by the erection and operation of the dam referred to in Paragraphs 22 and 23 of the Plaintiff's Declaration, the Defendant has backed up the water of the Gatineau River and has from time to time maintained it and proposes to maintain it at a controlled elevation of 321.5 feet above sea level (which elevation, and the elevations hereinafter referred to are based upon bench mark No. 469 of the Geodetic Survey of Canada located on the church of the United Church of Canada at Wakefield Village) at Farm Point, thus depriving Plaintiff of his property there (as described in Paragraphs 8 and 10 of the Declaration) actually covered by the said water up to the said controlled elevation of 321.5 feet;

7. That the maintenance of the said water on Plaintiff's said property as set out in the next preceding paragraph has had the effect of injuriously affecting and completely destroying the usefulness of his adjoining property up to elevation 325 as hereinafter alleged;

8. That prior to the damming back of the said water by the Defendant, the Plaintiff had for many years, to wit from the year 1912, owned and operated the business of supplying electric light and power in the Villages of Wakefield, the Cascades, Kirk's Ferry and Alcove, as mentioned in Paragraph 20 of the Declaration, and that it was his intention to have obtained the electricity for this purpose from the hydro-electric development at the Cascades, referred to in Paragraph 17 of the Declaration;

In the Superior Court

No. 7.

Plaintiff's Supplementary Declaration.

March 5th, 1932. *(continued)*

9. That, as mentioned in Paragraphs 23 and 24 of the Declaration, the Defendant, by damming back and raising the level of the water of the Gatineau River as aforesaid, totally destroyed the portion of the Plaintiff's said distribution system situated between the Cascades and Kirk's Ferry;

10. That, as stated in Paragraph 25 of the Declaration, the raising of the waters by the Defendant resulted in putting the Plaintiff's said power plant at Farm Point out of commission and necessitated the Plaintiff's purchasing power from the Defendant, the result of which has been that the business referred to has proved unprofitable and has been carried on at a loss;

11. That prior to the raising of the said water by the Defendant, the Plaintiff's said electric distribution business had for many years been yielding him an annual net profit of in the neighbourhood of Eight Thousand Dollars ($8,000.00);

12. That prior to the damming back of the said water by the Defendant, the Plaintiff had for many years, to wit from the year 1903, owned and carried on a lumber business with his chief mill situated at Farm Point, being the mill referred to in Paragraph 19 of the Declaration, and with branch mills at Alcove, 7½ miles up the River from Farm Point and at what is known as mileage 12 on the railway, being at or near the Village of Kirk's Ferry and 6 miles lower down the River from Farm Point. That the main mill situated at Farm Point was operated by water power obtained directly from Meach Creek, but that the two branch mills were operated by electric power from the Plaintiff's hydro-electric power plant on Meach Creek, referred to in Paragraph 18 of the Declaration;

13. That the said mill at mileage 12 was situated on land owned by the Plaintiff, being part of Lot 16-B in the 13th Range of the Township of Hull, and the Defendant has maintained the water of the Gatineau River from time to time and proposes to maintain it at a controlled elevation of 321.5 feet at Farm Point, thus depriving Plaintiff of a part of his said land, to wit:

"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 16-B in the 13th Range of the said Township containing by admeasurement 1.3 acres, more or less, and being more particularly described as follows:

Commencing at the intersection of the division line between Lots 16-B and 17-B and the southwesterly limit of the old loca-

In the Superior Court

No. 7.

Plaintiff's Supplementary Declaration.

March 5th, 1932. *(continued)*

tion 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."

14. That operating three mills at the respective points indicated instead of one mill was due to the fact that the Plaintiff owned timber limits in proximity to the said three places and that it was, therefore, more profitable to operate mills at the two outlying points than it would have been to bring logs from the outlying limits to the main mill at Farm Point;

15. That the timber limits referred to in the next preceding paragraph hereof have the following areas and are of the values respectively indicated, namely:

A. Near mileage 12 adjacent to Kirk's Ferry	500	acres freehold	Formerly worth $40 an acre
B. Adjacent to Alcove	400	acres freehold	Formerly worth $40 an acre
C. Adjacent to Farm Pt.	900	acres freehold	Formerly worth $40 an acre
D. Adjacent to Farm Pt.	200	acres freehold bush farm	Worth $3,000.00
E. Adjacent to Farm Pt.	5,210	acres under timber lease from the Crown	
F. Adjacent to Farm Pt.	520	acres under timber lease from private individuals	
Total acreage of limits	7,640		

16. That the Plaintiff had for many years been carrying on the said lumber business at an annual profit averaging in the neighbourhood of twenty thousand five hundred dollars;

17. That had the Plaintiff been permitted to carry out the hydro-electric development referred to in Paragraph 17 of the Dec-

In the Superior Court

No. 7.

Plaintiff's Supplementary Declaration.

March 5th, 1932. *(continued)*

laration, he would have raised the waters of the Gatineau River to a point not higher than 318 feet at Farm Point, which would not have affected the said lumber business, and while it would have prevented the generation of electricity by means of the Plaintiff's power plant on Meach Creek, referred to in Paragraph 18 of the Declaration, the Plaintiff would have had an abundant supply of electricity from his said development at the Cascades to have furnished all the electricity necessary for the carrying on of his said business of distributing electricity in the said villages and to have permitted of its material extension and also for the operation of the three lumber mills already referred to;

18. That the damming back of the water of the Gatineau River by the Defendant has utterly destroyed Plaintiff's land, property and business at mileage 12, rendered useless the mill property and business at Alcove because of the cutting off of the source of electric supply and has prejudicially affected the mill property and business at Farm Point, which will be utterly destroyed by the maintenance of the water at a controlled elevation of 321.5 feet;

19. That had the Plaintiff been permitted to carry out the hydro-electric development referred to in Paragraph 17 of the Declaration, he would not thereby have caused any damage whatever to the portion of his electric distribution system lying between the Cascades and Kirk's Ferry nor to the mill property at mileage 12, both of these properties being situated lower down the River than the location of the proposed development at Cascades;

20. That owing to the destruction of the Plaintiff's lumber business, the values of the timber limits as referred to in Paragraph 15 hereof have suffered and will suffer the following depreciation:

A. Near mileage 12 adjacent to Kirk's Ferry	500	acres freehold	Depreciated to the extent of $25 an acre — Loss	$12,500
B. Adjacent to Alcove	400	acres freehold	Depreciated to the extent of $25 an acre — Loss	$10,000
C. Adjacent to Farm Pt.	900	acres freehold	Depreciated to the extent of $25 an acre — Loss	$22,500
D. Adjacent to Farm Pt.	200	acres freehold bush farm	Depreciated to the extent of $10 an acre — Loss	$2,000
E. Adjacent to Farm Pt.	5,120	acres under timber lease from the Crown	Depreciated to the extent of $5 an acre — Loss	$25,600
F. Adjacent to Farm Pt.	520	acres under timber lease from private individuals	Depreciated to the extent of $10 an acre — Loss	$5,200
			Total Depreciation	$77,800

In the Superior Court

No. 7.

Plaintiff's Supplementary Declaration.

March 5th, 1932. (*continued*)

21. That Plaintiff is the owner of that portion of Lot 23-B in the 16th Range of the Township of Hull described as follows, that is to say:

"A piece or parcel of land forming part of Lot Twenty-three B (23-B) 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."

22. That Plaintiff acquired the said property mentioned in the next preceding paragraph herein from Dame Elizabeth Carmen, wife of Robert Reid, by Deed of Sale passed the 14th June, 1915, before Louis Bertrand, N.P., and registered in the Registry Office for the County of Hull under the Number 26625, as will appear by certified copy of said deed fyled as Plaintiff's Exhibit P-64;

23. That the value of the property described in Paragraph 21 hereof is $3,000.00;

24. That the property referred to in the next three preceding paragraphs hereof was purchased by the Plaintiff for the purpose of using the gravel thereon in the construction of the dam which he proposed building at Cascades;

25. That subsequently, in or about the year 1924, Plaintiff, to facilitate the construction of the said dam, caused a large quantity of the said gravel to be hauled to the West side of the Gatineau River at a total cost of $2,000.00;

26. That the raising of the level of the Gatineau River by the Defendant, rendering it impossible for the Plaintiff to construct the proposed dam at Cascades, has destroyed the value of the land referred to in Paragraphs 21 and 22 hereof and of the gravel referred to in Paragraph 25 hereof, and Plaintiff is entitled to claim from Defendant the said two sums of $3,000.00 and $2,000.00 with respect thereof;

27. That the amounts which Plaintiff is entitled to recover from the Defendant for the matters hereinbefore and in the Declaration referred to and alleged are as follows:

In the Superior Court

No. 7.

Plaintiff's Supplementary Declaration.

March 5th, 1932. (*continued*)

CASCADES:				
Undeveloped water power				$ 600,000.00
FARM POINT:				
Electric Light and Power Business:				
Physical assets as per statement fyled as Plaintiff's Exhibit P-65	$50,000.00			
Goodwill	100,000.00			
		$150,000.00		
Lumber Business:				
Replacement value as per summary and detailed valuations fyled as Plaintiff's Exhibit P-66	165,112.78			
Goodwill for the three mills	100,000.00			
		$265,112.78		
			$415,112.78	
Less assets that would have been lost had Plaintiff himself raised the water to 318 ft. as per list fyled as Plaintiff's Exhibit P-67.....			53,000.00	362.112.78
Mileage Twelve:				
Replacement value of buildings as per detailed valuation fyled as Plaintiff's Exhibit P-68	1,913.24			
Value of site, including land and tracks	12,000.00			
				13,913.24
Timber Limits:				
Depreciation as set out in Paragraph 20 hereof...				77,800.00
Gravel Pit:				
Value as set out in Paragraph 23				3,000.00
Cost of hauling Gravel:				
As set out in Paragraph 25				2,000.00
				$1,058.826.02

together with interest at 5 per cent upon the said sum of $1,058,-826.02 from the 12th March, 1927, the date of the flooding and submersion of Plaintiff's said properties by the Defendant;

In the Superior Court

No. 7.

Plaintiff's Supplementary Declaration.

March 5th, 1932. (*continued*)

28. That Plaintiff has necessarily expended or become liable for the amounts hereinafter set forth for disbursements, fees and costs in connection with this action and in connection with the passing of the said Act by the Quebec Legislature:

J. M. Robertson, Consulting Engineer, Fees			$ 7,500.00
De Gaspé Beaubien, Consulting Engineer, Fees and Expenses			6,369.10
N. B. MacRostie, Consulting Engineer:			
Fees	$8,500.00		
Expenses	1,513.17		
		$10,013.17	
Fees for Act	$ 375.00		
Expenses for Act	49.25		
		424.25	
			10,437.42
J. B. McRae, Consulting Engineer			300.00
L. S. St. Laurent, K.C.:			
Fees and Expenses		$4,927.24	
Fees and Expenses for Act		863.30	
			5,790.54
W. L. Scott, Barrister and Solicitor, Ottawa Agent:			
Fees and Expenses		$ 646.74	
Fees and Expenses for Act		443.69	
			1,090.43
Hon. P. B. Mignault, K.C.			500.00
Lafleur, MacDougall, Macfarlane & Barclay:			
Fees		$15,270.00	
Expenses		1,233.22	
Expenses for Act		440.17	
			16,943.39
G. Papineau, Land Surveyor			1,271.63
Fernand Major, Advocate, Hull			57.55
F. A. Labelle, N.P., Hull			350.00
Louis Bertrand, N.P., Hull			918.40
Cecil Burgess, Architect, Ottawa			100.00
W. G. Adamson, Valuator, Ottawa			216.08
Adamson & Hazelgrove, Valuators, Ottawa			800.00
Burgess & Adamson, Valuators, Ottawa			1,250.00
E. J. Dery, Photographer, Hull			271.65
A. Maxwell, Land Surveyor: Board			15.50
W. T. Maxwell, Assisting Land Surveyor: Labor			4.00
F. T. Cross:			
50 trips to Montreal at $12.00		$600.00	
25 nights at hotel, Montreal, at $5.00		125.00	
4 trips to Quebec at $30.00		120.00	
10 days' board and lodging, Quebec, at $15.00		150.00	
Paid by Plaintiff to Hull Registry Office		195.15	
			1,190.15
			$54,104.21

In the Superior Court

No. 7.

Plaintiff's Supplementary Declaration.

March 5th, 1932. *(continued)*

the whole as will more fully appear by itemized accounts produced herewith respectively as Plaintiff's Exhibits P-69 to P-89 inclusively;

29. That the total sum of $1,058,826.02 as set out in Paragraph 27 and the total sum of $54,104.21 as set out in Paragraph 28 form a total of $1,112,930.23 justly due to Plaintiff by Defendant by reason of the foregoing and the Declaration in virtue of the said Act Exhibit P-63, now known as Chapter 128 of the Statutes of Quebec, 22 George V;

WHEREFORE Plaintiff prays that instead of being awarded the relief prayed for in his original Declaration, he be declared to be the proprietor of the various immoveable properties described in the Declaration and in this Supplementary Declaration, that he be awarded and that Defendant be condemned to pay him as just and fair compensation for all his properties and rights taken for or affected by the said development of the Defendant up to the said controlled elevation of 321.5 feet above sea level at Farm Point, as determined by the geodetic survey bench mark on the church of the United Church of Canada at Wakefield Village, the sum of $1,058,-826.02 with interest thereon at 5 per cent from the 12th March, 1927, and the further sum of $54,104.21 referred to in Paragraph 28 hereof with interest from the date of judgment and costs; and that it be declared that upon payment by Defendant to Plaintiff of the said sums with interest and costs, or on deposit in full of the amount awarded in Court, to stand in lieu thereof, all such properties and rights of Plaintiff described in the said original Declaration and this Supplementary Declaration, and being below the contour line corresponding with elevation 321.5 feet above sea level at Farm Point, as determined by the said geodetic survey bench mark, and the right to affect the said properties up to a contour line corresponding to 325 feet by a controlled elevation of the waters of the Gatineau River to a point not exceeding 321.5 feet above sea level at Farm Point as aforesaid, shall become vested in the Company Defendant, and that upon Defendant's failure to pay or deposit in full the amounts awarded as aforesaid for compensation, interest and costs within fifteen days from the judgment to be rendered herein, the Defendant be ordered to lower the level of the said River on or opposite the properties of the Plaintiff, down to elevation 312 in connection with Plaintiff's properties described in Paragraph 8a of the original Declaration, and down to elevation 304 of the said geodetic survey datum in connection with Plaintiff's properties described in Paragraph 1 of the original Declaration at Cascades, and down to elevation 304 of the said geodetic survey datum in connection with Plaintiff's property at Mileage 12 described in Paragraph 13 and that upon Defendant failing to so lower the level of the water immediately after the

In the Superior Court

No. 7.

Plaintiff's Supplementary Declaration.

March 5th, 1932. *(continued)*

expiry of the said fifteen days, and having failed to pay or deposit in full the said amounts awarded for compensation, interest and costs, Plaintiff be authorized to open the gates and dykes of Defendant's development at Chelsea Falls, under the control of this Court, to the extent required to so lower the level of the said waters and that Defendant be condemned, in that event, to pay Plaintiff for the use and occupation of his property in the meantime, and the irreparable damages caused to Plaintiff, the sum of $144,000.00 with interest from the 27th February, 1931, claimed in the original action, and the further sum of $1,058,826.02 claimed in this Supplementary Declaration, with interest thereon at 5% from the 12th March, 1927, and the further sum of $54,104.24 for disbursements, fees and costs as set out in Paragraph 28 herein, the whole with costs and under reserve by Plaintiff of all his rights to sue for damages hereafter to be sustained.

MONTREAL, March 5th, 1932.

MACDOUGALL, MACFARLANE & BARCLAY,
Attorneys for Plaintiff.

In the Superior Court

No. 8.

Particulars of Plaintiff's Supplementary Declaration.

April 12th, 1932.

No. 8

PARTICULARS OF PLAINTIFF'S SUPPLEMENTARY DECLARATION

1. Paragraph 27: Particulars of the points to and from which the thirty-one miles of transmission lines extend:

Primary poles average 115 ft. apart.
Secondary poles average 135 ft. apart.
Transmission lines, branch lines and loops extended from Farm Point to Cascades to Kirks Ferry down the river, and from Farm Point to Rockhurst to Wakefield to Alcove up the river.
By actual count there are the following:
Primary and Secondary Poles and Loops:

	Primary Poles	Secondary Poles	Loops
Kirk's Ferry	228	140	60
Cascades	138	102	50
Farm Point	114	197	115
Rockhurst	17	31	16
Wakefield	182	184	139
Alcove	130	54	40

In the Superior Court

No. 8.

Particulars of Plaintiff's Supplementary Declaration.

April 12th, 1932. (*continued*)

2. Paragraph 27: Particulars of item $88,401.57 representing 40 buildings in Exhibit P-66: The exact location of these buildings was established by painting on each the number corresponding to those in Exhibit. The Plaintiff claims that each of the buildings is a total loss.

3. Paragraph 27: Particulars of item Dam on Meach Creek $24,384.00 as contained in Exhibit P-66:

Earth fill	2,600 cu. yds.	at $ .60	$1,560.00
Rock fill	4,257 cu. yds.	at $ 2.00	$8,514.00
Concrete	954 cu. yds.	at $15.00	$14,310.00
		Total	$24,384.00

4. Paragraph 27: Particulars of storage dams and improvements in upper reaches of Meach Creek $8,000. The location of these dams has been pointed out to representatives of the Defendant Company.

The dam at the outlet of Carmen Lake is valued at $1,500 and the dam at the outlet of Spring Lake at $800, making a total of $2,300, to which amount the Plaintiff reduces the amount of $8,000 as claimed in the Supplementary declaration.

The Plaintiff claims that these dams were rendered useless by flooding and taking of his industry at Farm Point.

5. Further particulars of P-66 are as follows:

(a) 2 residential lots, $2,000. These lots have been indicated on a plan furnished the Defendant Company;

(b) Lots—$6,534.00. These lots are also indicated on the said plan and are valued as follows:

Lots 1 to 9 incl.	1,005 ft.	at $1.00		$1,005.00
" 10 " 12 "	263 "	"	4.00	1,052.00
" 13 " 17 "	500 "	"	1.50	750.00
" 18	200 "	"	.75	150.00
" 19 " 30 "	275 "	"	1.50	413.00
" 21 " 25 "	510 "	"	3.00	1,530.00
" 26 " 28 "	378 "	"	3.00	1,134.00
" 29	125 "	"	4.00	500.00
				$6,534.00

These lots are affected by the flooding and the taking of Plaintiff's industry at Farm Point.

In the Superior Court

No. 8.

Particulars of Plaintiff's Supplementary Declaration.

April 12th, 1932. (*continued*)

(c) 20 acres on hill, $2,000. These acres are parts of lots 24c and 25c in the sixteenth range of the Township of Hull to the west and north of Farm Point Station and have been affected to the extent of $100 per acre by the flooding and the taking of Plaintiff's industry at Farm Point.

(d) 5 lots on the east side of the Gatineau River. These lots form part of Lot 23b of the sixteenth range of the Township of Hull fronting on the Gatineau River and the front portions thereof have been flooded.

6. Paragraph 27: Particulars of the following items contained in Exhibit P-67.

Land loss	$14,000.00
Buildings	25,131.00
These items should be—	
Land	24,000.00
Buildings	15,131.00

and are made up as follows:

2,240 feet more or less fronting on the River Gatineau, $1.75 per foot—$3,920 and valued at		$4,000.00
16 acres in lot 24c in the fifteenth range and 24c in the sixteenth range of the Township of Hull adjacent to the mill site		16,000.00
6¾ acres between elevation 318 and 321 injuriously affected by flooding to the extent of $600 per acre		4,000.00
Buildings:		
No. 5	$1,936.52	
No. 6	2,699.44	
No. 9	2,007.84	
No. 10	2,145.41	
No. 11	2,182.37	
No. 30	4,188.94	
No. 34	180.00	
	$15,340.52	
Less value on sheds on higher ground	209.52	
	$15,131.00	
		$15,131.00
		$39,131.00

MONTREAL, April 12th, 1932.

MacDougall, Macfarlane & Barclay,
Attorneys for Plaintiff.

In the Superior Court

No. 9.

Defendant's Inscription in Law Against Certain Allegations of Plaintiff's Supplementary Declaration.

May 11th, 1932.

No. 9

DEFENDANT'S INSCRIPTION IN LAW

The Defendant inscribes the present case for proof and hearing in law on the 6th day of June, 1932, against paragraphs 1 and 2 of Plaintiff's Supplementary Declaration and against the preamble of paragraph 3 thereof up to and including the words " the following form " and for moyens or reasons in support of its present Inscription in law the Defendant states:

1. That the said paragraphs 1, 2 and the preamble of paragraph 3 of the Plaintiff's Supplementary Declaration are useless, irrelevant and foreign to the issue between the parties herein and have no connection with the rights claimed by the Plaintiff.

2. That the facts alleged in the said paragraphs do not justify the conclusions of the said declaration and can in no way affect the matters in issue between the parties.

WHEREFORE the Defendant prays that the said paragraphs 1, 2 and the preamble of paragraph 3 of the Plaintiff's Supplementary Declaration be struck from the said declaration with costs.

MONTREAL, 11th May, 1932.

BROWN, MONTGOMERY & MCMICHAEL,
Attorneys for Defendant.

(Judgment on the foregoing as endorsed thereon.)

Inscription en droit renvoyée avec dépens, 5 juin 1933.

A. de L., J.C.S.

In the Superior Court

No. 10.

Defendant's Plea to Plaintiff's Supplementary Declaration.

May 11th, 1932.

No. 10

DEFENDANT'S PLEA TO PLAINTIFF'S SUPPLEMENTARY DECLARATION

Without waiver of the Inscription in law made and filed against certain paragraphs of Plaintiff's Supplementary Declaration, but on the contrary specially relying thereon Defendant for plea to Plaintiff's Suppiementary Declaration states:

In the Superior Court

No. 10.

Defendant's Plea to Plaintiff's Supplementary Declaration.

May 11th, 1932. (*continued*)

1. With regard to paragraph 3 of said supplementary declaration that the allegations therein contained and the projected Bills cited therein are irrelevant.

2. That the allegations in paragraph 2 are irrelevant and are denied as drawn, and Defendant states that the said Committee was told that said Bills could not affect the judgment to be rendered upon the merits of Plaintiff's original petitory conclusions, but were designed to overcome the erroneous and unappealable order of the Quebec Public Service Commission denying Defendant's right of expropriation of which order Plaintiff had attempted to take advantage by making extravagant and unwarranted claims against Defendant.

3. With regard to paragraph 3, Defendant admits that the original Bill 171 was contested by Plaintiff, and that the Bill 170 as set out in said paragraph was passed and became law, and Defendant avers that the passing of said act indicated that Defendant's contentions before the said Committee were upheld to the effect that Defendant was entitled to be vested with Plaintiff's properties and rights affected upon paying fair compensation therefor.

4. Paragraph 4 is admitted.

5. Paragraph 5 is denied as drawn.

6. Paragraph 6 is denied as drawn.

7. Paragraph 7 is denied.

8. Paragraph 8 is denied as drawn.

9. Paragraph 9 is denied.

10. Paragraph 10 is denied.

11. Paragraph 11 is denied.

12. Paragraph 12 is denied as drawn.

13. Paragraph 13 is denied.

14. That the matter contained in paragraph 14 is irrelevant and the same is denied as drawn.

15. With regard to paragraph 15, Defendant denies the allegations thereof and the statements of location, area and value therein contained, and in any event the recitals therein contained are irrelevant to the issue herein.

In the Superior Court

No. 10.

Defendant's Plea to Plaintiff's Supplementary Declaration.

May 11th, 1932. (*continued*)

16. Paragraph 16 is denied.

17. With regard to paragraph 17, Defendant is ignorant of what Plaintiff would have done had he been permitted to construct a hydro-electric development, but Defendant states that Plaintiff could not have made any hydro-electric development on his own property at Cascades which would have been scentifically, economically or commercially feasible either alone or by utilizing the available head belonging to others above his own property which he did not have the right to do, and that in particular, when the approval of Defendant's plans had been granted, Plaintiff would not and could not have received the necessary approval required by law for any development whatever.

18. Paragraph 18 is denied.

19. Defendant is ignorant of the facts alleged in paragraph 19.

20. Paragraph 20 is denied.

21. Defendant is ignorant of the facts alleged in paragraph 21.

22. With regard to paragraph 22, Defendant states that the deed referred to therein speaks for itself, but Defendant denies the sufficiency thereof as evidencing title in the Plaintiff to the property mentioned therein.

23. Paragraph 23 is denied.

24. Paragraph 24 is denied.

25. Paragraph 25 is denied.

26. Paragraph 26 is denied as drawn.

27. Paragraph 27, together with all the items and calculations therein contained, is denied.

28. Defendant is ignorant of the facts alleged in paragraph 28, but denies liability for the payment of the accounts and items of expenditure referred to therein.

29. Paragraph 29 is denied as drawn.

AND DEFENDANT FURTHER PLEADS:

30. That with respect to the portion of Plaintiff's distribution system between Cascades and Kirk's Ferry, as referred to in para-

In the Superior Court

No. 10.

Defendant's Plea to Plaintiff's Supplementary Declaration.

May 11th, 1932. *(continued)*

graph 9 of his Supplementary Declaration, the poles, wires and accessories thereof all of which are in a state of dilapidation, were constructed and were being maintained upon property not belonging to the Plaintiff, to wit, partly upon the public highway and partly upon property owned by or in possession of Defendant, upon which highway and property Plaintiff was trespassing without any authority or right to have said poles and wires so located.

31. That the power development of the Defendant duly approved, as set out in Defendant's original plea and as already proven herein, necessitated the flooding of the said highway and certain side roads between the points mentioned, and the use thereof in connection with Defendant's works was duly approved by the Municipality and by the Road Department of the Province of Quebec, and before said roads were closed and flooded, Defendant did by letter dated February 25th, 1927, addressed to Plaintiff's attorney, or representative, copy of which is produced herewith as Defendant's Exhibit D-121, call upon Plaintiff to indicate what disposal he desired to have made of the said portion of line, but no reply was received to the said communication and Plaintiff neglected and refused to cooperate with Defendant in any way either for fixing of compensation or for permitting the removal and replacement of said line to another site, which Defendant was prepared to do at its own expense.

32. That Defendant in connection with its development had necessarily to submerge, in addition to the highway, large sections of land in that vicinity, and prior to the raising of the water, Defendant had purchased or was in possession of the great majority of the properties of the customers of Plaintiff in the section between Cascades and Kirk's Ferry and there was no further demand for Plaintiff's services in the locality and said facts can give rise to no claim whatever on the part of Plaintiff against Defendant.

33. That with respect to Plaintiff's property at Mileage 12, as referred to in paragraph 13 of his Supplementary Declaration, Defendant admits that its operations have affected a small area of land forming part of said property, but Defendant states that the submersion of said area in no way affected the operation of Plaintiff's saw mill, which was a portable mill and has been removed from said site by Plaintiff.

34. That a considerable part of the Plaintiff's property at Mileage 12, referred to in the foregoing, is and has been since the year 1926 the subject of expropriation proceedings by the Canadian Pacific Railway Company, and Plaintiff is endeavouring by his claims made herein to secure compensation from the Defendant for

In the Superior Court

No. 10.

Defendant's Plea to Plaintiff's Supplementary Declaration.

May 11th, 1932. (*continued*)

total destruction of said property, well knowing that he will also be compensated by the Canadian Pacific Railway in the said expropriation proceedings.

35. With regard to Plaintiff's pretended saw mill industry at Alcove, referred to in paragraph 18, the same had been abandoned by Plaintiff long before Defendant's plans for the development of the river had been projected, and neither Plaintiff's property nor any industry of Plaintiff at Alcove has been in any way affected by Defendant's operations.

36. That the Plaintiff did not operate three saw mills, as alleged in his declaration, but the said pretended Alcove saw mill was a small portable mill which he moved to Mileage 12 and is the same saw mill for which Plaintiff is claiming on the above-mentioned site at Mileage 12.

37. That Plaintiff's saw mill at Farm Point (Meach Creek), also referred to in paragraph 18, is high up on the side of a hill and none of the operations of the said industry nor the property directly appurtenant thereto can or will be affected by the maintenance of a water level of 321.5 save and except a small area of less than three acres of land at times used by 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 said purpose, and the measure of compensation due to Plaintiff in respect thereof 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 Defendant, and Plaintiff is without right to set up against Defendant as he has done herein an exorbitant claim based on the pretended ruin of his industry.

38. That apart from the above-mentioned possible effect on the piling ground, a water level of 321.5 will affect property in the vicinity of Meach Creek to an extent of approximately twenty-seven acres of land and five small frame buildings with outhouses, none of which are necessary for the operation of Plaintiff's lumber business and for all of which land and buildings Defendant has been and is ready to pay Plaintiff the compensation hereinafter mentioned.

39. That with respect to Plaintiff's hydro-electric plant at Farm Point (Meach Creek), the same consists of a small concrete power house, twenty-seven feet in width by twenty feet in depth by twelve feet in height, containing a small generator and appurtenant apparatus and a water wheel deriving its water supply from a pipe or penstock extending from the back of the said power house up the hill behind, to the crest of said hill, where the water of Meach

In the Superior Court

No. 10.

Defendant's Plea to Plaintiff's Supplementary Declaration.

May 11th, 1932. (*continued*)

Creek on the higher level is impounded by a dam, and the said penstock is tapped about half way up the said hill by another pipe or penstock, which feeds the water wheel motivating the Plaintiff's said Farm Point saw mill, to which reference has been made in the foregoing paragraphs.

40. That the said Meach Creek, which supplies the water for said penstocks, is a small and unimportant stream, very unreliable in its flow, and which at times practically dries up, and the equipment in the small power house referred to above is and was when the Defendant's plans were approved obsolete and out of repair and totally inadequate and unreliable for the purpose of continuous generation of electrical energy.

41. That with respect to the hydro-electric plant of Plaintiff described in the foregoing, it is true that a water elevation of 321.5 in the Gatineau River would have an adverse effect upon the same and would bring about a maximum reduction at certain times by 10 per cent of the power which Plaintiff could develop at this site, and this effect is due to the lowering of the available head by reason of the rise in the water in the tail race in the low part of Meach Creek below the power house, and apart from the said loss of power, certain rearrangements of the power house itself might require to be made to meet the new conditions at a cost of not more than Two thousand dollars ($1,500).

42. That before Defendant's works on the Gatineau River were completed, Plaintiff's hydro-electric plant at Meach Creek aforesaid was unreliable and inadequate for the purpose of public service by reason of lack of water, and his distribution system, equipment and apparatus were obsolete and out of repair, and the poles and wires on the public road in many places were in a dilapidated and dangerous condition and were a menace to the public, and Plaintiff's customers were continually complaining about the service he was giving, and Plaintiff was making no attempt to give adequate service and was for considerable periods at a time utilizing the available water in Meach Creek to motivate his saw mill instead of for the generation of electricity to supply his customers, and said customers were forced to put up with such service as Plaintiff desired to give them.

43. That before Defendant's works were completed, Defendant constructed a wood pole transmission line along the Gatineau Highway from Chelsea to Paugan Falls, having duly received approval of such construction from the Quebec Public Service Commission, and in compliance with the order of the said Commission, Defendant, at its own expense, removed and delivered to Plaintiff

In the Superior Court

No. 10.

Defendant's Plea to Plaintiff's Supplementary Declaration.

May 11th, 1932. (*continued*)

the old poles owned by Plaintiff on the said highway from a point near Cascades to a point near Rockhurst (south of Wakefield, Que.), and itself placed new poles along said road and carried and is carrying thereon, free of charge, Plaintiff's crossarms and wires, thereby greatly improving the physical condition of a substantial section of Plaintiff's distribution system.

44. That after Defendant's development became an assured fact, Plaintiff's customers brought their grievances before the Quebec Public Service Commission and the said Commission caused a thorough investigation and detailed inspection of Plaintiff's plant, lines and services to be made by the Commission's Chief Engineer, who found the said system, other than the part carried on the Defendant's poles as aforesaid, was in bad condition and out of repair and at certain places constituted a menace to life and property, and that the service given by said system was not continuous or satisfactory, even with the plant working under normal conditions, inasmuch as the flow of Meach Creek was not sufficient to supply the requirements of Plaintiff's customers, and said report has been produced in this case as Exhibit D-5.

45. That following said report and in view of the fact that Plaintiff's generating plant had never been able to produce sufficient power to insure a proper service for his customers, the Quebec Public Service Commission on November 12th, 1929, ordered Plaintiff to put his lines and service in order and to purchase power from Defendant.

46. That Plaintiff neglected to comply with the said order of the Quebec Public Service Commission to put his lines and services in order and that further complaints were made by Plaintiff's customers and that by an order of the said Commission dated May 17th, 1930, Plaintiff was instructed to put his lines and services in order by August 15th, 1930, or failing his so doing the Commission would authorize Defendant to serve Plaintiff's customers.

47. That Plaintiff thereafter entered into a contract with the Defendant for a supply of continuous power and Defendant has supplied Plaintiff with more than the total commercially available output of his plant and Plaintiff has been enabled thereby to give an improved service to his customers.

48. That if (which is not admitted) Plaintiff's plant had been adequate to give satisfactory service to his customers prior to the reduction (at times) by a maximum of 10 per cent of the available output thereof by Defendant's operations, it would in fact be just

In the Superior Court

No. 10.

Defendant's Plea to Plaintiff's Supplementary Declaration.

May 11th, 1932. (*continued*)

as adequate after such reduction, inasmuch as Plaintiff's electrical load was reduced by more than 10 per cent by the removal of his customers from the locality in which he operated, as set out in paragraph 32 hereof.

49. That the whole distribution system of the Plaintiff was of little value at the time Defendant began its operations and the said system had no goodwill value whatever.

50. That in view of the foregoing facts the claim of Plaintiff in his declaration based upon the ruin of his said hydro-electric industry is unwarranted and exorbitant and is made in bad faith, and Plaintiff will be amply compensated for any adverse effect thereon by the payment of the sum herein offered in respect thereof.

51. With respect to the property on the east side of the river, referred to in paragraph 21 of Plaintiff's Supplementary Declaration, the same would only be affected to the extent of approximately one-half acre by a water level of 321.5 and said water level would in no way affect the gravel pit mentioned, which is high up on the hill, and would in no way affect any buildings on the said property.

52. That it is not true, as mentioned in paragraph 25 of Plaintiff's Supplementary Declaration, that Plaintiff hauled a large quantity of gravel to the west side of the river for the purpose of construction of a dam at Cascades in the year 1924, and Defendant avers that the said gravel was hauled in the year 1926 after the Defendant's plans for development were common knowledge.

53. That Plaintiff is not the owner of the freehold timber limits mentioned in his Supplementary Declaration and with respect to the timber limits referred to as being under Crown lease to wit item (e) of paragraph 20 of Plaintiff's Supplementary Declaration, Plaintiff, before Defendant's operations on the said river were thought of, was in default to pay the Crown dues thereon and only paid the same in the year 1928 after the Plaintiff's works were in operation, and Plaintiff has paid no dues since 1929.

54. That the Plaintiff's claims made herein with respect to injury to his lumber business and the good will thereof, and to his electrical business and the good will thereof, and with respect to depreciation in the value of timber limits are irrelevant and entirely remote to the issue between the parties, and the claims made with respect thereto are extravagant and unwarranted.

55. That Plaintiff is not justified either under the letter or spirit of the Act 22 George V, 1932, Chapter 128, in claiming the extravagant amounts totalling $54,104.21 mentioned in paragraph

In the Superior Court

No. 10.

Defendant's Plea to Plaintiff's Supplementary Declaration.

March 11th, 1932. (*continued*)

28 of his Supplementary Declaration for professional fees and disbursements and extra judicial expenses and Defendant denies responsibility for the said accounts as mentioned and denies that services to the amount claimed were rendered in connection with the present case and the passing of the said Act, and Defendant states that Plaintiff will be adequately compensated by the amount hereinafter offered in respect of the said items.

56. Defendant reiterates the allegations of its original plea reserving its right to make such further and other proof as may be warranted herein.

57. 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.

(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 rearrangements 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 betwen 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.

(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.

(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.

In the Superior Court

No. 10.

Defendant's Plea to Plaintiff's Supplementary Declaration.

March 11th, 1932. (*continued*)

(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 to the west side of the river to pay Plaintiff the sum of $500 with interest as aforesaid.

(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.

WHEREFORE Defendant prays acte of its offers made and contained herein and prays for the dismissal of the Plaintiff's action for any excess with costs.

MONTREAL, 11th May, 1932.

BROWN, MONTGOMERY & MCMICHAEL,
Attorneys for Defendant.

In the Superior Court

No. 11.

Plaintiff's Answer to Defendant's Supplementary Plea.

Sept. 1st, 1932.

No. 11

PLAINTIFF'S ANSWER TO DEFENDANT'S SUPPLEMENTARY PLEA

FOR ANSWER TO DEFENDANT'S SUPPLEMENTARY PLEA PLAINTIFF DECLARES:

1. Paragraph 1 is denied;

2. Paragraph 2 is denied;

3. Plaintiff prays acte of the admission contained in paragraph 3 and declares that the said Bill 170 (replacing original Bill 170) speaks for itself; the remaining allegations of the said paragraph are denied;

4. Plaintiff prays acte of the admission contained in paragraph 4;

5. Plaintiff joins issue;

In the Superior Court

No. 11.

Plaintiff's Answer to Defendant's Supplementary Plea.

Sept. 1st, 1932. (*continued*)

6. Plaintiff joins issue;

7. Plaintiff joins issue;

8. Plaintiff joins issue;

9. Plaintiff joins issue;

10. Plaintiff joins issue;

11. Plaintiff joins issue;

12. Plaintiff joins issue;

13. Plaintiff joins issue;

14. Plaintiff joins issue;

15. Plaintiff denies paragraph 15;

16. Plaintiff joins issue;

17. Plaintiff denies paragraph 17;

18. Plaintiff joins issue;

19. Paragraph 19 speaks for itself;

20. Plaintiff joins issue;

21. Paragraph 21 speaks for itself;

22. Plaintiff denies the allegations contained in paragraph 22;

23. Plaintiff joins issue;

24. Plaintiff joins issue;

25. Plaintiff joins issue;

26. Plaintiff joins issue;

27. Plaintiff joins issue;

28. The first part of paragraph 28 speaks for itself and Plaintiff joins issue with Defendant on its denial of liability for the payment of the said accounts and items of expenditure;

In the Superior Court

No. 11.

Plaintiff's Answer to Defendant's Supplementary Plea.

Sept. 1st, 1932. (*continued*)

29. Plaintiff joins issue;

30. Plaintiff denies paragraph 30 and declares in any event that whether part of Plaintiff's distribution system was or was not constructed and maintained partly upon his own property and partly upon the public highway is irrelevant and is not a valid ground of defence to the allegations of the present supplementary declaration;

31. Plaintiff denies the allegations contained in paragraph 31 and says that in any event the allegations contained in said paragraph are irrelevant to the issues herein;

32. Plaintiff denies paragraph 32 and says that in any event the allegations thereof as irrelevant to the issues herein;

33. Plaintiff prays acte of the admission contained in paragraph 33 and denies the remainder of the said paragraph;

34. Plaintiff declares that the expropriation proceedings by the Canadian Pacific Railway Company speak for themselves and denies the remaining allegations of the said paragraph;

35. Plaintiff denies paragraph 35;

36. Plaintiff denies paragraph 36 except insofar as the same agrees with the allegations contained in paragraph 12 of Plaintiff's Supplementary Declaration;

37. Plaintiff denies paragraph 37;

38. Plaintiff denies paragraph 38;

39. Plaintiff denies paragraph 39 as drawn;

40. Plaintiff denies paragraph 40;

41. Plaintiff prays acte of the admission that a water elevation of 321.5 on the Gatineau River would have an adverse effect on the hydro-electric plant of the Plaintiff and denies the remaining allegations of paragraph 41;

42. Plaintiff denies paragraph 42;

43. Plaintiff denies the paragraph as drawn and says any order of the Public Service Commission speaks for itself and is irrelevant to the issues;

In the Superior Court

No. 11.

Plaintiff's Answer to Defendant's Supplementary Plea.

Sept. 1st, 1932. (*continued*)

44. Plaintiff denies paragraph 44 as drawn and says that the complaints therein referred to were only brought in September, 1929, after the hydro-electric plant of Plaintiff had been rendered useless by the illegal trespass upon and flooding of Plaintiff's property at Farm Point and elsewhere by the Defendant.

45. Plaintiff denies paragraph 45 as drawn and says that the said order of the Public Service Commission speaks for itself and is irrelevant and was the result of the aforesaid illegal trespass and flooding;

46. Plaintiff denies paragraph 46 as drawn and says that the said order of the Public Service Commission speaks for itself and is irrelevant; and was the result of the aforesaid illegal trespass and flooding;

47. Plaintiff denies paragraph 47 except insofar as the same agrees with the allegations contained in Plaintiff's Supplementary Declaration and states that he was forced to enter into the present contract by reason of the fact that his power plant was illegally put out of commission by the Defendant as aforesaid;

48. Plaintiff denies paragraph 48 and further says that it is unfounded in fact and in law;

49. Paragraph 49 is denied;

50. Paragraph 50 is denied;

51. Paragraph 51 is denied;

52. Paragraph 52 is denied;

53. Paragraph 53 is denied;

54. Paragraph 54 is denied;

55. Plaintiff denies paragraph 55;

56. Plaintiff denies paragraph 56 and denies that Defendant has any right to adduce evidence in support of matters not specially pleaded by it;

57. Plaintiff denies the sufficiency of the sums which Defendant declares itself willing to pay in paragraph 57 of its Supplementary Plea and declares that the said paragraph is unfounded in fact

In the Superior Court

No. 11.

Plaintiff's Answer to Defendant's Supplementary Plea.

Sept. 1st, 1932.

and also is unfounded in law inasmuch as Defendant has not accompanied its offer with any payment into Court and said offer is therefore irrelevant and immaterial and does not justify the conclusions of Defendant's Plea.

AND FOR FURTHER ANSWER PLAINTIFF SAYS:

58. That save as hereinabove specifically admitted all the allegations contained in Defendant's Supplementary Plea are denied.

WHEREFORE Plaintiff prays that Defendant's Supplementary Plea be dismissed with costs.

MONTREAL, September 1st, 1932.

MacDougall, Macfarlane & Barclay,
Attorneys for Plaintiff.

In the Superior Court

No. 12.

Defendant's Replication to Plaintiff's Answer to Plea.

Sept. 16th, 1932.

No. 12

DEFENDANT'S REPLICATION TO PLAINTIFF'S ANSWER TO SUPPLEMENTARY PLEA

1. With regard to paragraph 30 of Plaintiff's Answer to Plea Defendant denies the same and the relevancy of the same inasmuch as Defendant has pleaded by paragraph 30 of its defence that the said part of the distribution system was constructed and was being maintained on property not belonging to the Plaintiff.

2. Paragraphs 44, 45, 46, 47, 56 and 57 of Plaintiff's Answer to Plea are denied.

WHEREFORE Defendant prays for the dismissal of the said Answer with costs.

MONTREAL, 16th September, 1932.

Brown, Montgomery & McMichael,
Attorneys for Defendant.

In the Superior Court

No. 13.

Declaration Made by Defendant.

Nov. 21st, 1932.

No. 13

DECLARATION MADE ON BEHALF OF DEFENDANT

WHEREAS the Act 22 Geo. V, Chapter 128, provides that the Court shall determine what property or rights shall upon payment of the indemnity to Plaintiff become vested in the Defendant in this case;

NOW THEREFORE should this Honourable Court find with respect to Plaintiff's claim 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 that it abandons in favour of Plaintiff any right of ownership upon any such property as may be so made the subject of 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 said Act 22 George V, Chapter 128; or alternatively 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 be granted to Defendant, then Defendant undertakes to create 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.

MONTREAL, 21st November, 1932.

BROWN, MONTGOMERY & MCMICHAEL,
Attorneys for Defendant.

In the Superior Court

No. 14.

Motion by Plaintiff to Amend Paragraph 28 of Supplementary Declaration and Add New Paragraph to Said Supplementary Declaration.

Nov. 21st, 1932. (*continued*)

No. 14

MOTION ON BEHALF OF PLAINTIFF TO AMEND PARAGRAPH 28 OF HIS SUPPLEMENTARY DECLARATION AND ADD A NEW PARAGRAPH TO THE SAID SUPPLEMENTARY DECLARATION.

WHEREAS in Paragraph 28 of Plaintiff's Supplementary Declaration Plaintiff alleges that he has necessarily expended or become liable for certain amounts detailed therein for disburse-

In the Superior Court

No. 14.

Motion by Plaintiff to Amend Paragraph 28 of Supplementary Declaration and Add New Paragraph to Said Supplementary Declaration.

Nov. 21st, 1932. *(continued)*

ments, fees and costs in connection with the present action and with the passing of the Special Act by the Quebec Legislature;

WHEREAS in addition to the amount set out in said paragraph 28 it has been proved that Plaintiff has necessarily expended the sum of $1,127.40 to Messrs. Bush and Kenehan, Official Court Stenographers, for a copy of the transcript of the evidence and argument already made in the present action; and

WHEREAS Plaintiff has also incurred disbursements, fees and costs on the issues raised by the supplementary pleadings as authorized by judgment of this Honourable Court which are already proved and which are more particularly detailed as follows:—

J. M. Robertson, Consulting Engineer,	
Fees and Expenses	$1,890.50
De Gaspé Beaubien, Consulting Engineer,	
Fees and Expenses	2,316.70
N. B. MacRostie, Consulting Engineer,	
Fees	5,799.00
Expenses	314.75
F. T. Cross,	
Expenses	310.00
Telephone bill	36.90
W. L. Scott, K.C., Barrister and Solicitor,	
Fees	490.00
Expenses	21.15
MacDougall, Macfarlane & Barclay,	
Fees	7,963.00
Expenses	442.42
George B. Langford, Consulting Engineer,	
Fees	2,100.00
Bush and Kenehan, Official Court Stenographers,	
Transcript of evidence	1,425.50
Louis St. Laurent, K.C.,	
Fees	3,290.66

and

WHEREAS in order to agree with the facts so proved Plaintiff is desirous of amending his said Supplementary Declaration by inserting therein, after said paragraph 28 a new paragraph numbered 28A to include such disbursements, fees and costs detailed above and already proved and amounting in all to the sum of $26,400.58;

WHEREFORE Plaintiff prays that said paragraph 28 of Plaintiff's Supplementary Declaration be amended by adding thereto paragraph 28A to read as follows:—

In the Superior Court

No. 14.

Motion by Plaintiff to Amend Paragraph 28 of Supplementary Declaration and Add New Paragraph to Said Supplementary Declaration.

Nov. 21st, 1932. *(continued)*

28A—Disbursements, fees and costs incurred by Plaintiff in addition to those set forth in paragraph 28 of his Supplementary Declaration—

Kenehan and Bush	$ 1,127.40
Disbursements, fees and costs incurred on supplementary issues as authorized by Judgment of the 10th March, 1932	26,400.58

and Plaintiff further prays that the conclusions of his said action be amended by adding thereto after the words " paragraphs 28 herein," the following words " and the further sum of $27,527.98 for disbursements, fees and costs as set out in paragraph 28a herein with interest on the said sum of $54,104.21 since the 5th day of March, 1932 and on the said sum of $27,527.98 since the 21st day of November, 1932," costs to follow.

MONTREAL, November 21st, 1932.

MACDOUGALL, MACFARLANE & BARCLAY,
Attorneys for Plaintiff.

AFFIDAVIT AND NOTICE

[Not Printed]

En délibéré, sous réserve de tous droits que la défenderesse peut avoir par Hon. juge de Lorimier, ce 21 novembre 1932.

J. G.
Dep. P.C.S.

(Judgment on the foregoing as endorsed thereon.)

25 nov. 1932. Motion accordée frais réservés.

A. deL., J.C.S.

In the Superior Court

No. 15.

Plaintiff's Amended Supplementary Declaration.

Dec. 6th, 1932.

No. 15

PLAINTIFF'S AMENDED SUPPLEMENTARY DECLARATION

1. Since the completion of the trial and hearing herein and while the case was under advisement, the Defendant arranged to have introduced in the Legislative Assembly of the Legislature of

In the Superior Court

No. 15.

Plaintiff's Amended Supplementary Declaration.

Dec. 6th, 1932. *(continued)*

the Province of Quebec two Public Bills bearing Numbers 170 and 171, in the following form:

Bill No. 170—An Act to amend the Watercourse Act.

His Majesty, with the advice and consent of the Legislative Council and of the Legislative Assembly of Quebec, enacts as follows:

1. Section 18 of the Water-Course Act (Revised Statutes, 1925, chapter 46) is replaced by the following:

" 18. No expropriation under this division shall take place except in the case of a waterpower of an average natural force of at least two hundred horsepower, and large enough for industrial purposes.

" Such expropriation must, previously, be authorized by the Quebec Public Service Commission, when it is exercised to the prejudice of waterpowers, whether developed or not, or to that of an industry already established or of a waterworks system, provided that it be shown satisfactorily to the Commission that the expropriation asked for is in the public interest.

" In the case of the expropriation of a waterworks system or of an established industry or of developed waterpowers, the Commission may grant a special indemnity and prescribe such terms and conditions as it may deem proper to secure the continuation or replacement of an existing public service.

" Notwithstanding the provisions of this section, no feeder of a waterworks system may be expropriated unless another feeder, approved by the Quebec Public Service Commission, has previously been developed so as to assure an uninterrupted supply of water."

2. The said act is amended by inserting therein, after section 23 thereof, the following section:

" 23a. In the event of an application for the expropriation of land liable to be flooded through the carrying out of work for the development of waterpowers, the owner of such land may require that, instead of the right of ownership, the company which has made such application obtain merely a servitude over

In the Superior Court

No. 15.

Plaintiff's Amended Supplementary Declaration.

Dec. 6th, 1932. (*continued*)

such land, the nature and duration whereof to be determined by the Quebec Public Service Commission."

3. Section 62 of the said act, as amended by the act 17 George V, chapter 66, section 13, is again amended by replacing the last paragraph thereof by the following paragraphs:

" No expropriation may be held under this section, save for the construction or maintenance of a work which is intended, either alone or with other works, to supply a fall or a rapid giving an average natural force of at least two hundred horsepower, or a waterworks system for domestic or industrial purposes.

" Such expropriation must, previously, be authorized by the Quebec Public Service Commission, when it is exercised to the prejudice of waterpowers, developed or not, or to that of an industry, already established, or of a waterworks system, provided that it be shown satisfactorily to the Commission that the expropriation asked for is in the public interest.

" In the case of the expropriation of a waterworks system or of an established industry or of developed waterpowers, the Commission may grant a special indemnity and prescribe such terms and conditions as it may deem proper to secure the continuation or replacement of an existing public service.

" Notwithstanding the provisions of this section, no feeder of a waterworks system may be expropriated unless another feeder, approved by the Quebec Public Service Commission, has previously been developed so as to assure an uninterrupted supply of water."

4. The said act is amended by inserting therein, after section 62 thereof, the following section:

" 62a. In the event of an application for the expropriation of any land liable to be flooded through the carrying out of work for the storage of water, the owner of such land may require that, instead of a right of ownership, the company which has made such application obtain merely a servitude over such land, the nature and duration whereof to be determined by the Quebec Public Service Commission."

5. This act shall come into force on the day of its sanction.

In the Superior Court

No. 15.

Plaintiff's Amended Supplementary Declaration.

Dec. 6th, 1932. *(continued)*

Bill No. 171—An Act to amend the Public Service Commission Act.

His Majesty, with the advice and consent of the Legislative Council and of the Legislative Assembly of Quebec, enacts as follows:

1. Section 28k of the Public Service Commission Act (Revised Statutes, 1925, chapter 17), as enacted by the act 16 George V, chapter 16, section 6, and amended by the act 17 George V, chapter 16, section 3, is repealed.

2. This act shall come into force on the day of its sanction.

2. The said Bills were, after second reading thereof, referred to the Public Bills Committee where the Defendant's counsels were heard in support thereof and expressly admitted that the said Bills had been introduced at their instance to deal with the situation arising out of the facts with which this action has to do;

3. The adoption of the said Bills was opposed by counsel for Plaintiff and after the discussion thereof Bill No. 171 was abandoned and Bill No. 170 in its original form was replaced by a Special Act to govern the matters involved in this case, under the following title and in the following form:

(Assembly Bill No. 170)

An Act respecting certain Water-Powers on the Gatineau River.

Whereas the Gatineau Power Company has developed certain waterpowers at Chelsea Falls, on the Gatineau River, and has, by its works erected for that purpose, raised the level of the river above the said Falls and thereby submerged in whole or in part, since the 12th March, 1927, certain properties of which one Freeman T. Cross claims to be the owner and with respect to which he claims to have suffered serious loss and damage;

Whereas the said Cross has instituted in the Superior Court, in the district of Montreal, a petitory action against the said company with respect to some of the said properties, which action is still pending;

Whereas the said Cross has opposed certain proposed amendments to the Water-Course Act as being apt to affect the

In the Superior Court

No. 15.

Plaintiff's Amended Supplementary Declaration.

Dec. 6th, 1932. (*continued*)

rights asserted by him in the said petitory action, but has expressed his willingness to allow the said Gatineau Power Company to acquire all of his said properties submerged or affected by the said development provided he be paid fair compensation;

Whereas the said company has expressed its desire to expropriate the said properties;

Whereas it appears that the parties are unable to agree as to what would be fair compensation;

Whereas it appears proper, under the circumstances, to provide by special legislation that the said company shall not be disturbed in the operation of its said power development and that fair compensation to the said Cross shall be assessed in his favour and awarded to him by the Courts in the said pending case;

Therefore, His Majesty, with the advice and consent of the Legislative Council and of the Legislative Assembly of Quebec, enacts as follows:

1. The Gatineau Power Company shall not be disturbed by the said Cross, his successors or assigns, in the operation of its power development at Chelsea Falls by maintaining the level of the Gatineau River above the said Falls at any controlled elevation not exceeding 321.5 feet above sea level at Farm Point as determined by the geodetic survey bench mark on the church of the United Church of Canada at Wakefield Village, provided fair compensation to the said Cross shall be assessed and paid as hereinafter determined.

2. The Gatineau Power Company shall make just and fair compensation to the said Cross for all his properties and rights taken for or affected by the said development up to the said elevation and by the operation thereof.

3. The date with reference to which valuation shall be made shall be the date of the Order-in-Council approving the plans for such development.

4. 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.

In the Superior Court

No. 15.

Plaintiff's Amended Supplementary Declaration.

Dec. 6th, 1932. (*continued*)

5. 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 the said case may, under the control of the said Court, make such amendments to their pleadings and/or fyle 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.

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6. The Court shall in the judgment to be rendered in the said case determine what properties and rights shall, on payment of the said compensation, interest and costs, become vested in the Gatineau Power Company, and make such order for the lowering of the level of the said river on or opposite the properties of the said Cross and for the payment of damages, interest and costs as may appear to be proper in the event the said company should fail to pay the amounts awarded as full compensation, interest and costs.

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7. On payment or deposit in full of the amount awarded, the said properties and rights shall be vested in the company and the compensation shall stand in lieu of such properties and rights.

8. The judgment to be rendered in the said case shall be deemed for all purposes of appeal or otherwise a judgment of the said Court.

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9. This act shall come into force on the day of its sanction.

4. The said Act was sanctioned on the 19th day of February, 1932, and is now in force, a certified copy of said Bill being fyled herewith as Plaintiff's Exhibit P-63;

5. In order that the provisions of the said Act may be complied with, Plaintiff declares that the following are facts which are required to be considered in addition to the allegations of the original pleadings, that is to say:

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6. That by the erection and operation of the dam referred to in Paragraphs 22 and 23 of the Plaintiff's Declaration, the Defendant has backed up the water of the Gatineau River and has from time to time maintained it and proposes to maintain it at a controlled elevation of 321.5 feet above sea level (which elevation, and the elevations hereinafter referred to, are based upon bench mark No. 469 of the Geodetic Survey of Canada located on the church of the United

In the Superior Court

No. 15.

Plaintiff's Amended Supplementary Declaration.

Dec. 6th, 1932. (*continued*)

Church of Canada at Wakefield Village) at Farm Point, thus depriving Plaintiff of his property there (as described in Paragraphs 8 and 10 of the Declaration) actually covered by the said water up to the said controlled elevation of 321.5 feet;

7. That the maintenance of the said water on Plaintiff's said property as set out in the next preceding paragraph has had the effect of injuriously affecting and completely destroying the usefulness of his adjoining property up to elevation 325 as hereinafter alleged;

8. That prior to the damming back of the said water by the Defendant, the Plaintiff had for many years, to wit, from the year 1912, owned and operated the business of supplying electric light and power in the Villages of Wakefield, the Cascades, Kirk's Ferry and Alcove, as mentioned in Paragraph 20 of the Declaration, and that it was his intention to have obtained the electricity for this purpose from the hydro-electric development at the Cascades, referred to in Paragraph 17 of the Declaration;

9. That, as mentioned in Paragraphs 23 and 24 of the Declaration, the Defendant, by damming back and raising the level of the water of the Gatineau River as aforesaid, totally destroyed the portion of the Plaintiff's said distribution system situated between the Cascades and Kirk's Ferry;

10. That, as stated in Paragraph 25 of the Declaration, the raising of the waters by the Defendant resulted in putting the Plaintiff's said power plant at Farm Point out of commission and necessitated the Plaintiff's purchasing power from the Defendant, the result of which has been that the business referred to has proved unprofitable and has been carried on at a loss;

11. That prior to the raising of the said water by the Defendant, the Plaintiff's said electric distribution business had for many years been yielding him an annual net profit of in the neighbourhood of Eight Thousand Dollars ($8,000.00);

12. That prior to the damming back of the said water by the Defendant, the Plaintiff had for many years, to wit from the year 1903, owned and carried on a lumber business with his chief mill situated at Farm Point, being the mill referred to in Paragraph 19 of the Declaration, and with branch mills at Alcove, 7½ miles up the River from Farm Point and at what is known as mileage 12 on the railway, being at or near the Village of Kirk's Ferry and 6 miles lower down the River from Farm Point. That the main mill situated

In the Superior Court

No. 15.

Plaintiff's Amended Supplementary Declaration.

Dec. 6th, 1932. *(continued)*

at Farm Point was operated by water power obtained directly from Meach Creek, but that the two branch mills were operated by electric power from the Plaintiff's hydro-electric power plant on Meach Creek, referred to in Paragraph 18 of the Declaration;

13. That the said mill at mileage 12 was situated on land owned by the Plaintiff, being part of Lot 16-B in the 13th Range of the Township of Hull, and the Defendant has maintained the water of the Gatineau River from time to time and proposes to maintain it at a controlled elevation of 321.5 feet at Farm Point, thus depriving Plaintiff of a part of his said land, to wit:

"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 16-B in the 13th Range of the said Township containing by admeasurement 1.3 acres, more or less, and being more particularly described as follows:

Commencing at the intersection of the division line between Lots 16-B and 17-B 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."

14. That operating three mills at the respective points indicated instead of one mill was due to the fact that the Plaintiff owned timber limits in proximity to the said three places and that it was, therefore, more profitable to operate mills at the two outlying points than it would have been to bring logs from the outlying limits to the main mill at Farm Point;

In the Superior Court

No. 15.

Plaintiff's Amended Supplementary Declaration.

Dec. 6th, 1932. (*continued*)

15. That the timber limits referred to in the next preceding paragraph hereof have the following areas and are of the values respectively indicated:

A. Near Mileage 12 adjacent to Kirk's Ferry	500	acres freehold	Formerly worth $40 an acre
B. Adjacent to Alcove	400	acres freehold	Formerly worth $40 an acre
C. Adjacent to Farm Pt.	900	acres freehold	Formerly worth $40 an acre
D. Adjacent to Farm Pt.	200	acres freehold bush farm	Worth $3,000.00
E. Adjacent to Farm Pt.	5,120	acres under timber lease from the Crown	
F. Adjacent to Farm Pt.	520	acres under timber lease from private individuals	
Total acreage of limits	7,640		

16. That the Plaintiff had for many years been carrying on the said lumber business at an annual profit averaging in the neighbourhood of twenty thousand five hundred dollars;

17. That had the Plaintiff been permitted to carry out the hydro-electric development referred to in Paragraph 17 of the Declaration, he would have raised the waters of the Gatineau River to a point not higher than 318 feet at Farm Point, which would not have affected the said lumber business, and while it would have prevented the generation of electricity by means of the Plaintiff's power plant on Meach Creek, referred to in Paragraph 18 of the Declaration, the Plaintiff would have had an abundant supply of electricity from his said development at the Cascades to have furnished all the electricity necessary for the carrying on of his said business of distributing electricity in the said villages and to have permitted of its material extension and also for the operation of the three lumber mills already referred to;

18. That the damming back of the water of the Gatineau River by the Defendant has utterly destroyed Plaintiff's land, property and business at mileage 12, rendered useless the mill property and business at Alcove because of the cutting off of the source of electric supply and has prejudicially affected the mill property and business at Farm Point, which will be utterly destroyed by the maintenance of the water at a controlled elevation of 321.5 feet;

19. That had the Plaintiff been permitted to carry out the hydro-electric development referred to in Paragraph 17 of the Declaration, he would not thereby have caused any damage whatever to the portion of his electric distribution system lying between the

In the Superior Court

No. 15.

Plaintiff's Amended Supplementary Declaration.

Dec. 6th, 1932. *(continued)*

Cascades and Kirk's Ferry nor to the mill property at mileage 12, both of these properties being situated lower down the River than the location of the proposed development at Cascades;

20. That owing to the destruction of the Plaintiff's lumber business, the values of the timber limits as referred to in Paragraph 15 hereof have suffered and will suffer the following depreciation:

A.	Near Mileage 12 adjacent to Kirk's Ferry	500 acres	freehold	Depreciated to the extent of $25 an acre — Loss $12,500
B.	Adjacent to Alcove	400 acres	freehold	Depreciated to the extent of $25 an acre — Loss $10,000
C.	Adjacent to Farm Pt.	900 acres	freehold	Depreciated to the extent of $25 an acre — Loss $22,500
D.	Adjacent to Farm Pt.	200 acres	freehold bush farm	Depreciated to the extent of $10 an acre — Loss $2,000
E.	Adjacent to Farm Pt.	5,120 acres	under timber lease from the Crown	Depreciated to the extent of $5 an acre — Loss $25,600
F.	Adjacent to Farm Pt.	520 acres	under timber lease from private individuals	Depreciated to the extent of $10 an acre — Loss $5,200
				Total Depreciation $77,800

21. That Plaintiff is the owner of that portion of Lot 23-B in the 16th Range of the Township of Hull described as follows, that is to say:

> "A piece or parcel of land forming part of Lot Twenty-three B (23-B) 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."

22. That Plaintiff acquired the said property mentioned in the next preceding paragraph herein from Dame Elizabeth Carmen, wife of Robert Reid, by Deed of Sale passed the 14th June, 1915, before Louis Bertrand, N.P., and registered in the Registry Office for the County of Hull under the Number 26625, as will appear by certified copy of said deed fyled as Plaintiff's Exhibit P-64;

23. That the value of the property described in Paragraph 21 hereof is $3,000.00;

In the Superior Court

No. 15.

Plaintiff's Amended Supplementary Declaration.

Dec. 6th, 1932. (*continued*)

24. That the property referred to in the next three preceding paragraphs hereof was purchased by the Plaintiff for the purpose of using the gravel thereon in the construction of the dam which he proposed building at Cascades;

25. That subsequently, in or about the year 1924, Plaintiff, to facilitate the construction of the said dam, caused a large quantity of the said gravel to be hauled to the West side of the Gatineau River at a total cost of $2,000.00;

26. That the raising of the level of the Gatineau River by the Defendant, rendering it impossible for the Plaintiff to construct the proposed dam at Cascades, has destroyed the value of the land referred to in Paragraphs 21 and 22 hereof and of the gravel referred to in Paragraph 25 hereof, and Plaintiff is entitled to claim from Defendant the said two sums of $3,000.00 and $2,000.00 with respect thereof;

27. That the amounts which Plaintiff is entitled to recover from the Defendant for the matters hereinbefore and in the Declaration referred to and alleged are as follows:

CASCADES:			
Undeveloped water power			$ 600,000.00
FARM POINT:			
Electric Light and Power Business:			
Physical assets as per statement fyled as Plaintiff's Exhibit P-65	$50,000.00		
Goodwill	100,000.00		
		$150,000.00	
Lumber Business:			
Replacement value as per summary and detailed valuations fyled as Plaintiff's Exhibit P-66	165,112.78		
Goodwill for the three mills	100,000.00		
		265,112.78	
		$415,112.78	
Less assets that would have been lost had Plaintiff himself raised the water to 318 ft. as per list fyled as Plaintiff's Exhibit P-67.....		53,000.00	
			362,112.78

In the Superior Court

No. 15.

Plaintiff's Amended Supplementary Declaration.

Dec. 6th, 1932. (*continued*)

Mileage Twelve:			
Replacement value of buildings as per detailed valuation fyled as Plaintiff's Exhibit P-68	1,913.24		
Value of site, including land and tracks.....	12,000.00		
			13,913.24
Timber Limits:			
Depreciation as set out in paragraph 20 hereof...			77,800.00
Gravel Pit:			
Value as set out in paragraph 23			3,000.00
Cost of Hauling Gravel:			
As set out in paragraph 25			2,000.00
			$1,058,826.02

together with interest at 5% upon the said sum of $1,058,826.02 from the 12th March, 1927, the date of the flooding and submersion of Plaintiff's said properties by the Defendant;

28. That Plaintiff has necessarily expended or become liable for the amounts hereinafter set forth for disbursements, fees and costs in connection with this action and in connection with the passing of the said Act by the Quebec Legislature:

J. M. Robertson, Consulting Engineer, Fees			$ 7,500.00
De Gaspé Beaubien, Consulting Engineer, Fees and Expenses.....			6,369.10
N. B. MacRostie, Consulting Engineer:			
Fees	$8,500.00		
Expenses	1,513.17		
		$10,013.17	
Fees for Act	$ 375.00		
Expenses for Act	49.25		
		424.25	
			10,437.42
J. B. McRae, Consulting Engineer			300.00
L. S. St. Laurent, K.C.:			
Fees and Expenses		$4,927.24	
Fees and Expenses for Act		863.30	
			5,790.54
W. L. Scott, Barrister and Solicitor, Ottawa Agent:			
Fees and Expenses		$ 646.74	
Fees and Expenses for Act		443.69	
			1,090.43

In the Superior Court

No. 15.

Plaintiff's Amended Supplementary Declaration.

Dec. 6th, 1932. *(continued)*

	Hon. P. B. Mignault, K.C.		500.00
	Lafleur, MacDougall, Macfarlane & Barclay:		
	Fees	$15,270.00	
	Expenses	1,233.22	
	Expenses for Act	440.17	
			16,943.39
	G. Papineau, Land Surveyor		1,271.63
	Fernand Major, Advocate, Hull		57.55
	F. A. Labelle, N.P., Hull		350.00
	Louis Bertrand, N.P., Hull		918.40
10	Cecil Burgess, Architect, Ottawa		100.00
	W. G. Adamson, Valuator, Ottawa		216.08
	Adamson & Hazelgrove, Valuators, Ottawa		800.00
	Burgess & Adamson, Valuators, Ottawa		1,250.00
	E. J. Dery, Photographer, Hull		271.65
	A. Maxwell, Land Surveyor: Board		15.50
	W. T. Maxwell, Assisting Land Surveyor: Labor		4.00
	F. T. Cross:		
	50 trips to Montreal at $12.00	$ 600.00	
	25 nights at hotel, Montreal, at $5.00	125.00	
	4 trips to Quebec at $30.00	120.00	
20	10 days' board and lodging, Quebec, at $15.00	150.00	
	Paid by Plaintiff to Hull Registry Office	195.15	
			1,190.15
			$54,104.21

the whole as will more fully appear by itemized accounts produced herewith respectively as Plaintiff's Exhibits P-69 to P-89 inclusively;

28A. Disbursements, fees and costs incurred by Plaintiff in addition to those set forth in Paragraph 28 above:

30	Kenehan & Bush, Official Court Stenographers	$ 1,127.40

Disbursements, fees and costs incurred on Supplementary issues as authorized by Judgment of the 10th March, 1932:

	J. M. Robertson, Consulting Engineer:	
	Fees and Expenses	1,890.50
	De Gaspé Beaubien, Consulting Engineer:	
	Fees and Expenses	2,316.70
	N. B. MacRostie, Consulting Engineer:	
40	Fees	5,799.00
	Expenses	314.75
	F. T. Cross:	
	Expenses	310.00
	Telephone Bill	36.90
	W. L. Scott, K.C., Barrister and Solicitor:	
	Fees	490.00
	Expenses	21.15

In the Superior Court

No. 15.

Plaintiff's Amended Supplementary Declaration.

Dec. 6th, 1932. (*continued*)

MacDougall, Macfarlane & Barclay:	
Fees	7,963.00
Expenses	442.42
George B. Langford, Consulting Engineer:	
Fees	2,100.00
Bush & Kenehan, Official Court Stenographers:	
Transcript of evidence	1,425.50
Louis St. Laurent, K.C.:	
Fees	3,290.66
	$27,527.98

29. That the total sum of $1,058,826.02 as set out in Paragraph 27 and the total sums of $54,104.21 and $27,527.98 as set out in Paragraphs 28 and 28A respectively form a total of $1,140,458.21 justly due to Plaintiff by Defendant by reason of the foregoing and the Declaration in virtue of the said Act Exhibit P-63, now known as Chapter 128 of the Statutes of Quebec, 22 George V;

WHEREFORE Plaintiff prays that instead of being awarded the relief prayed for in his original Declaration, he be declared to be the proprietor of the various immoveable properties described in the Declaration and in this Supplementary Declaration, that he be awarded and that Defendant be condemned to pay him as just and fair compensation for all his properties and rights taken for or affected by the said development of the Defendant up to the said controlled elevation of 321.5 feet above sea level at Farm Point, as determined by the geodetic survey bench mark on the church of the United Church of Canada at Wakefield Village, the sum of $1,058,826.02 with interest thereon at 5 per cent from the 12th March, 1927, and the further sum of $54,104.21 referred to in Paragraph 28 hereof, and the further sum of $27,527.98 for disbursements, fees and costs as set out in Paragraph 28A herein with interest on the said sum of $54,104.21 since the 5th day of March, 1932 and on the said sum of $27,527.98 since the 21st day of November, 1932, and costs; and that it be declared that upon payment by Defendant to Plaintiff of the said sums with interest and costs, or on deposit in full of the amount awarded in Court, to stand in lieu thereof, all such properties and rights of Plaintiff described in the said original Declaration and this Supplementary Declaration, and being below the contour line corresponding with elevation 321.5 feet above sea level at Farm Point, as determined by the said geodetic survey bench mark, and the right to affect the said properties up to a contour line corresponding to 325 feet by a controlled elevation of the waters of the Gatineau River to a point not exceeding 321.5 feet above sea level at Farm Point as aforesaid, shall become vested in the Company Defendant, and that upon Defendant's failure to

In the Superior Court

No. 15.

Plaintiff's Amended Supplementary Declaration.

Dec. 6th, 1932. (*continued*)

pay or deposit in full the amounts awarded as aforesaid for compensation, interest and costs within fifteen days from the judgment to be rendered herein, the Defendant be ordered to lower the level of the said River on or opposite the properties of the Plaintiff, down to elevation 312 in connection with Plaintiff's properties described in Paragraph 8a of the original Declaration, and down to elevation 304 of the said geodetic survey datum in connection with Plaintiff's properties described in Paragraph 1 of the original Declaration at Cascades, and down to elevation 304 of the said geodetic survey datum in connection with Plaintiff's property at Mileage 12 described in Paragraph 13, and that upon Defendant failing to so lower the level of the water immediately after the expiry of the said fifteen days, and having failed to pay or deposit in full the said amounts awarded for compensation, interest and costs, Plaintiff be authorized to open the gates and dykes of Defendant's development at Chelsea Falls, under the control of this Court, to the extent required to so lower the level of the said waters and that Defendant be condemned, in that event, to pay Plaintiff for the use and occupation of his property in the meantime, and the irreparable damages caused to Plaintiff, the sum of $144,000.00 with interest from the 27th February, 1931, claimed in the original action, and the further sum of $1,058,826.02 claimed in this Supplementary Declaration, with interest thereon at 5 per cent from the 12th March, 1927, and the further sum of $54,104.21 for disbursements, fees and costs as set out in Paragraph 28 herein, and the further sum of $27,527.98 for disbursements, fees and costs as set out in Paragraph 28A herein, with interest on the said sum of $54,104.21 since the 5th day of March, 1932 and on the said sum of $27,527.98 since the 21st day of November, 1932; the whole with costs and under reserve by Plaintiff of all his rights to sue for damages hereafter to be sustained.

MONTREAL, December 6th, 1932.

MacDougall, Macfarlane & Barclay,
Attorneys for Plaintiff.