

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
LIBRARY

GATINEAU POWER COMPANY,

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

(Defendant in the Superior Court),

APPELLANT,

—AND—

FREEMAN T. CROSS,

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

(Plaintiff in the Superior Court),

RESPONDENT.

THE CASE

VOLUME 6

PLAINTIFF'S EVIDENCE (1st Hearing)

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

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30469

No. 655

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LAW
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W.C.1.

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25, RUSSELL SQUARE,

LONDON,

W.C.1.

Canada,
Province de Québec,
District de Montréal,
N° C-80504.

COUR SUPERIEURE

PRESENT: L'HONORABLE JUGE de LORIMIER

10

FREEMAN T. CROSS,

Demandeur.

—vs—

GATINEAU POWER COMPANY,

Défenderesse.

20

L'an mil neuf cent trente et un, le vingt-unième jour de septembre,

Est comparu :

GUSTAVE JOSEPH PAPINEAU,

ingénieur civil et arpenteur, âgé de quarante et un ans, 10, rue St-Jacques Ouest, Montréal, témoin entendu de la part du demandeur;

30

Lequel, après serment prêté sur les Saints Evangiles, dépose et dit:

INTERROGE PAR Me ST-LAURENT, c.r.,
AVOCAT DU DEMANDEUR:

Q.—Monsieur Papineau, vous avez dit que vous étiez ingénieur civil et arpenteur: arpenteur géomètre de la province de Québec?

R.—Oui.

40 Q.—Vous pratiquez depuis un certain nombre d'années?

R.—Comme arpenteur, depuis dix-sept ans, comme ingénieur depuis dix-neuf ans.

Q. Comme arpenteur, avez-vous eu occasion de travailler dans le canton de Hull?

R.—Oui.

Q.—Et dans cette région qui constitue le bassin de drainage de la Gatineau?

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Superior Court*

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Plaintiff's
Evidence.
G. J. Papineau,
Examination
Sept. 21st, 1931.

*In the
Superior Court*

No. 16.
Plaintiff's
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G. J. Papineau,
Examination
Sept. 21st, 1931.
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R.—A Farmers' Point et Cascades.

Q.—Voulez-vous produire comme pièce P-10 un exemplaire de cette carte topographique du département de l'Intérieur, qui montre d'une façon générale la région d'Ottawa, Hull et cette partie de la Gatineau dite " Alcove ", jusqu'à son embouchure?

R.—Oui.

Q.—Vous avez examiné cette carte topographique?

R.—Oui.

10 Q.—Et, sans avoir vérifié tous les détails qu'elle comporte, vous savez que cela représente approximativement les lieux, tels que vous les connaissez?

R.—Oui.

Q.—Voulez-vous produire comme pièce P-11, une copie certifiée par le sous-régistrare de la Province de la proclamation du trois (3) janvier mil huit cent six (1806) érigeant le canton de Hull?

R.—Oui.

Q.—C'est bien ce même canton de Hull dont il s'agit ici?

R.—Oui.

20 Q.—Voulez-vous produire comme pièce P-12 ce diagramme, certifié par le Sous-Ministre des Terres, indiquant la division originale du canton de Hull?

R.—Oui.

Me Desaulles, c.r.: Nous nous objectons à la production de ce plan et de la proclamation, à moins qu'on ne montre en quoi ils se rapportent au litige. Il n'y a rien qui réfère à la rivière Gatineau sur ce plan.

30 Me St-Laurent, c.r.: Cette proclamation érige le canton et donne spécifiquement la forme et les dimensions du lot 21 du 15ème rang.

La Cour: Je permets la production de ces documents, sous réserve.

PAR Me ST-LAURENT, c.r.:

40 Q.—Voulez-vous produire maintenant, comme pièce P-13, la copie certifiée par le Sous-Ministre des Terres, des instructions générales données pour l'arpentage et la subdivision du canton de Hull, en date du dix-sept (17) d'août mil huit cent deux (1802)?

Me Dessaulles, c.r., Conseil pour la défenderesse;

Je m'oppose à la production de ces instructions comme n'étant pas un document qui peut affecter des titres.

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La Cour: Je permets la production, sous réserve.

(Le témoin produit ce document comme pièce P-13).

Q.—Voulez-vous produire comme pièce P-14, une copie, certifiée par le Sous-Ministre du Département de la Colonisation, des Mines et des Pêcheries, M. Richard, du plan du cadastre du canton de Hull?

R.—Je le produis.

10 Q.—Maintenant, pour commodité dans l'examen de ce plan, voulez-vous produire cet extrait lithographié de partie du plan du cadastre, qu'on va marquer P-15?

R.—Oui.

Q.—Sur cette pièce P-15 il y a, vis-à-vis les lots vingt (20) à vingt-trois (23) du quinzième (15^e) rang et les mêmes lots du seizième (16^e) rang, une ligne ondulante avec une flèche à chaque bout qui indique que cela a été corrigé et que la partie ainsi traversée par ces lignes ondulées est reproduite au-dessus, dans la correction?

R.—Oui.

20 Q.—Où se trouve, par rapport à la rivière, la demie sud des lots 20 et 21 du rang 15?

(Le témoin examine le plan P-15).

R.—Une partie de la demie sud, représentée par le lot 21b, est au nord de la rivière; une autre partie de cette partie sud, indiquée par les lots 21c et 21d du 15^e rang est au sud de la rivière.

30 Q.—Voulez-vous prendre connaissance de ces lettres-patentes du onze (11) novembre mil huit cent soixante et sept (1867) qui ont déjà été produites comme pièce P-4, et me dire si les terrains décrits comme étant les demies sud des deux lots 20 et 21 du 15^e rang du Township de Hull, sont les mêmes terrains que vous venez de nous indiquer sur le cadastre, pièce P-15?

R.—Les lots 21b, 21c, 21d, font partie du terrain décrit dans ces lettres-patentes sur le lot 21.

40 Q.—Voulez-vous prendre connaissance de ce plan photostat qui est déjà au dossier comme pièce P-1 et nous dire si les lots que vous avez mentionnés comme 21b, 21d et 21c, indiqués sur ce photostat, sont également des parties de cette demie sud du lot originaire?

R.—Les parties 21b, 21c, 21d font partie de la moitié sud du lot 21 du 15^e rang, canton de Hull.

PAR LA COUR:

Q.—Ils font partie du lot originaire?

R.—Du lot originaire 21.

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PAR Me ST-LAURENT, c.r.:

Q.—Nous avons produit comme pièce P-5 la copie certifiée par le registrateur du district de Hull d'un acte de donation par David Moore à son fils Thomas Moore des demies sud des lots 20 et 21 du 15ème rang du Township de Hull en date du dix-sept (17) août mil huit cent soixante et quinze (1875).

Voudrez-vous produire comme pièce P-16, une copie authentique, certifiée par le notaire, du même document?

10 R.—Oui.

Q.—Vu le consentement de mes confrères, au lieu de produire cette copie comme P-16, je l'annexerai à P-5, déjà produite, pour faire partie de P-5. Le terrain décrit,—les deux demies sud des lots 20 et 21,—c'est le même terrain qui est mentionné dans les lettres-patentes, pièce P-4?

R.—Oui.

Q.—Voulez-vous produire comme pièce P-16 la copie authentique de testament de Thomas Moore, le donataire décrit dans la pièce P-5?

20 R.—Oui.

Q.—Comme vous le constatez par ce testament, Thomas Moore lègue ses biens à son épouse, Bridget Smith?

R.—Oui.

Q.—C'est cette même Bridget Smith qui, étant devenue l'épouse de Michael Burns, apparaît comme venderesse dans la pièce P-2?

R.—...

Q.—Connaissez-vous cette personne-là?

R.—Non, je ne la connais pas.

30 Q.—Alors, vous ne savez pas si c'est le même nom?

R.—Non.

Me St-Laurent, c.r.: La défenderesse a produit comme pièce D-3 un document, tout simplement écrit à la machine, sans aucun certificat, qui serait une copie d'un ordre-en-conseil du dix-sept (17) décembre mil neuf cent vingt-six (1926). Pour les fins de l'enquête le demandeur aurait besoin du document véritable et des plans et descriptions qui y sont mentionnés.

40 Me Kerr: Ce plan a été mentionné dans les procédures en expropriation.

PAR Me ST-LAURENT:

Q.—Voulez-vous prendre connaissance de la pièce P-7, à laquelle j'attacherai aussi cette copie, certifiée par le notaire, vu que ce qui a été produit comme P-7 est simplement certifié par le registrateur, et me dire si les parcelles de terrain décrites dans le paragraphe 8 de

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la déclaration font partie de ce qui est décrit dans cette pièce P-7?

R.—Je puis produire un plan montrant l'état des lieux.

Q.—Ce qui est décrit dans la paragraphe 8 de la déclaration a été figuré par vous sur ce plan que vous produisez comme P-17?

Me Dessaulles, c.r., s'oppose à la production de ce document.

10 La production est permise par la Cour sous réserve de l'objection.

R.—Le plan étant produit pour indiquer les terrains acquis par M. Cross par la pièce P-7, ce terrain est coloré en rose, et le terrain décrit à l'article 8 de la déclaration est inclus dans cette partie colorée en rose.

Q.—Voulez-vous prendre connaissance de la pièce P-8 et me dire si le terrain décrit dans le paragraphe 10 de la déclaration fait partie des terrains auxquels s'applique la pièce P-8?

20 (Le témoin compare le paragraphe 10 de la déclaration et la pièce P-8.)

R.—Sur le même plan produit précédemment comme pièce P-17, le terrain acquis par M. Cross est indiqué en jaune, mais une partie du terrain décrit dans l'article 10 n'est pas incluse dans ce titre.

Q.—Comment l'avez-vous indiquée, la partie qui ne se trouve pas incluse?

R.—En vert, avec plus grande partie.

30 Q.—Avez-vous le contrats qui se rapporte au terrain figuré en vert sur la pièce P-17?

R.—J'ai une copie certifiée par le registraire du comté du Hull.

Q.—Alors, voudrez-vous produire comme pièce P-18, cette copie certifiée par le registraire, et aussi une copie authentique certifiée par notaire?

R.—Oui.

Q.—Etant une vente par John E. Cox à Freeman T. Cross devant Louis Bertrand, en date du vingt-huit (28) septembre mil neuf cent vingt et un (1921)?

R.—Oui.

40 Q.—Votre plan P-17 montre un peu plus que ce qui est décrit dans la déclaration?

R.—Ah oui. Ce qui est décrit dans la déclaration ne forme que partie des terrains acquis par M. Cross et décrits dans les pièces produites.

Q.—Ce qui est décrit dans la déclaration, sous-paragraphe "A" du paragraphe 8, se trouve à faire partie de ce qui est en rose?

R.—Oui.

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Q.—Et à être désigné par une ligne irrégulière, une ligne brisée, qui comprend une partie de 23a, une partie de 24 et une partie de 24c?

R.—23a et 24 du rang 15, et 24c du rang 16.

Q.—Maintenant, ce qui est décrit dans le sous-paragraphe “ B ” du paragraphe 8 se trouve aussi coloré en rose comme étant P-Lot 24c, rang 16?

R.—Oui.

10 Q.—Cette partie de la lisière entre le chemin public et la rivière Gatineau qui se trouve colorée en rose est aussi incluse dans la propriété acquise par M. Cross en mil neuf cent six (1906) ?

R.—Oui.

Q.—Et la partie de cette lisière entre le chemin public et la rivière, colorée en jaune, fait partie de ce qui a été acquis par M. Cross en mil neuf cent vingt-trois (1923) ?

R.—Oui.

20 Me Dessaulles, c.r.: Je m'oppose à la production de ce plan en tant qu'il indique des terrains que ne sont pas couverts par la déclaration. On ne doit pas faire une preuve qui dépasse la déclaration. M. Papineau a admis, que, bien que la partie colorée en rose fut comprise dans les titres de M. Cross, elle n'était pas comprise dans certains paragraphes de la déclaration.

Me St-Laurent, c.r.: L'objet de cette preuve n'est pas du tout d'étendre la portée de la déclaration, mais simplement de prouver que ce qui est décrit dans la déclaration fait partie des plus grandes étendues acquises par M. Cross à différentes époques.

30 (A midi et quart la séance est levée.)

A deux heures et demie de l'après-midi le témoin comparaît de nouveau et continue sa déposition comme suit: .

PAR Me ST-LAURENT, c.r.:

40 Q.—Voulez-vous produire comme pièce P-19, cette copie bleue d'un plan de M. Farley qui paraît avoir été signifiée à M. Cross par M. J.-E. Couture, huissier, le quatre (4) décembre mil neuf cent vingt-six (1926), avec l'avis y annexé, et comparer ce plan avec le plan P-1, et nous dire si c'est de ce plan que la pièce P-1 est la copie photographique? (Le procureur du demandeur faisant remarquer qu'il n'attache aucune importance et n'entend pas faire servir comme partie de preuve les annotations mises au crayon jaune sur le plan, comportant “ approximative location of proposed dam, F. T. Cross ”, admettant que ceci à été ajouté après la signification et ne faisait pas partie du document signifié au demandeur).

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R.—Le photostat est une copie, excepté les lignes rapportées du côté gauche du plan et marquées “ north half, lot 21 ; south half, lot 21 ”, ainsi que la ligne latérale marquée lot 21 et lot 22.

Q.—Avez-vous même vérifié les coins d'angle de ce lot, partie sud, demie sud du lot 21?

R.—Oui, pour la ligne est.

Q.—Et avez-vous fait des sondages ensuite à travers la rivière, entre ces deux parties de demie sud de 21, dont il s'agit en cette cause?

10 R.—Oui, j'ai fait des sondages. Je produis un plan indiquant les sondages.

Q.—Voulez-vous produire comme pièce P-20 une copie de ce plan, et dire ce que représentent les chiffres marqués sur quatre colonnes traversant la rivière?

R.—Sur la pièce P-20, vous remarquez une ligne Alpha-E, une autre ligne E-T-V, une autre ligne N-M et une autre ligne dont une extrémité est marquée “ blazed birch ”, l'autre extrémité “ pine creek ”. Le long de ces lignes, les chiffres en colonne indiquent les profondeurs du lit de la rivière rattachées au même plan d'élévation
20 que les hauteurs mentionnées en cette cause.

La ligne marquée A-12 est une ligne actuellement mesurée sur le terrain. La ligne marquée “ Shore line, June 28, 1926 ” est compilée d'après la pièce P-19, ainsi que les lignes de contour. Les élévations des hauteurs d'eau, du niveau de l'eau, sont marquées sur le plan mais ont été prises par l'ingénieur, M. MacRostie.

Q.—Vous ne faites aucune preuve quant à ces niveaux d'eau?

R.—Quant à ces niveaux d'eau là, ils ne sont pas les biens.

Q.—Avez-vous vous-même trouvé ce point “ A ” marqué “ Iron
30 bolt ”?

R.—Oui.

Q.—Et quelle identification en avez-vous eu?

R.—En faisant des recherches au bureau d'enregistrement de Hull, dans des titres concernant la propriété “ Canada Cement Property ”, pour le lot 20 du 15ème rang, il est fait mention d'un procès-verbal par un arpenteur du nom de Hamilton, en mil huit cent soixante et sept (1867).

Me Desaulles, c.r.: Je crois que nous devons objecter, à moins
40 que le document soit produit.

La Cour: Preuve permise sous réserve.

R.—Dans le document que j'ai trouvé au bureau d'enregistrement de Hull on mentionnait qu'un piquet était situé à une certaine distance de la berge de la rivière Gatineau et mesurée dans le cordon, entre le 14ème et le 15ème rang, dans le procès-verbal on mentionnait un piquet.

Me Dessaulles, c.r.: On réfère à un procès-verbal, alors qu'on produise le procès-verbal.

(Le témoin: Il est impossible à trouver).

PAR LA COUR:

Q.—Il est impossible à trouver?

10 R.—Le procès-verbal est impossible à trouver. Le greffe de cet arpenteur-là on ne sait pas où il est rendu.

PAR Me DESSAULLES, c.r.:

Q.—Quel est le nom de l'arpenteur?

R.—Hamilton.

La Cour: Je permets toute la preuve sous réserve.

20 R.—J'ai trouvé que la dite borne, au point "A", correspondait à la distance mentionnée dans le procès-verbal.

PAR Me ST-LAURENT, c.r.:

Q.—Et vous êtes parti de ce point-là?

R.—J'ai aussi vu certains plans en possession de la compagnie Canadien Pacifique, indiquant une encoignure de lot et une borne en fer. Alors, je suis parti de cette borne.

30 Q.—Est-ce que cette fiche de fer avait l'apparence de celles généralement placées par les arpenteurs?

R.—Non. C'était une borne, un monument de fer, mais il n'avait pas les caractéristiques d'une borne d'arpentage.

Q.—Vous êtes parti quand même de la tige de fer?

R.—Je suis parti de cette fiche-là, j'ai traversé la rivière, où j'ai trouvé un piquet de bois marqué L-2, M. Cross, mon client, me disant que ce piquet indiquait sa limite. . . .

Me Dessaulles, c.r. s'oppose à cette preuve comme illégale.

40 R.—Comme vient de le dire M. St-Laurent, j'ai été voir le voisin, M. Cave, il m'a dit que le dit poteau était bien sa limite. Quant deux hommes s'accordent sur un piquet on l'accepte comme étant leur ligne.

Q.—En fait, est-ce que cette ligne coïncide avec celle qui est indiquée sur le plan de M. Farley, qui avait été signifiée par la compagnie à M. Cross, pièce P-19?

R.—Oui. De là j'ai continué un arpentage jusqu'à la propriété

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de Farmers' Point où j'ai retracé le cordon entre le rang 15 et le rang 16. Nous avons les traces évidentes de la ligne séparative des cordons. Prenant cette direction par le piquet L-1, j'ai tracé une parallèle à ce cordon pour établir ma limite entre la moitié nord et la moitié sud du lot 21. Comparant les distances entre le point "A" et L-2, nous trouvons une longueur de deux mille sept cent cinquante-trois (2,753), qui est plus longue par environ quatre-vingt-neuf (89) pieds de la moitié mathématique des profondeurs contenue dans les instructions de l'arpentage primitif, qui était de quatre-vingts chaînes et soixante et quinze (75) chaînons. Alors, le piquet L-2 est sensiblement la moitié du lot.

Q.—La ligne parallèle que vous avez tirée correspond-t-elle, ou non, au prolongement de la ligne indiquée sur le plan de Farley signifié par la compagnie à Cross?

R.—Je ne pourrais pas dire, je ne l'ai pas comparée.

Q.—Est-ce que vous pouvez le dire en les comparant?

(Le témoin fait cette comparaison).

20

R.—Pas tout à fait.

Q.—Elle est un peu plus ouverte que la ligne de M. Farley?

R.—Elle est un peu plus ouverte que la ligne de M. Farley.

Q.—A quelle date avez-vous fait les sondages que vous avez indiqués sur ce plan P-20 et qui indiquent, d'après vous, le fond du lit de la rivière?

R.—Aux environs du vingt-deux (22) décembre mil neuf cent trente (1930).

30 Q.—Vous avez fait ensuite le plan rapportant vos opérations, le huit (8) janvier mil neuf cent trente et un (1931)?

R.—Oui.

Q.—Je comprends que vous n'avez fait aucun arpentage relatif à la propriété que M. Cross réclame comme la sienne à l'endroit appelé "La Pêche"?

R.—Aucun.

Q.—Voulez-vous produire comme P-21 des lettres-patentes du vingt-deux (22) mai mil huit cent trente-deux (1832) pour le lot 24 du 15ème rang du canton de Hull, et dire si c'est le même lot 24 dont les parties à Farmers' Point, dont il s'agit, faisaient partie?

40

(Le témoin examine le document P-21).

R.—Oui, je le produis.

Q.—Et comme P-22, les lettres-patentes du huit (8) décembre mil huit cent quarante et un (1841) pour la demie sud du lot 24 du 16ème rang, et comme P-23 les lettres-patentes pour la demie nord du lot 23 du 15ème rang, en date du 26 septembre mil huit cent

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trente-huit (1838), et nous dire si les parties décrites comme étant 24, 24c, 23a, dans les paragraphes 8 et 10 de la déclaration sont des parties de ces lots originaires 23 et 24 des 15ème et 16ème rang du canton de Hull auxquels ces lettres-patentes d'appliquent?

(Le témoin examine les documents en question).

R.—Oui.

10 Q.—Vous répondez dans l'affirmative?

R.—Oui.

Q.—Les parties décrites sont des parties de ces lots originaires cédés par les lettres-patentes en question?

R.—Oui.

20 Q.—Voulez-vous produire comme pièce P-24, une copie photographiée du contrat pour l'achat de la voie de chemin de fer vis-à-vis le lot 21 du 15ème rang du canton de Hull, mes confrères acceptant que nous produisions cette copie photographiée au lieu d'une copie authentique, et voulez-vous nous dire si ce qui est décrit comme partie de 21c est le même 21c du 15ème rang qui est indiqué sur votre plan et sur le plan P-19?

(Le témoin examine la pièce P-24).

R.—Il faudrait que je le lise plus attentivement.

Q.—Est-ce que le vingt et un (21c) du 15ème rang est le même 21c que celui indiqué sur votre plan?

R.—Oui.

30 Q.—Voulez-vous maintenant produire comme P-25 le plan de la voie du chemin de fer Ottawa & Gatineau Valley, du 10ème au 20ème mille et dire si la partie de cette voie qui se trouve vers le 15ème mille, vis-à-vis l'endroit marqué " Cascades ", le lot indiqué sur le plan comme 21c, se trouve à être le même 21c du 15ème rang dont il s'agit en la présente cause?

R.—Pour moi, le lot 21c du 15ème rang, sur ce plan est le même 21c montré sur la pièce P-20.

40 Q.—Voulez-vous produire comme pièce P-26, le livre de renvoi se rapportant à la même voie de chemin de fer, déposé le trente (30) mai mil huit cent quatre-vingt-huit (1888), la copie étant certifiée par le député ministre du département des Travaux Publics et des Chemins de Fer, à Québec, et dire si le 21c, rang 15, indiqué comme acquis de Thomas Moore est une partie de la même propriété?

R.—Non, ça ne reproduit pas cela.

Q.—Vous ne pouvez pas l'identifier?

R.—Non.

Q.—Étant donné que vous venez d'identifier le lot 26 sur P-25, " plot 56 ", et que vous trouvez " plot 56 " sur le livre de renvoi

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R.—Oui.

Q.— est-ce que cela vous permet de l'identifier?

R.—Oui, c'est correct. Nous avons sur le plan préparé par la compagnie une parcelle de terrain marquée 56 avec le nom de Thomas Moore au-dessus. Ceci correspond bien à l'exhibit P-26.

CONTRE-INTERROGE PAR Me DESSAULLES, c.r.,
CONSEIL POUR LA DEFENDERESSE:

10 Q.—Monsieur Papineau, au sujet de la pièce P-11 qui est une description, je comprends, d'une proclamation érigeant le " township " de Hull, avez vous pris connaissance de cette description, avez-vous lu ce document-là?

R.—Ici, en Cour.

Q.—Vous ne l'avez pas lu?

R.—Avant, non.

PAR LA COUR:

20 Q.—Dites-vous que vous l'avez vu mais que vous ne l'avez pas lu?

R.—Je l'ai juste lu en Cour, ici.

PAR Me DESSAULLES, c.r.:

Q.—Vous avez lu le titre, je suppose? Vous avez vu de quoi il s'agissait, d'une façon générale?

R.—Oui.

30 Q.—Pouvez-vous m'indiquer dans le document, quelques références à la rivière Gatineau?

(Le témoin examine longuement la pièce P-11).

R.—Ils n'en font pas mention. Il n'est pas fait mention de la rivière Gatineau.

Q.—Savez-vous quels sont les rangs qui sont traversés par la rivière Gatineau?

R.—Le rang 15 est traversé par la rivière Gatineau.

40 Q.—Y en a-t-il d'autres?

R.—Oui, il y en a d'autres.

Q.—Vous ne pouvez pas indiquer l'endroit où la rivière Gatineau entre dans le " township " de Hull, ni où elle en sort?

R.—Non.

Q.—Vous n'avez pas fait d'arpentage de tout le Township de Hull?

R.—Non.

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Q.—En dehors des sondages et des mesures que vous avez donnés, avez-vous fait quelque arpentage, un arpentage quelconque?

R.—Non.

Q.—Vous n'avez fait aucun arpentage en rapport avec la pièce P-17 qui est le plan coloré de certains immeubles du demandeur?

R.—Mon arpentage, pour établir la ligne entre 15 et 16 s'est fermé sur un point indiqué sur le plan, l'intersection des lots 24c, 25c, 24 et 25a. Quant au reste du plan, c'est une copie d'un plan signé par M. Farley, à l'échelle de 200 pieds, qui est produit comme une des pièces en cette cause.

10 Q.—Je reviendrai à ce plan-là tout à l'heure. Je voulais seulement savoir quel est le travail que vous avez fait sur le terrain. Le diagramme P-12 qui accompagne la pièce P-11 vous a-t-il été soumis avant aujourd'hui?

R.—Je l'ai vu avant aujourd'hui.

Q.—Quand?

R.—Je ne pourrais pas dire la date exacte.

Q.—A peu près?

20 R.—En dedans de l'année.

Q.—Au sujet de la cause?

R.—Oui.

Q.—Où l'avez-vous vu?

R.—Dans le dossier.

Q.—Vous ne l'aviez pas examiné au bureau d'enregistrement?

R.—Pas celui-là, non.

Q.—Y trouvez-vous quelque concordance, avec le plan actuel du cadastre?

30 Le Témoin: Voulez-vous me montrer le plan du cadastre?

(L'avocat montre un document au témoin.)

R.—C'est seulement une partie du plan du cadastre.

Me St-Laurent, c.r.: Voici le grand plan, pièce P-14.

R.—Nous voyons qu'il y a 16 rangs à partir de la rivière Ottawa, en montant, seize (16) rangées de lots, et nous voyons sur les limites des concordances de numéros originaux.

40 PAR Me DESSAULLES, c.r.:

Q.—Si vous prenez maintenant l'extrait du même plan, P-15, pour vous limiter aux rangs 14 et 15, pourriez-vous dire s'il y a quelque concordance entre le plan originaire et le plan actuel du cadastre?

(Le témoin examine le plan P-15.)

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R.—Nous voyons, pour le rang 15, qu'à partir des limites ouest nous avons les mêmes numéros originaires qui semblent se répéter, qui se répètent, munis de signes différents.

PAR LA COUR:

Q.—Il y a concordance, là?

R.—Oui.

10 Q.—Est-ce que vous considérez cela comme s'il y avait concordance?

R.—Je considère cela comme concordance. Pour le rang 15, n'est-ce pas.

PAR Me DESSAULLES, c.r.:

Q.—Pour le rang 14, voulez-vous dire ce que vous constatez?

R.—Il y a eu des corrections. Le plan a été fait une première fois et a été corrigé en partie, marqué par des flèches.

20 Q.—Quelle est la conséquence de cette correction?

R.—Que certaines lignes latérales des lots n'ont plus la même direction.

Q.—Que certaines lignes latérales des lots n'ont plus la même direction?

R.—Ne correspondent plus les unes aux autres.

Q.—C'est-à-dire, que, par exemple, le lot 21 ne correspond pas au lot 22, le lot 23 ne correspond pas au lot 23 dans le rang suivant?

30 R.—Sur la correction on peut constater que les lots 24 et 23 sont différents des lots sur le diagramme. Le lot 21 peut être compté comme concordant avec le lot 21 sur le diagramme.

Q.—Seulement, il ne se trouve pas vis-à-vis le lot 21 du rang 16? Le lot 21 du rang 15 ne se trouve plus vis-à-vis le lot 21 du rang 16?

R.—Non.

Q.—Par conséquent, le plan P-12 ne correspond pas avec le plan P-15, pour la partie de la rivière Gatineau dont il est question en cette cause?

40 R.—Non. La rivière Gatineau n'est pas montrée sur le premier diagramme; il n'y a que des lots. Il est vrai que dans les différents rangs, le rang 14, les lignes ne coïncident pas, telles que montrées sur le diagramme. C'est un cas que l'on rencontre couramment dans les arpentages des anciens cantons, où les lignes, quand le cadastre est fait, ne correspondent pas avec les lignes de l'arpentage primitif.

Q.—C'est-à-dire que le cadastre, dans la plupart des cas, ne cadastre ne coïncide pas, ni avec les anciens titres, ni avec les anciens arpentages,—dans bien des cas?

R.—Dans bien des cas, ne correspondent pas avec l'arpentage primitif; correspondent avec les titres, cependant.

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Q.—Le cadastre ne correspond pas avec les titres?

R.—Oui.

Q.—Mais le cadastre ne correspond pas nécessairement avec les anciens titres ou les anciens arpentages?

R.—Les anciens arpentages primitifs.

Q.—Avez-vous pris connaissance de la pièce P-13 avant de venir en Cour, ce matin? Ce sont les instructions qu'on suppose avoir été données à l'arpenteur qui a fait le plan du Township du Hull en mil huit cent deux (1802).

10

(Le témoin examine la pièce P-13.)

R.—C'est la première fois que je prends connaissance de ce document.

Q.—Mais j'ai compris, tout à l'heure, que vous aviez parlé de cette distance de deux mille sept cent cinquante-trois (2753) pieds et que vous aviez dit que la distance ne correspondait pas avec celle des instructions?

20 R.—Qu'elle coïncidait, à quatre-vingt-neuf (89 pieds), près, si nous prenons la moitié mathématique, d'après les instructions.

Q.—Mais, cette différence, l'aviez-vous constatée avant aujourd'hui?

R.—Je l'ai constatée lors de la fabrication de mon plan.

Q.—Dans ce temps-là aviez-vous connaissance des instructions?

R.—J'avais connaissance de la profondeur des lots.

Q.—De la profondeur générale?

30 R.—De la profondeur entre les rangs. J'avais aussi constaté la concordance par le prolongement du rang 15 et 16; j'ai trouvé le cordon visible vis-à-vis les lots 24; je l'ai prolongé avec l'intersection de ma ligne prolongée; cela correspondait.

Q.—Remarquez-vous que le lot 24 n'a pas des angles droits?

R.—Oui.

Q.—Que dans l'arpentage originaire, ou d'après le plan P-12, le diagramme que vous venez d'examiner, que ce sont des angles droits?

R.—Oui.

Q.—Constatez-vous également que les lots 23, 23a, 23b, 22, 22a, 22b, ne sont pas à angle droit, que les lignes ne sont pas parallèles?

40 R.—Oui.

Q.—Par conséquent, est-ce que vous n'en viendriez pas à la conclusion que le cadastre actuel ne correspond pas aux anciens titres?

R.—Je n'ai pas étudié la question à ce point de vue. J'ai fait des recherches au cadastre et j'ai vu que, lors de la confection du cadastre, les lots 21c et 21b, dans la première colonne du livre de renvoi, étaient au nom de David et Thomas Moore. Ayant vu les

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titres, j'en ai conclu que ces propriétaires avaient occupé le terrain et que c'était bien le lots 21, le même lot 21 qui leur avait été concédé, qui était mentionné au cadastre.

Q.—Vous avez simplement, par la similitude de noms?

R.—Par la similitude de noms et les renseignements sur la terrain me donnant où les lignes de rang étaient.

Q.—Vous venez d'admettre que les lignes de rang, ou les lignes latérales des lots ne correspondaient pas?

10 R.—Ne semblent pas correspondre, pour les lots que vous m'avez dits, au cadastre. Mais je n'ai pas étudié les autres lots,— 23a, 23b. Le 21, les lignes m'ont l'air d'être absolument à angle droit avec les lignes de cordon.

Q.—Seulement, il ne correspond pas avec le lot 21 du rang 16,— quant à 21?

R.—Sur le plan du cadastre.

Q.—Sur le plan corrigé? Sur le plan du cadastre?

R.—Oui.

20 Q.—Quelle est la date du cadastre dans le Township de Hull,— la date de la mise en vigueur?

(Le témoin examine la pièce P-15).

R.—Le plan porte une date: Québec, 28 novembre 1881.

Q.—Est-ce la date de la correction ou la date du plan originaire?

R.—Nous avons une note ici: " Cadastre mis en vigueur le 31 octobre, 1882."

Q.—Et quand la correction a-t-elle été faite?

R.—Le dix (10) juin mil huit cent quatre-vingt-onze (1891).

30 Q.—Vous avez identifié, en rapport avec la pièce P-4, la moitié sud des lots 20 et 21, dans le 15ème rang?

R.—Oui.

Q.—Est-ce que vous l'avez identifié avec le plan du cadastre, et est-ce avec le plan corrigé ou avec le plan originaire?

R.—Simplement par déduction de similitude de noms.

Q.—Le nom seulement?

40 R.—Le nom et par le même procès-verbal en date de mil huit cent soixante et sept (1867). En mil huit cent soixante et sept (1867) dans le procès-verbal dont il est fait mention dans le titre de la Canada Cement, on mentionne le lot 21 comme étant au même endroit qu'indiqué sur mon plan, et ceci avant la fabrication du cadastre. Donc, par la filière des titres du

Q.—Pouvez-vous dire quelle est la date du titre de la Canada Cement auquel vous référez?

R.—Non.

Q.—L'avez-vous noté?

R.—Non. On peut le produire, c'est au bureau d'enregistrement de Hull.

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Q.—Avez-vous la référence au document?

R.—J'ai une note ici. Je crois que ce serait le douze (12) décembre mil neuf cent deux (1902) où on réfère à un plan fait par M. Hamilton. Je crois que c'est la date de l'enregistrement, le douze (12) décembre mil neuf cent deux (1902).

Q.—Quel est le numéro d'enregistrement?

R.—5806, je crois.

Q.—5806?

R.—Sous tout les réserves.

10 Q.—Avez-vous pris le nom du notaire?

R.—Non.

Q.—Quelle est la référence à un procès-verbal?

R.—Oui.

Q.—Voulez-vous lire la référence que vous avez?

R.—Procès-verbal et plan en mil huit cent soixante et sept (1867) par Arthur Hamilton.

Q.—Avez-vous cherché le procès-verbal?

20 R.—Je me suis informé au bureau d'enregistrement s'ils savaient où était le greffe de M. Hamilton. Je me suis informé

Q.—Avez-vous demandé au Palais de Justice?

R.—Non.

Q.—C'est généralement là qu'ils sont déposés?

R.—Oui. On m'a dit que des recherches avaient été faites et qu'on n'avait pas pu le retrouver.

Q.—Pourriez-vous produire une copie de votre note, de la note que vous avez extraite de ce document, comme pièce D-4?

R.—Oui. Il faudrait que je la copie.

30 Q.—Voudrez-vous produire comme pièce D-4 la note que vous prise au bureau d'enregistrement à ce sujet?

R.—Oui.

PAR LA COUR:

Q.—Avez-vous dit que vous produiriez cette note?

R.—Je la ferai copier et je la produrai.

PAR Me DESSAULLES:

40 Q.—Voulez-vous prendre connaissance de la pièce P-16 et dire s'il y a quelque chose qui vous indique à quel immeuble cette pièce se rapporte?

(Le témoin examine la pièce P-16).

R.—Il y a une description mentionnant les lots 20b, 20c, 20d, 21b, 21c et 22c dans le 15ème rang, Township de Hull, "According to the official plan and Book of Reference of said Township".

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Q.—Aviez-vous pris connaissance de ce titre-là avant ce matin?

R.—Non.

Q.—Est-ce que vous avez examiné la chaîne des titres d'une façon générale, avant ce matin?

R.—Oui.

Q.—Pour préparer votre plan, P-17, est-ce que vous aviez les titres devant vous?

R.—J'ai pris connaissance de la filière des titres.

Q.—Est-ce que le plan P-17 a été préparé d'après les titres?

10 R.—P-17, non. Il a été préparé,—je l'ai dit déjà, il a été préparé d'après une copie du plan de M. Farley.

Q.—C'est simplement une copie du plan?

R.—C'est simplement un croquis pour indiquer les lopins de terre correspondant aux exhibits, aux titres de M. Cross. Je n'ai pas fait d'arpentage sur le terrain pour cet exhibit-ci. J'ai pris le plan de M. Farley et je l'ai copié, et j'ai ensuite indiqué les parcelles correspondant aux titres de M. Cross.

20 Q.—Pourriez-vous indiquer sur ce plan quelles sont les parties qui se rapportent, ou qui sont mentionnées, décrites dans la déclaration, aux paragraphes 8 et 10?

R.—Oui. Il faudrait un peu de temps.

Q.—Voudrez-vous le faire à l'ajournement?

R.—Oui.

Q.—Pourriez-vous m'indiquer sur le plan P-21 où se trouve cette distance de deux mille sept cent cinquante-trois pieds (2,753) que vous avez mentionnée?

R.—Entre le point "A" et le point L-2, marqué "wooden stake".

30 Q.—Vous êtes partis, pour le point "A", de cette fameuse borne de fer dont vous avez parlé et que vous croyiez être indiquée dans le titre du Canada Cement?

R.—La borne, c'était un piquet qui était indiqué dans le titre de la Canada Cement, mais j'ai trouvé une borne de fer correspondant à la distance donnée du bord de la rivière, et les habitants de la place me l'ont indiquée comme étant la limite de la propriété.

Q.—Avez-vous fait un relevé pour vous assurer si cette borne se trouvait sur la limite entre le rang 15 et le rang 14?

R.—Non. Je l'ai admise telle quelle.

40 Q.—Vous avez pris cela pour acquit?

R.—Je l'ai pris pour acquit. Cependant, ma présomption a été confirmée par la distance que j'ai trouvée entre la ligne du rang 16, entre les rangs 15 et 16, prolongés.

Q.—Mais cette ligne se trouve plus courte de quatre-vingt-neuf (89) pieds que la ligne des rangs, que la distance des rangs?

R.—Si nous divisons la distance entre les deux rangs par deux, nous trouvons la distance de mon plan plus grande par quatre-vingt-

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neuf (89) pieds.

Q.—La distance de votre plan est plus grande?

R.—Que la moitié de la distance théorique entre les lignes du rang.

Q.—Vous avez dit que la “ Iron bolt ” n'avait pas les caractéristiques ordinaires d'une borne?

R.—Elle n'avait pas deux (2) pouces de diamètre, c'est tout. La loi demande de planter des bornes de deux pouces de diamètre. Celle-là était plus petite que deux pouces.

10 Q.—Est-ce une borne solide, carrée, ou un tuyau?

R.—Un boulon.

Q.—Quelle longueur?

R.—Environ six (6), sept (7) pouces, hors de terre,—de mémoire.

Q.—A quelle profondeur en terre?

R.—Je ne l'ai pas relevée.

Q.—Vous n'avez pas vu, aussi, s'il y avait des tessons de faïence, en dessous?

20 R.—Non. C'était au mois de décembre, la terre était gelée, cela aurait demandé un ouvrage assez considérable.

Q.—Y avait-il quelques indications, quelques coches ou quelques indications sur la borne,—des chiffres ou lettres?

R.—Non.

Q.—Est-ce que la borne avait des marques d'ancienneté?

R.—Oui, elle était rouillée.

Q.—Bien, ces bornes-là se rouillent assez vite?

R.—Tout dépend en quoi elles sont faites.

Q.—C'est une borne de fer?

30 R.—C'est une borne de fer. Si c'est du fer doux, cela va pouvoir rouiller. . . . Je n'ai pas analysé le matériel de la borne.

Q.—Vous n'avez pas essayé à vous rendre compte si c'était une borne ancienne, qui remonterait avant le cadastre, ou si cela aurait été une borne placée là pour des travaux récents?

R.—Non. M'étant basé sur le témoignage de M. Cross reconnaissant que c'était la ligne, j'ai été convaincu que ce monument-là était réellement une limite de propriété.

40 Q.—Maintenant, à l'autre extrémité, la borne de bois, ou le piquet que vous avez trouvé, est-ce qu'il avait des caractéristiques d'une borne ordinaire?

R.—Non. C'était un piquet bien ordinaire, qui, d'après certains témoignages que j'ai eus, aurait été déposé par M. Farley. Je l'ai relevé. C'est de cette borne que j'ai fait les mesurages. Je l'ai pris comme étant la ligne.

Q.—Il n'y a pas d'angle indiqué sur votre plan?

R.—Non.

Q.—Est-ce que vous avez fait un relevé avant de tirer votre

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ligne, un relevé d'angle?

R.—J'ai fait le relevé du cordon entre les rangs 15 et 16 et j'ai maintenu la ligne marquée moitié nord, moitié sud, parallèle au cordon du rang 16.

Q.—Cela c'est à l'extrémité ouest?

R.—Nord.

Q.—A l'extrémité du lot 21?

R.—Du lot 21.

10 Q.—Pour partir votre ligne, vous n'avez pas fait de lecture d'angles?

R.—Non.

Q.—C'est-à-dire que vous avez retrouvé ces deux points à chaque extrémité de la distance que vous mentionnez, et ensuite, vous avez mesuré la distance entre les deux points?

R.—Oui.

Q.—Vous êtes-vous basé, pour retrouver le point "A", sur les indications données dans le titre de la Canada Cement?

R.—J'ai

20 Q.—Est-ce qu'il y a des angles de mentionnés dans le

R.—Oui, il y a des angles. C'est la distance qui est donnée qui correspond, la distance de ce point-ci,—du point "A",—à la berge de la rivière.

Q.—Est-ce qu'il y a une borne, est-ce qu'il y a une limite de lot qui correspond à votre ligne de deux mille sept cent cinquante-trois (2,753) pieds?

R.—Pour moi, la limite entre les lots 20 et 21.

Q.—Avez-vous pris la copie du livre de renvoi, au sujet des lots 20 et 21, au bureau d'enregistrement?

30 R.—J'en ai pris connaissance.

Q.—Y a-t-il quelque indication, là, quant à la distance de cette profondeur? Avez-vous vu la copie de la description?

R.—Non. On donnait le lot 21b comme lot irrégulier ainsi que 21c, et on donnait la superficie.

Q.—Quelle superficie avez-vous?

R.—Je ne peux pas la donner de mémoire.

Q.—Regardez donc dans vos notes.

R.—Non, je ne l'ai pas.

Q.—Vous êtes sûr que vous ne l'avez pas dans vos notes?

40 R.—Je ne l'ai pas ici.

Q.—L'avez-vous à votre bureau?

R.—Oui, je dois l'avoir à mon bureau.

Q.—Pourriez-vous la retrouver et nous donner cette superficie?

R.—Probablement.

Q.—La superficie n'est pas indiquée dans les

R.—Je n'attachais pas une importance très particulière à la superficie du lot, parce que la ligne de rive des rivières est très

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variable, et, souvent, prête à des interprétations différentes, dans le cas des lot irréguliers.

Q.—Voulez-vous dire la borne le long des rivières ou bien

R.—Le long des rivières. Ainsi, 21b, 21c étant bornés par la rivière, la superficie des lots irréguliers bornés par des rivières, est très difficile à calculer deux fois de la même façon. Chaque arpenteur interprète la rive d'un façon différente.

PAR LA COUR:

10

Q.—Quelle est la largeur des lots, monsieur?

R.—Vingt-six (26) chaînes, les lots originaires.

Q.—Vingt-six (26) chaînes?

R.—Vingt-six (26) chaînes.

Q.—Est-ce qu'il y a une différence avec les lots actuels?

R.—Pour le lot 21c, le coin tombait dans la rivière; alors, j'ai indiqué ma ligne sur le plan comme étant de vingt-six (26) chaînes environ. Sur le terrain je n'avais pas la ligne entre le 21c et le 22c.

20 Q.—Qu'appellez-vous une chaîne?

R.—Soixante et six (66) pieds anglais.

PAR Me DESSAULLES, c.r.:

Q.—Vos sondages ont été pris de quelle façon?

R.—A travers la glace. Nous avons établi nos lignes sur la glace et nous avons brisé la glace et pris la profondeur.

Q.—Par rapport à quel datum?

30 R.—Nous avons un point de repère qui nous avait été fourni par l'ingénieur MacRostie, et c'était le même datum, je crois, que les eaux courantes et le même datum que les lignes de contour établies sur le plan d'expropriation.

Q.—J'ai compris que vous n'aviez pas relevé des lignes de contour?

R.—Non.

40 Q.—Et vous n'avez pas pris non plus les niveaux qui sont mentionnés sur le plan, par exemple, celui du vingt-cinq (25) septembre mil neuf cent vingt-six (1926), de trois cent trois, point quatre-vingt quinze (303.95)? Est-ce que vous l'aviez quand vous avez pris vos sondages? Aviez-vous ce plan-ci?

R.—Non. J'ai fabriqué ce plan-là moi-même.

Q.—Aviez-vous le plan Farley?

R.—J'avais un plan Farley, oui.

Q.—Le plan Farley indique-t-il la borne "A"?

R.—Ah

(L'avocat montre au témoin la pièce P-19.)

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R.—Oui, “ Iron bolt ”.

Q.—Est-ce que vous aviez vu le plan Farley avant d'aller au bureau d'enregistrement? Pourquoi êtes-vous allé au bureau d'enregistrement, si vous aviez déjà “ Iron bolt ”, indiqué sur le plan?

R.—Je n'avais pas assez de renseignements sur ce plan-là pour ma satisfaction personnelle.

Q.—Qu'est-ce que vous cherchiez au bureau d'enregistrement?

10 R.—Des renseignements pour trouver les limites des lots 20, 21, enfin, pour savoir comment M. Cross était propriétaire des lots, enfin, ce qu'on fait toujours dans un arpentage, on cherche des renseignements. La première place d'est au bureau d'enregistrement.

Q.—Vous avez dit que vous aviez continué votre travail à Farm Point. Pouvez-vous m'indiquer où est Farm Point sur le plan P-20?

R.—Il n'est pas indiqué sur le plan P-20.

Q.—Est-il indiqué sur le plan P-17?

R.—Oui.

Q.—Où est Farmers' Point?

R.—C'est tout cela. C'est l'endroit couvert par

20 Q.—Couvert par?

R.—Aux environs du plan P-17.

Q.—Aux environs de ce qui est coloré en jaune, en rose et en vert?

R.—Oui. Vous avez la station de Farmers' Point, à gauche.

Q.—La station du Pacifique?

R.—Oui.

Q.—Je vois qu'il y a un espace coloré en rose qui est hachuré, ou qui paraît rayé au crayon? Qu'est-ce que c'est?

R.—C'est un morceau rayé.

30 Q.—Qui ne fait pas partie de la propriété Cross?

R.—Je n'en sais rien.

Q.—Qui ne fait pas partie des titres qui vous ont été soumis?

R.—Je ne crois pas. Cela a été coloré par erreur. C'est une erreur de dessinateur.

Q.—Maintenant, vous dites qu'à Farm Point vous avez trouvé des traces évidentes de la séparation des lignes du rang: quelles sont ces traces évidentes?

R.—Un coin de clôture, au No 24c, 25c, du 16ème, et 24 et 25a du 15ème rang.

40 Q.—Est-ce qu'il y en a d'autres?

R.—J'avais rencontré d'autres points de l'autre côté de la rivière.

Q.—Comment aviez-vous rattaché ce point-là au demandeur?

R.—Par arpentage.

Q.—Vous avez fait un arpentage?

R.—Continu.

Q.—Quelle distance avez-vous trouvée entre ce point et l'autre extrémité de la ligne que vous avez relevée?

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R.—Je ne peux pas dire de mémoire.

Q.—Pourriez-vous consulter vos notes et nous le dire?

R.—Oui.

Q.—Quand vous avez fait le relevé de cette ligne dont vous venez de parler, entre 24c du 16ème rang et 24 du 15ème rang, est-ce que vous aviez la pièce P-21?

R.—Non.

Q.—Vous ne l'aviez pas vue non plus avant de venir en Cour ce matin?

10 R.—Non.

Q.—La même chose s'applique, je suppose, aux pièces P-22 et P-23?

R.—Oui.

Q.—Est-ce que vous aviez examiné ces patentes-là au bureau d'enregistrement?

R.—Non. Je ne me suis occupé de Farm Point que pour re-tracer la ligne sur le terrain.

20 Q.—Quant à P-24, aviez-vous vu cette pièce avant de venir en Cour aujourd'hui?

R.—J'avais vu un certain document au C.P.R. Je ne pourrais pas jurer si c'est le même. Je sais que j'ai fait les recherches pour trouver quelle était la propriété du C.P.R.

Q.—Maintenant, au sujet du plan P-25, le plan de la ligne du Pacifique, est-ce que vous aviez examiné ce plan-là avant de venir ici, ce matin?

R.—Non.

Q.—Vous n'avez pas fait de constatations sur le terrain pour savoir si la localisation de cette ligne correspondait à ce plan-là?

30 R.—Sur le terrain, non. C'est la première fois que je vois le plan, ce matin. Par mes connaissances du terrain, je pouvais dire qu'il y avait une partie du 21c du 15ème rang

Q.—Qui était touché par la ligne du Pacifique?

R.—Oui.

Q.—Mais vous n'avez pas fait de relevé au sujet de la ligne du Pacifique?

R.—Non.

Q.—Et vous n'avez pas pris connaissance non plus de l'extrait du livre de renvoi produit comme pièce P-26?

40 R.—Non.

Q.—Vous n'avez pas vérifié les dimensions mentionnées dans la pièce P-26 en regard de la propriété N° 56, celle de Thomas Moore?

R.—Non.

Q.—Vous avez comparé, je comprends, la plan P-1 avec votre plan P-20 et vous avez dit que l'écartement des lignes n'était pas le même?

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R.—Pas tout à fait.

Q.—De quelle ligne?

R.—La ligne marquée, “ north-half, south-half ”.

Q.—Avez-vous pris l'angle qui se trouve entre la ligne séparative des lots 20 et 21 et la ligne marquée “ north-half, south-half ”?

R.—Non, cette ligne-là n'existe pas sur le terrain.

Q.—Elle n'existe pas sur le terrain, mais vous l'avez tracée sur votre plan. Il s'agirait de déterminer si vous avez pris une lecture d'angle?

10 R.—Non.

Q.— pour arriver à l'écartement de cette ligne indiquée sur votre plan?

R.—Non. J'ai expliqué de quelle façon j'avais tracé cette ligne-là.

Q.—Voulez-vous l'expliquer de nouveau?

R.—C'est parallèle au cordon prolongé entre les rangs 15 et 16.

Q.—Vous n'avez pas calculé quelle était la différence de superficie entre le triangle indiqué sur votre plan et celui indiqué sur le plan P-1?

20 R.—Non.

Q.—Qu'est-ce qu'indique la partie blanche dans le plan P-1, dans le lot 21b?

R.—La partie noyée par la Gatineau Electric sur le lot 21b. Non pas la partie noyée, mais la partie comprise entre le contour 325 et la berge de la rivière.

Q.—Est-ce que c'est indiqué cela, sur votre plan P-20?

R.—Non. Nous avons le contour, mais aucune couleur pour l'indiquer.

30 Q.—Vous n'avez pas fait la comparaison entre les deux superficies, celle de 21b dans P-1, et de 21b dans P-20?

R.—Non.

Q.—Pouvez-vous expliquer la différence d'écartement des lignes?

R.—Non. Je ne connais pas quelle opération M. Farley a faite.

Q.—Vous ne voulez pas prétendre que le plan de M. Farley est inexact?

R.—Je n'en sais rien.

Q.—Est-ce que les lignes de rang sont parallèles?

40 R.—Je ne sais pas.

Q.—Vous n'avez pas cherché à les relever?

R.—Je n'ai pas eu le temps de faire cet ouvrage.

Q.—Cela pourrait affecter l'angle d'écartement à la tête du triangle 21b?

R.—Pas au coin nord-est. Peut-être de quelques pieds au coin nord-ouest du lot.

Q.—Où est le coin nord-ouest?

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R.—Le coin nord-est est marqué L2 “ wooden stake ”; le coin nord-ouest n'a pas de marque spéciale, c'est l'intersection des deux lignes au point extrême gauche du plan.

Et le témoin ne dit rien de plus pour le moment.

10 L'an mil neuf cent trente et un, le vingt-unième jour de sept-
embre.

Est comparu :

ARMAND BEAUDRY,

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greffier de la Commission des Services Publics, âgé de cinquante-sept ans, domicilié au No 6646 de la rue de St-Valier, à Montréal, témoin entendu de la part du demandeur;

Lequel, après serment prêté sur les saints Evangilies, dépose et dit:

20 INTERROGE PAR Me ST-LAURENT, c.r.,
CONSEIL DU DEMANDEUR:

Q.—Monsieur Beaudry, comme greffier de la Commission des Services Publics, avez-vous un plan avec une description représentant un groupe de cinq (5) morceaux de terrain que la Gatineau Power Company cherchait à exproprier de M. Cross en mil neuf cent vingt-sept (1927)?

R.—Oui, monsieur.

30 Q.—Vous avez un plan de M. Farley qui porte le numéro de dessin 19-6-4-1/4, et, attachée à ce plan, une description de cinq (5) morceaux de terrain colorés en rouge, et une description d'un morceau de terrain coloré en jaune sur le plan, et un certificat de M. Farley comportant que, dans son opinion, une somme de \$12,155.00 serait suffisante pour dommages?

R.—Oui, monsieur.

Q.—Voulez-vous faire préparer, pour être produite comme pièce P-27, une copie de ce plan et des descriptions et certificat y annexés?

R.—Oui.

40 Q.—Je constate qu'il y a une étampe sur le plan: “ Fyled Feb. 28th-27, Q.P.S.C.” et qu'il y a la même étampe sur le dos du plan: “ Fyled Feb. 28-27 Q.P.S.C.”, Secretary's Office?

R.—Oui.

Q.—Est-ce que vous pouvez nous le laisser un moment?

R.—Ah oui. On pourrait plutôt vous le laisser que d'en faire faire une copie.

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PAR LA COUR :

Q.—Est-ce l'original, monsieur Beaudry?

R.—C'est ce que nous avons eu, c'est ce qui a été produit avec la requête.

Q.—Produit par qui?

R.—Par la Compagnie Gatineau.

10 PAR Me KER, c.r., avocat de la défenderesse:

Q.—Ces documents ont été produits en matière d'expropriation?

R.—En matière d'expropriation.

Et le témoin ne dit rien de plus.

20 L'an mil neuf cent trente et un, le vingt-unième jour de septembre.

Est comparu :

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GUSTAVE JOSEPH PAPINEAU,

ingénieur civil et arpenteur, déjà entendu et rappelé pour compléter son témoignage;

Lequel, sous le serment qu'il a déjà prêté dépose et dit:

30 INTERROGE PAR Me ST-LAURENT, c.r.,
CONSEIL DU DEMANDEUR:

Q.—Monsieur Papineau vous avez dit en contre-interrogatoire que pour la préparation du plan P-17, vous vous étiez servi d'un plan de M. Farley: voulez-vous examiner ce plan dont une copie doit être produite comme P-27, venant des archives de la Commission des Services Publics, et dire si c'est là le plan de Farley dont vous vous êtes servi?

40 R.—Oui, c'est le plan dont j'ai fait une copie pour préparer la pièce P-17.

Q.—Et vous avez indiqué sur votre plan, vous avez coloré en rose sur votre plan un peu plus que ce qui apparaît comme coloré en rouge ou en jaune ici, mais tout ce qu'il y a de coloré en rouge ou en jaune se trouve inclus dans votre plan?

R.—Oui.

Me St-Laurent, c.r.: Le procureur de la défenderesse ayant

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eu l'obligeance de nous fournir une copie du plan Farley et de la description y attachée, ils sont produits comme pièce P-27, sans être certifiés et de consentement.

Et le témoin ne dit rien de plus pour le moment.

(Copie conforme.)

HENRI MACKAY,
Sténographe.

10

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DEPOSITION OF NORMAN B. MACROSTIE, A WITNESS
PRODUCED ON BEHALF OF PLAINTIFF.

20 On this twenty-first day of September, in the year of Our Lord One thousand nine hundred and thirty-one, personally came and appeared,

NORMAN B. MACROSTIE,

of the City of Ottawa, in the Province of Ontario, Civil Engineer, aged forty-six years, a witness produced on behalf of the Plaintiff, who being duly sworn doth depose and say as follows:

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

Q.—How long have you practised as a Civil Engineer?

A.—I graduated in 1911, and then, as an under-graduate, I had experience since 1906, and then I have had experience as a graduate since 1911, and have been in private practice since 1919.

Q.—And where has your practice been carried on principally?

40 A.—In the City of Ottawa in a private capacity. I was engineer on special works for the City of Ottawa for a number of years, and from there, following the war, I was in private practice in the City of Ottawa and vicinity.

Q.—Do you know the township of Hull?

A.—I do.

Q.—Do you know the properties supposed to belong to Mr. Cross in the Township of Hull?

A.—I do.

Q.—How long have you known these properties?

A.—I have known them casually for about sixteen or seventeen

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years, and more intimately since 1926, March, 1926, when I was called in by Mr. Cross.

Q.—How long have you known the Gatineau River?

A.—Since I was a boy I have been accustomed to go up the Gatineau.

Q.—Are you familiar with the logging conditions on the Gatineau River?

A.—I have been up there in the spring, and have seen them coming down.

10 Q.—What are the logging conditions on the Gatineau River? How are the logs floated there?

A.—They are floated down singly.

Q.—Loose logs?

A.—Loose logs.

Q.—Has there ever been, to your knowledge, any navigation on the Gatineau River?

A.—Not to my knowledge.

20 Q.—From the mouth of the Gatineau River going upward, how far can one go before encountering rapids or falls that would preclude navigation?

A.—Just below the bridge crossing Ironsides; just below the bridge that crosses Farmers' Rapids today.

Q.—And how far is that from the mouth?

A.—I should judge possibly about three miles.

Q.—That is, below Chelsea?

A.—Below Chelsea, and below Farmers' Rapids, it is practically the dead water of the Ottawa, extends up that far.

Q.—What is the height of the Falls there?

30 A.—There is a rapid below Farmer's Rapids that is not at present developed. That rapid under normal conditions, I should say, would be perhaps 14 or 15 feet.

Q.—What length?

A.—Oh, about half to three-quarters of a mile.

Q.—Would that rapid be an obstacle to navigation itself?

A.—Yes.

Q.—It would?

A.—Yes.

Q.—What is there up at the head of the Rapids?

40 A.—There is the Farmers' development.

Q.—But before there was the development, what is the height of the Fall there?

A.—I would not like to say from memory offhand how much fall there was there. It was a series of rapids, just going up.

Q.—Did it constitute a physical impossibility to navigation?

A.—Yes.

Q.—I understand that shortly above Farmers' Rapids there is

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the Chelsea Falls?

A.—Yes.

Q.—And from there High Falls?

A.—There is quite a sheer at Chelsea.

Q.—Would that also be another obstacle to navigation?

A.—Another obstacle to navigation.

Q.—Then, above Chelsea?

A.—Then, there were a series of smaller rapids. There was one at nearly opposite Kirk's Ferry. There was another obstacle there.

10 Q.—That would be about how far above the Chelsea?

A.—That would be about a couple of miles or a mile and a half below Cascades.

Q.—What are the Cascades?

A.—The Cascades are a series of rapids and falls about eight miles above Chelsea.

Q.—And how would they affect the possibility of navigation?

A.—They again would be non-navigable.

20 BY THE COURT:

Q.—Do you swear that this Gatineau River is not navigable?

A.—I do.

BY MR. ST. LAURENT:

Q.—You swore that the river was non-navigable. Would it be floatable on cribs?

A.—I would say not.

30 L'an mil neuf cent trente et un, le vingt-deuxième jour de septembre,

Est comparu:

GUSTAVE JOSEPH PAPINEAU,

40 témoin déjà entendu et rappelé pour terminer son témoignage;

Lequel, sous le serment qu'il a déjà prêté dépose et dit:

INTERROGE PAR Me ST-LAURENT, c.r.,
CONSEIL DU DEMANDEUR:

Q.—Monsieur Papineau, M. Dessaulles vous avait demandé hier d'indiquer par des lignes hachées les quatre lots de terre décrits dans

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les paragraphes 8 et 10 de la déclaration et de faire cette indication sur votre exhibit P-17: est-ce que vous l'avez fait?

R.—Sur l'exhibit P-17 j'ai indiqué par des hachures en noir les terrains décrits dans la requête.

Q.—Voulez-vous substituer cet exemplaire avec les lignes hachées à ce qui avait été marqué hier P-17, pour qu'il n'y ait pas deux fois au dossier le même plan en une façon incomplète, d'abord, et ensuite en une façon complète?

R.—Oui.

10 Q.—On vous avait demandé aussi de préparer pour être produite, une copie de la note que vous aviez prise d'un certain procès-verbal, ou d'une référence à un procès-verbal, au bureau d'enregistrement de Hull: est-ce que vous l'avez préparée?

R.—Oui.

Q.—Vous aviez convenu de produire ce document comme D-5?

R.—Oui.

20 Q.—On vous avait demandé aussi d'indiquer une certaine distance que vous aviez mesurée au cours de vos opérations, pour préparer le plan pièce P-20: est-ce que vous avez fait ces recherches dans vos notes?

R.—Oui. J'ai trouvé que la distance entre le prolongement de la ligne "A"—L2 et la dite distance mesurée le long du cordon entre les rangs 15 et 16 et le coin nord-ouest du lot 24, 15ème rang, est de six mille cent soixante et dix (6,170) pieds mesurée à l'échelle sur le plan.

Q.—Avez-vous trouvé quelque chose dans vos notes se rapportant à vos opérations dans ce chaînage-là?

30 R.—Au cours de l'arpentage allant du point L-2 au coin nord-ouest en dernier lieu mentionné, j'ai rencontré sur le terrain une clôture dont j'ai fait le relevé; mesurant de cette clôture à la ligne A-L2 prolongée, j'ai trouvé une distance de mille sept cent cinquante-cinq (1,755) pieds, qui correspondrait à vingt-six chaînes et trente-neuf pieds, ce qui montrerait que la dite clôture est la ligne ouest de la moitié nord du lot 21, qui porte aujourd'hui 21A du cadastre du 15ème rang.

Q.—Vous l'avez trouvée à vingt-six chaînes et trente-neuf pieds au lieu de vingt-six chaînes exactement?

R.—Oui.

40

Re-cross-
examination

CONTRE-INTERROGE PAR Me DESSAULLES, c.r.,
CONSEIL POUR LA DEFENDERESSE:

Q.—La distance de six mille cent soixante et dix (6,170) pieds n'a pas été mesurée par vous sur le terrain?

R.—Non, mesurée sur le plan. J'ajouterai que

Q.—Et l'autre distance?

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R.—L'autre distance a été mesurée sur le plan aussi.

Q.—L'autre distance de

R.—Mille sept cent cinquante-cinq (1,755) pieds, sur le plan. Et j'ajouterai qu'entre le point "A" qui est la borne en fer dont nous avons déjà parlé, et l'intersection du cordon prolongé sur mon plan, et la ligne A-L2 prolongée sur mon plan, la distance est de cinq mille cinq cents (5,500) pieds. Si nous prenons la moitié, nous trouvons deux mille sept cent cinquante (2,750) pieds; et nous trouvons que le piquet de bois, L-2, est placé à deux mille sept cent cinquante-trois (2,753) pieds. Nous voyons donc que la moitié est pratiquement la même, à trois pieds près.

10

Q.—J'étais sous l'impression, et mon impression est confirmée par la transcription des notes prises hier de votre déposition, que vous aviez rattaché le coin de clôture par arpentage. Je vous demande: "Vous avez fait un arpentage?" Vous répondez: "Continu". Je dis: "Quelle distance avez-vous trouvée entre ce point et l'autre extrémité de la ligne que vous avez relevée?" "Je ne peux pas dire de mémoire". "Pourriez-vous consulter vos notes et nous le dire?" "R.—Oui".

20

Q.—Et maintenant vous dites que ces distances que vous donnez là sont prises à l'échelle sur le plan et ne sont pas le résultat d'un arpentage?

R.—Non. J'ai interprété votre question comme demandant la distance entre le coin du lot et la ligne prolongée, car le rattachement que j'ai fait du coin nord-ouest du lot 24 au piquet L-2 a été fait par une ligne polygonale contenant plusieurs angles et plusieurs mesures servant à la mise en plan. Quand la mise en plan est complétée, nous mesurons les distances directes à l'échelle.

30

Q.—Alors, c'est votre lecture d'angles qui vous a donné,— avec votre mise en plan,—qui vous a donné

R.— La mesure de six mille cent soixante et dix (6,170) pieds.

Q.—La mesure de six mille cent soixante et dix (6,170) pieds est le résultat de vos opérations sur le terrain?

R.—Oui.

Q.—Et non pas la lecture sur un autre plan?

R.—Non, non, sur mon plan que j'ai préparé moi-même.

Et le témoin ne dit rien de plus.

40

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And on this twenty-second day of September, in the year of our Lord one thousand nine hundred and thirty-one, personally came and reappeared the said witness,

NORMAN B. MACROSTIE,

and his examination in chief was continued on behalf of the plaintiff, as follows:

10 BY MR. ST. LAURENT:

Q.—You stated yesterday that you graduated in 1911?

A.—Yes.

Q.—I omitted to ask you from what university you graduated?

A.—I graduated from Queen's University in Engineering in 1911, and in Arts in 1912. I am also Associate Member of the Engineering Institute of Canada, and a member of the Professional Engineers of Ontario and licensed to practise for the professional engineers of Quebec.

20 Q.—What is the Engineering Institute of Canada?

A.—It is the parent organization of all engineers in the Dominion of Canada.

Q.—A professional body?

A.—A professional body.

Q.—You stated yesterday that you knew of these properties which Mr. Cross claims to be his, on the Gatineau River, for a great many years, and that you have specially worked upon them since, I believe it was March, 1926?

30 A.—From March, 1926.

Q.—Are you familiar with this profile of the Quebec Streams Commission which was put out with their report of 1926?

A.—I am.

Q.—Will you file a copy of it as Exhibit P-28?

A.—Yes.

Q.—That is a profile of the river from its mouth up to the thirtieth mile?

A.—30th mile.

Q.—To what do the elevations on the profile refer?

40 A.—They refer to the Geodetic Survey of Canada.

Q.—How is that indicated in the locality?

A.—At the present time there are a series of Bench Marks which have been established by the Geodetic Survey of Canada. These Bench Marks are described in a booklet published by the Department showing the Bench Marks in the Province of Quebec. Numbers are assigned to each of these Bench Marks, and their location and

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elevation is designated in this publication of the Geodetic Survey of Canada.

Q.—And are they generally known to the profession?

A.—They are used by the profession.

Q.—They are the things which are used for the preparation of plans showing elevations in the locality?

A.—Yes, wherever possible.

Q.—Are those the same Bench Marks that we see on the other plans which have been put in in this case?

10 A.—I presume they are, because the elevations correspond to that. There is a reference made to Bench Mark 460, the Geodetic Survey of Canada, elevation 460, 827, so the levels on this plan would be all referred to that Bench Mark.

Q.—Is it one of those same series of Bench Marks you used in your works?

A.—Yes.

Q.—Will you just describe for the layman what these little cuts on the top of this plan mean, "B.M., B.M."?

20 A.—Standing for Bench Marks. They describe the location. They show diagrammatically the location of the Bench Marks that have been used throughout this particular piece of work. One bench mark would be down here, 460 was the first one that was used, that is, at the C.P.R. bridge, at the point starting at the lower end, and as the property would work upstream they would establish other Bench Marks for their own convenience, not being Bench Marks established by the Geodetic Survey of Canada, but for their own convenience, and the locations are shown on these little sketches at the top of the plan.

30 Q.—What is shown? Will you explain that to the layman by this plan, which seems to be a plan of the river, just under the sketches of the Bench Marks?

A.—That shows the river itself with its various sinuosities throughout its extent as you go up the river, and shows also the line between the Township of Hull and the Township of Wakefield, and the Township of Wakefield and the Township of Denholm at the upper end.

Q.—Between what appears to be the banks of the rivers there are white spots with figures over them. What are those figures?

40 A.—Those indicate the mileages which corresponds to the mileages shown on the profile at the bottom of the plan.

Q.—Then, the profile appears in the scale form with elevations, and what does the heavy white line running through the scale indicate?

A.—It indicates the surface on the date on which the work was done.

Q.—You do not happen to remember with which of the official

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reports of the Quebec Streams Commission this profile P-28 was issued?

A.—No, I do not.

Mr. St. Laurent: We will ascertain with which report it came out, so that it can be used by both parties here.

BY MR. ST. LAURENT:

10 Q.—Did you, yourself, verify elevations opposite Mr. Cross' property, and at Cascades and above it?

A.—I have taken elevations at different seasons of the year, and at different discharges as well.

Q.—From your work were you able to form any opinion as to what head might be there susceptible of hydro-electric development?

A.—Yes. I estimate that by backing the water up, not as high as it is at the present time, that Mr. Cross would get in the neighborhood of fourteen feet.

Q.—With 14-foot head?

20 A.—With 14-foot head.

Q.—Assuming the flow to be 10,000 cubic feet second, what would that amount to in horse power?

A.—In water horse power about 15,500.

Q.—Well, then, did you also do any work in connection with the lands at Farm Point?

A.—I did.

Q.—What was there at Farm Point before this development of the Gatineau Power Company?

30 A.—I have a panoramic view taken, showing what was at Farm Point in 1926. It is among the photos. I have a panoramic photo showing the development that was at Farm Point on Meach Creek. That was taken on September 23rd, 1926. I had Mr. Cross secure a photographer by the name of Bery, who took the photograph.

Q.—Were you present when the photograph was taken?

A.—No, I was not present when the photograph was taken.

Q.—Do you recognize the photograph as being in accord with what you saw at that time?

40 A.—Yes, and taken from the place where I instructed Mr. Cross to have it taken.

BY THE COURT:

Q.—What is the date?

A.—September 21st, 1926.

BY MR. ST. LAURENT:

Q.—Will you file a copy of that photograph as Exhibit P-29?

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(continued)

A.—Yes.

Q.—That shows a number of buildings, etc., but will you tell us from your own recollection what Mr. Cross was doing at that point for a few years prior to 1926?

10 A.—Mr. Cross had a dam on Meach Creek close to its junction with the Gatineau River. That dam was placed, or constructed, at the top of a fall and rapid on Meach Creek. Immediately below this dam Mr. Cross had a saw mill which was operated by water wheel a little further down stream. Below this saw mill he had a small power house where he generated electricity, supplying a number of cus-
tomers from Alcove which is above Wakefield, to Kirk's Ferry, which is below Cascades.

Q.—Was he supplying only those two points or was he supplying the residences?

A.—That was his area, those points and the area in between.

Q.—Was he the only one supplying electricity?

A.—Yes. He had about 270 customers.

Q.—Customers taking electricity for what purposes?

20 A.—For lighting purposes, lighting their homes.

Q.—What kind of saw mill was this? What was the capacity of the saw mill?

A.—It was the general saw mill where he sawed rough lumber and made some shingles. He mostly sawed ties and rough lumber.

Q.—What was the average output?

A.—Well, I have seen approximately a million feet to approximately three to four million feet in the yard.

Q.—From your estimate four million feet would be the most you saw at any one time in the yard?

30 Mr. Ker: I do not want unnecessarily to object to my learned friend's question, but it seems to me the best witness to prove that fact would be the man who owned the saw mill. I do not think this is the best evidence to prove the output of the saw mill.

40 Mr. St. Laurent: I have heard objection as to the best evidence urged several times, but I have never heard it urged as to the individual or personality of the witness. If the witness knows the facts, what he knows is evidence of those facts. It may be there would be someone else who knew them before.

His Lordship: I understood the witness to say that he saw the lumber.

Mr. Ker: That he has seen lumber piled up near the mill, sometimes a million feet.

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His Lordship: Which makes proof to that extent. I will allow the question.

BY MR. ST. LAURENT:

Q.—For how long to your knowledge had that mill been in operation?

10 A.—The mill has been in that location during my entire knowledge of the locality. As I stated yesterday, my knowledge prior to March, 1926, was just gained by going up and down the road, and observing and visiting in that locality. In 1926 I took a specific and more intimate note of things.

Q.—How far back does your general knowledge of the locality, from going by the highway, extend?

A.—Around sixteen or seventeen years.

Q.—Does the operation of the Hydro-Electric plant go back to your general knowledge to the same period?

A.—Oh, yes.

20 Q.—What was there at Farm Point besides the saw mill and the power house?

A.—Mr. Cross had a number of workmen's cottages at that place, quite a number of them. He had a large ice house from which he supplied cottages with ice.

Q.—Were there at that point any cottages other than the workmen's cottages?

A.—Yes.

Q.—What were the other cottages used for?

30 A.—The other cottages were erected or owned by residents mostly from the City of Ottawa.

Q.—Is that the only point on the Gatineau where residents of the City of Ottawa come to occupy cottages during the summer?

A.—No. The whole of the Gatineau throughout its length from Chelsea, including Chelsea, and up, is used as a summer resort by the citizens of Ottawa.

Q.—Up to what extent?

A.—As far up almost as you want to go.

Q.—Were there any hotels or boarding houses at this point?

40 A.—There was an hotel right at Farm Point owned by Mr. Cross. There was another one situated below what is now the Cascades Station, also owned by Mr. Cross.

Q.—Were they just summer hotels or open the year round?

A.—I have never been in those hotels as a guest, and I think that they were really summer propositions. I would say from my knowledge of the buildings, these which I have examined, that they are just summer hotels.

Q.—What are the villages between Alcove and Kirk's Ferry?

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Is Wakefield included?

A.—Alcove is the one above Wakefield. There is Wakefield, then, there is a little community called Rockhurst Station, just at the lower end of Wakefield, and there is Farm Point, Cascades and Kirk's Ferry.

Q.—Were there groups of dwelling houses at each one of these points you mentioned?

A.—Yes, and cottages as well.

Q.—How many buildings were there on Farm Point?

10 A.—I have never counted them, but I should judge there would be, oh, possibly forty—between forty and fifty.

Q.—Was the Post Office there?

A.—Mail addressed to Farm Point reaches people. I know that.

Q.—You have never been to the Post Office?

A.—I have never been to the Post Office.

Q.—Do you know how these cottages or other buildings at Farm Point were supplied with water?

20 A.—I know that some of them were supplied by a pipe line connected with the water above the dam at Meach Creek. There was a pipe line which was taken off the 30-inch penstock and that ran underground and supplied a number of cottages around that locality.

Q.—Then, this was a pipe line from Mr. Cross' penstock?

A.—Yes.

Q.—Do you know who operated that aqueduct?

A.—Mr. Cross.

Q.—Do you know, (of course you do, but for the purpose of the record I ask you) about the construction of the Gatineau Power Company's development at Chelsea?

A.—Yes.

30 Q.—When was that commenced?

A.—It was commenced in—I think possibly there was a little work done in 1925.

Q.—Do you know when the water was raised by means of the works at Chelsea?

Witness: Affecting Mr. Cross' property?

Counsel: Yes.

40 A.—It was raised in March, 1927.

Q.—Were you there?

A.—No, I was not.

Q.—Were you there within a period of days from the time it did go up?

A.—I was in Montreal on a similar hearing to this, and I had occasion to phone back to Ottawa about certain matters that I

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wanted to find out about, and I was informed then by our office that the water was going up then, and when I got back to Ottawa I went up and saw the water had raised.

Q.—Within how many days?

A.—Within three or four days after.

Q.—Do you know what date that was?

A.—Trusting to my memory, it was either the 10th or 12th of March.

10 Q.—The 10th or 12th of March, 1927?

A.—Yes.

Q.—When you went up there, what had happened to the head at Cascades?

A.—It had been submerged.

Q.—Completely submerged?

A.—Yes.

Q.—And what had happened to the Farm Point's property?

A.—The water had been raised, affecting the tail water at Mr. Cross' power house.

20 Q.—To what elevation was the water raised at that time?

A.—It came up generally around 318.

Q.—Was that the high point or was it perfectly stable at 318, or was there variation around 318?

A.—It varied.

Q.—How frequently have you been going back to that place since March, 1927?

A.—Sometimes I would be up there a couple of times a week, sometimes I would be once a week, or once every two weeks.

30 Q.—And have you on all these occasions remarked the elevation of the waters?

A.—Yes, I established a gauge at Wakefield, and established a gauge at Mr. Cross' as well, and I would observe it.

Q.—And at what elevation has the water been maintained opposite, or on the Farm Point property?

A.—It has come at certain times below three hundred and eighteen, but I would say generally it has been operated between 318 to 319.5, often at 320.

40 Q.—I note here on this profile, which is put in as exhibit P-28, that there was added apparently after the blue print was made, a line, just a rough sketch in red pencil from the Chute Chelsea up to Kirk's Ferry, etc. What does that indicate?

A.—I presume it is intended to indicate the area included in the development at Chelsea. There is a dam at Chelsea which backs the water up to the elevation shown by that red line.

Q.—Between 318 and 320?

A.—Yes.

Q.—What was the effect of this backing up of the water of ele-

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variations varying between 318 and 320 on the Farm Point property?
First of all, what did it do to Mr. Cross' power plant?

A.—It has flooded out the tail race at his plant.

Q.—At what elevation was the tail race at his plant?

A.—His power house floor was elevation 321.5, and the tail race completely cleaned out was 311.

Q.—So this would mean between seven and nine feet above the tail race?

A.—Yes.

10 Q.—What effect would that have on the power plant?

A.—It would reduce the power which he could supply.

Q.—What effect, in fact, did it have upon the power plant and power system? What has come about since that?

A.—The fact is at the present time the power house is closed down. Mr. Cross is purchasing power from the Gatineau Power Company to supply those of his customers who remain.

Q.—How do you know that?

20 A.—I was instructed by the Public Service Commission to keep a record, since July, 1930, of all transactions, and to look after the clients of Mr. Cross in this respect. We have been endeavoring to do so to the best of our ability ever since.

Q.—The matter came up before the Quebec Public Service Commission?

A.—Yes. There were quite a number of complaints of insufficient power, and after a number of these complaints had been heard, the Commission decided that the advisable thing for Mr. Cross to do was to close down his power and get power from the Gatineau Power Company.

30 Q.—Will you file as Exhibit P-30 a copy of the Order from the Quebec Public Service Commission of the third day of September, 1927, with respect to that?

A.—Yes.

Q.—You say that for a certain period you have been acting as supervisor or inspector, on behalf of the Quebec Public Service Commission with respect to this distribution?

40 A.—We have been sending out accounts to these clients, and looking after any complaints that have come in regarding the same, and endeavouring to serve the customers in an efficient manner, and are keeping a record of the clients and their consumption of power, and the accounts.

Q.—Do you get the bills from the Gatineau Power Company? Do they come through you?

A.—Yes, and they are paid through us.

Q.—What did these bills amount to? I suppose they are on a meter basis?

A.—Yes. The account for June this year rendered as from June

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1st to July 2nd, that is the period of the account, came to \$308.97, and there are two discounts which reduced the bill to \$278.84.

Q.—Is that a high account, or is it one of the average accounts?

A.—Well, from July 2nd to August 1st the bill was

Q.—Give us the net amount?

A.—\$255.71. They run in that line. I should say \$260 would be a fair average.

Q.—\$260 a month would be a fair average?

A.—Well, \$250 to \$260.

10 Q.—That is the amount Mr. Cross has been paying to the Gateineau Power Company for electricity supplied to him, to in turn supply it to his customers?

A.—Yes.

Q.—And how many customers are there now?

A.—They vary slightly, but there are about 175 at the present time.

Q.—Is there any portion of the distribution system which is not now in use?

20 A.—The portion below Farm Point and at Cascades.

Q.—What happened to them?

A.—The transmission line was flooded out.

Q.—Is that to your personal knowledge?

A.—I saw the poles floating in the river, and attached to the wires, the transformers, and all that.

Q.—How were they flooded out?

A.—By the raising of the water.

Q.—The raising of the water at this elevation 318 to 320?

A.—Yes.

30 Q.—Is that the explanation of this difference between what you said before was the number of customers, 270 or thereabouts, and 170 or 175 at the present time?

A.—Yes.

Q.—It is the taking out of this portion below Farm Point?

A.—Yes, below. And, of course, there may have been some summer cottagers who have moved away, and things like that.

Q.—I mean, in a general way?

A.—In a general way, it is the cutting off of the lower part of his field of operation.

40 Q.—Cutting off of something like one-third?

A.—About that.

Q.—Would the cutting off of this one-third of his field of operation substantially affect the overhead, or the cost of exploiting the business?

A.—I should judge it did not.

Q.—To what Bench Mark did you refer your elevations?

A.—The one in Wakefield.

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Q.—On the stone foundation of the north side of the United Church of Wakefield?

A.—Well, on the east side, one, and there is another one, one mile north of Wakefield. It is No. 468.

Q.—What is the number of the one on the United Church at Wakefield?

A.—The Bench Mark at Wakefield, No. 469, elevation 332.429. It is on the stone foundation of the United Church at Wakefield. Bench Mark 468 is one mile north of Farm Point. The elevation
10 326.614.

Q.—Are they both part of this official system of Bench Marks?

A.—Yes. I have checked in between them as well.

Q.—You told us what the effect was of raising the level of the water from 318 to 320 on the power plant at Farm Point. What other effect did it have upon the properties at Farm Point?

A.—It has flooded out a good deal of Mr. Cross' piling ground below his saw mill. I have a photograph showing that. I have a panoramic photograph taken in September, 1928.

20 Q.—Under your instructions?

A.—Yes.

Q.—And does it conform with what you personally saw?

A.—It does.

Q.—Will you file a copy of this photograph as P-31?

A.—Yes.

Q.—Now, will you continue?

A.—Exhibit P-32 is a photograph taken under my instructions, and when I was present. It was taken from a position on the railway track looking towards Mr. Cross' power plant. The elevation of the
30 water at that date was 317.9.

I have two other photographs taken the same day, showing the flooded land in front of Mr. Cross' power house.

Q.—Will you file them as exhibits P-33 and P-34?

A.—Yes.

Q.—Looking at Exhibit P-29, about the middle of the photograph there is a white construction with what appears to be a black door?

A.—Yes.

Q.—What is that?

40 A.—That is the concrete power house.

Q.—On Exhibit P-32 at the left hand, we see a white construction with a black door in the middle, and two black windows, what is that?

A.—It is the concrete power house, the same one.

Q.—And on Exhibit P-32 we also see a white construction towards the left side with a black door in the middle and two black windows?

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A.—It is the same concrete power house.

Q.—At what elevation was the water when P-32 was taken?

A.—317.9.

Q.—And when P-31 was taken in 1928?

A.—It was somewhat higher. It was possibly up to about 319.5.

Q.—You said something about the effect of the raising of the water on the piling ground? Will you elaborate that a bit?

10 A.—Those photographs show that Mr. Cross' available piling ground is more materially reduced. The result today is that he has to pile slab wood and ties on the area which should normally be available for lumber, and he has also to move or pile slab wood, cart it up the mountain, and cart it across the railway at a considerably added expense.

Q.—Is that what appears on this photograph P-31, as being around the little Church?

A.—Yes. You will see on P-31 that the area adjacent to the siding which is there, which should be used for piling lumber, is flooded out.

20 Q.—What happened, in fact, to the 14-foot head at Cascades?

A.—It was completely submerged.

Q.—How was it completely submerged?

A.—By the raising of the water due to the construction of the Chelsea dam.

Q.—Is that included in the head, or is it at the Chelsea dam?

A.—It is. It is transferred to the Chelsea dam.

Q.—Was that a thing for which it appeared to be adaptable even before it was done?

A.—Yes, I would say so, one of the things.

30 Q.—Was there any other point for which it seemed possible that it might be combined in the development?

A.—It might have been combined with the Canada Cement.

Q.—Are these combinations to bring as much head as possible in one development, more or less advantageous than separate developments?

A.—They are more advantageous to concentrate. It is what is commonly done today.

Q.—Did the inclusion of this 14-foot head in the head collected at Chelsea have any other effect than increasing the head?

40 A.—Yes, it made available the pondage from Cascades up to Wakefield, a distance of about four and three-quarter miles.

Mr. Montgomery: I would like, my lord, to register an objection to this proof, as this evidence is clearly value to the taker and not value to the owner, that is, value to the Gatineau Power Company, and not value to Mr. Cross. Of course, that principle was distinctly ruled out by the judgment of the Privy Council in the Cedars

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Mr. St. Laurent: That was an expropriation.

10 Mr. Montgomery: Whether it be an expropriation or not, the principles are exactly the same, if we are dealing here with the question of damage to Mr. Cross, obviously the damage to Mr. Cross is not in any way connected with the advantages to us. What they are making evidence of is the alleged advantage to us in securing extra pondage by flooding out this Cascades Fall above the Chelsea plant, that whatever advantage we might get by that, if that occurred, would be our good fortune.

In other words, what you are dealing with, is compensation to the owner for his property which he is being deprived of.

His Lordship: This might be an element to show that he did suffer damages on that account.

20 Mr. Montgomery: No, because what they are dealing with here is the advantage that we are supposed to have gained by securing this extra pondage. That is advantage to us, and not damage to him, because he did not own that property above.

His Lordship: I will reserve the objection.

BY MR. ST. LAURENT:

30 Q.—What advantage could that be to the owner of the Hydro-electric development?

A.—If you have more pondage over, just immediately above your power plant, it makes available the storing of water to take care of daily fluctuations in your load.

Q.—Are there daily fluctuations in the load in the operation of hydro plants?

A.—In all power plants.

Q.—To what extent?

A.—Oh it depends on the plant itself. There are quite marked variations.

40 Q.—Has that storage got to be immediately above the dam, or should the storage in the storage reservoirs be used to take care of the daily fluctuations?

Mr. Montgomery: I need not renew my objection. It is understood to apply to all similar evidence.

His Lordship: Yes.

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Witness: When the reservoirs are any distance away from the dam, the effect of that storage is not immediately available. It takes some time for the water released on the storage dam to come down to your plant, and in order to take care of your daily load, it is necessary to have this pondage available immediately adjacent to your power plant, where it can be called upon on short notice.

Q.—Do you know, as a matter of fact, how far the storage reservoirs on the Gatineau are, from those developments?

10 A.—I should say possibly 100 miles or more. They are away above Maniwaki.

Q.—And how fast does the water come down there?

A.—It would take it quite a while to come down there.

Q.—I would like to have an idea as a layman. How many miles an hour?

A.—Possibly two to three miles an hour would be about the limit.

BY THE COURT:

20 Q.—Is there a dam to withhold that storage?

A.—There are dams in the storage areas that hold back the water, and it was released from these storage areas as required below, for the plants. That takes care of seasonal changes in the amount of rain fall and things like that. If we have a dry season as we have had this summer they draw upon that storage to supply water.

BY MR. ST. LAURENT:

30 Q.—What is the recognized engineering practice in disposing of power from a hydro-electric development?

A.—You have a certain power available, and you apply what you call your load factor, that is, the average power divided by the peak power, and that will give you your load factor, and that is, of course, less than the power development, that is, that load factor is your 70 or 75 per cent, 80 per cent.

Q.—80 per cent of what?

A.—80 per cent of the power developed.

40 Q.—Does that mean that if you have 100,000 developed, that your load factor would be 80,000?

A.—No. It would mean that 100,000 would be 80 per cent of what you would normally sell, or 70 per cent, just depending on what your load factor is.

Q.—If it were 70 per cent, about 45 per cent more than your developed capacity?

A.—Yes.

Q.—How can that be done?

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A.—It is because you sell to your peak load, and the peak load of a number of industries due to diversification generally all do not come at the same time, therefore you can offer the same on the peaks to the peak load more than you actually can develop.

Q.—Then, how do you take care of the peak load?

A.—Your storage helps you for that.

Q.—The storage? Not what you have referred to as the storage reservoirs for seasonal fluctuations or the pondage?

10 A.—Both that and the pondage. On the periods where you are not using so much power, take your daily load for instance, like the City of Montreal, would go up around seven o'clock. You would have a high peak, then go down a little bit, fall down. Then, about 10.30 or a quarter to eleven it would begin to rise again, and then it would drop down shortly after twelve again, go up at one, and then drop down till about four, and then come on at 4.30 or 5, depending on the season. If it is in the Fall it comes a little earlier when the lights come on, and the street cars begin using more power, and things like that, so you take from what we call below our average
20 line, and store it up in the seasons or periods of small consumption; you store it up in the form of water, and you use it on your peak.

Q.—What is the load, say from seven or eight o'clock in the evening until six or seven o'clock the next morning?

A.—On most industries it is off. There are some industries that run 24 hours a day. Of course, their load would be constant or almost constant.

Q.—I am speaking of the general practice? During how many hours out of twenty-four do you have the plant to take care of peak load?

30 A.—Not very many. As I say, possibly maybe four hours when you would have your peaks, one, seven to eight, one around eleven, another one at one, and another one at five and six.

Q.—And are they just barely above the average, or considerably above the average?

A.—Considerably above.

Q.—To what extent?

A.—Well, again it depends.

Q.—Do they double? Is the peak double the minimum or one and a half times the minimum?

40 A.—I would say there are lots of cases where they might be double.

Q.—It might be double the minimum?

A.—Yes.

Q.—Would this stored water be available only for Chelsea, or would it be of any benefit to any other development of the defendant?

A.—It would be available for Farmers' Rapids as well. These

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two plants are run together, and they are run substantially in synchronism.

Q.—What, in your opinion, would be the value of that pondage?

A.—It would be of very material advantage. For the two-foot draw down up to a foot of Mr. Cross' property, that would provide 2,894 cubic feet per second for a period of ten hours. That would be spread over the Chelsea and the Farmers' Rapids Falls for development.

Q.—What would that mean in horse power?

10 A.—Allowing them an average head of 147 feet for these two it would be 38,600 additional horse power available for ten hours.

Q.—By including the additional pondage resulting from taking in the Cross property and up to Wakefield?

A.—Would make available 5,311 cubic feet per second for ten hours.

Q.—What would that signify in horse power?

A.—That would be equivalent to 77,700 horse power when spread over the Chelsea and Farmers' Rapids development.

20 Q.—So then, that would enable one to make a variation of 77,000 between the low and the peak?

A.—There would be that much to play on. I would not like to say how they would use it.

Q.—It would make available that much water that could be used?

A.—I would express it this way, that the available pondage would be substantially twice 38,600 to 77,700.

Q.—What figure would you put upon that feature as the annual value?

30 Mr. Montgomery: I must again renew my objection. This is so clearly evidence of value to us and not damage to Cross.

His Lordship: I will reserve the objection, Mr. Montgomery, but I would like to have communication of the authorities you have mentioned, before giving a decision.

Witness: We have placed in that claim a value of \$10,000 per year for that. Frankly, I think it is worth more than that.

40 Q.—You think there that \$10,000 as the annual value for that feature is low?

A.—I do.

Q.—Can you say whether or not there was in the Gatineau River between the banks alleged to belong to Mr. Cross, a water power of an average natural force of not less than 200 horse power and large enough for industrial purposes at Cascades?

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A.—There was.

Q.—What head could have been obtained by combining the Canada Cement Power and the Cross power?

Mr. Montgomery: I object to this as not alleged.

Mr. St. Laurent: It is alleged that it was adaptable for inclusion with others.

10 (The Court reserves the objection.)

A.—Twenty-six or twenty-seven foot head.

BY MR. ST. LAURENT:

Q.—In developing the Canada Cement Power, would there have been any immediate pondage at all without including the Cross property?

20 A.—No. There would have been difficulty immediately you started to develop, because they would have absolutely no pondage at all. They would have been restricted absolutely to the flow of the river, because they are immediately adjacent to each other.

Q.—You have, of course, seen these plans of the Chelsea Power Development as submitted for approval to the Lieutenant-Governor-in-Council at Quebec?

A.—Yes, I have.

Q.—Has the development been substantially carried out—I do not mean, talking of details, in conformity with these plans?

30 A.—I should say so.

Q.—To you, as an engineer, just looking over the situation they appear to have been carried out?

A.—Yes.

Q.—Will you file a certified copy of this plan as Plaintiff's Exhibit P-35?

A.—Yes.

Mr. St. Laurent: This is a section of the general plan prepared by Mr. Farley and bearing date March 23rd, 1926.

40 BY MR. ST. LAURENT:

Q.—There is a statement on the right hand side of the plan, seven columns, showing Township, range, lot number, owner, area between high water elevation and elevation 318, acres, area between elevation 318 and elevation 321, acres, character of land. Will you explain for the benefit of the layman what that means?

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A.—That is a schedule which has been made up at the time of the preparation of this plan showing the amount of land which is being taken from each of the owners on the plan covered by this sheet P-35 showing the township and the range, the lot number, the owner's name and the areas are given in two columns, the first, the area between the high water elevation and 318 that is flooded to the controlled elevation of 318, and then the additional area of the lands between 318 and 321. That is another three feet higher. The amount taken from each owner.

10 Q.—Then, looking at the plan itself, I see waving lines marked 315, 320, 325, 330, which follow in general parallel fashion the bank of the river. What does this mean?

A.—Those are contour lines showing the location of the ground at five-foot intervals; as you raise up five feet, tracing that line out would be followed up the side of the hill; as you get another five feet above at some place the ground is level, it will be a long piece back. If the ground is very steep going up it will be close to it. Those are what we call technically contour lines.

20 Q.—I see on the north side or the upper side of the plan that the lines 315, 320, 325, and 330 are quite close together?

A.—Yes.

Q.—Does that indicate that it is rather a steep bank?

A.—It indicates the ground is rising very rapidly.

Q.—In the principal part of the plan there appears to be a sketch of the river?

A.—Yes.

Q.—Drawn to scale?

A.—Yes.

30 Q.—With the banks and contour lines on each side?

A.—Yes.

Q.—And in the lower part of the plan a profile of the river with the regulated low water stage line; the low water level when river discharges approximately five thousand feet, and the estimated natural high water stage when 76,000 second feet are passing over dam. What would those refer to?

A.—They refer to the surface of the water at those periods.

Q.—And are the figures mentioned in that scale elevations referring to these same Bench Marks we have been talking about?

40 A.—Yes.

Q.—And do these contour lines 315, 320, 325 and 330 also refer to the same Bench Marks we have been talking about?

A.—They do.

Q.—In this section I see a line over to the right end of the plan, range 15 and range 16, and then above it lot 21-C and F. T. Cross. Is that the same lot 21-C and the same F. T. Cross we are dealing with in this case?

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A.—It is.

Q.—And over on the north, or east side of the river, there is a triangular piece where I also find F. T Cross. Is that the same triangular piece we are concerned with as the north or east bank of the river at Cascades?

A.—It is.

Q.—Then, as an engineer, what do you take to be indicated by these V-shaped hatchings across the river between these two portions of the Cross property?

10 A.—They are intended to indicate swift water or falls.

Q.—Is that a conventional sign that is used for that purpose?

A.—Yes.

Q.—Before the raising of the water, what was the mean low water level at the foot of the Cross property?

A.—On March 24th in 1926 I checked the water in the lower pool which would correspond to Mr. Cross' tail water at 302.5.

Q.—What was the flow at that time?

A.—3,420 cubic feet per second.

Q.—That is the low water?

20 A.—That point, I may say, did not include any of the little ripple which is shown on the last exhibit as being between the island and the main land.

On the same date I checked the elevation at the upper side of the swift water and found it to be 309.71.

Q.—That was all within the property alleged here to belong to Mr. Cross?

A.—Yes.

30 BY MR. KER:

Q.—On what point was that? East or west?

A.—It was taken adjacent to the east side.

Q.—The upper end?

A.—The last elevation given was taken at the upper end.

Q.—The upstream?

A.—The upstream. The first one was at the downstream.

BY MR. ST. LAURENT:

40 Q.—At the same time did you take the elevation up at La Peche?

A.—No.

Q.—While we are on this question, will you look at Exhibit P-1, and tell us if P-1 is to the same scale?

A.—P-1 is to scale 100 feet to the inch. The last exhibit is 200 feet to the inch.

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Q.—By following out the contour line on this last Exhibit P-35, is it possible to determine how much of the banks of 21-B, 21-C and 21-D come below elevation of 318 or 320?

A.—Yes, it is.

Q.—How much of the portion shown in white on this Plan P-1 does come below the elevation varying from 318 to 320?

A.—Plan P-1, on the west side of the river, purports to take all the land between the railway right-of-way and the river. There are some portions of that which are higher than 321. The contour lines
10 320 would enter in upon the portion shown white on Plan P-1.

Q.—And on the other hand, even the contour line 318 runs into the railway right-of-way at various points?

A.—Yes. 315 would touch upon the railway line.

Q.—As a matter of fact, what was done with the railway track at that point?

A.—The railway track has been raised.

Q.—How much?

A.—I do not know how much. Quite a considerable distance.

Q.—I do not mean in length, but how many inches or feet has it
20 been raised?

A.—I could not tell you just how much it has been raised.

Q.—It is a matter of more than inches?

A.—Oh, yes. I would like to add that on the east side of the river, the part shown white on Plan Exhibit P-1, includes the land up to contour 325.

Q.—But the contour 320 is shown, and it is very close to 325?

A.—Very close to it.

Q.—On that side?

A.—Yes.
30

Q.—This same Exhibit P-35 also shows the Farm Point property?

A.—Yes. It shows Mr. Cross' saw mill and his power house, and Meach Creek, and it shows where the 315 contour comes, and it shows where the 318 contour comes.

Q.—Comparing that with Mr. Papineau's Plan P-17, showing the hatched lines, the four parcels of land described in paragraphs 8 and 10 of the Declaration, is it possible to determine where the flooded portions come at these elevations between 318 and 320?

A.—The heavy line which runs between contours 315 and 320
40 on Exhibit P-35 is the 318 contour, and shows all the flooded lands at elevation 318, regulated elevation 318.

Q.—And the line outside of that, not quite so heavy and bearing the figure 320, is the contour 320, and shows where the water goes when it is at 320?

A.—Yes, and shows how much of the land will be flooded at that time.

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Q.—Have you, in fact, seen whether or not these four plots shown on P-17 are flooded by the water holding at this elevation, which varies from 318 to 320?

A.—There is none of the portion shown colored green flooded. There is part of the one shown colored yellow which is flooded, and a large part of the one shown in pink which is flooded.

Q.—A large part of the three plots shown?

A.—Of the three plots shown.

Q.—Is this Plan P-17 to the same scale as P-35?

10 A.—Yes.

Q.—So that it is a matter of looking at the two at the same time to see where the contour lines come with respect to the hatched portions of P-17?

A.—Yes.

Q.—Have you seen with your own eyes whether or not these contour lines are substantially correct?

A.—They are correct.

20 Q.—I take it then that this plan P-35, or the plan of which P-35 is a section, showed the intention of including the thing you have called the 14-foot head at Cascades in the development at Chelsea?

A.—Yes, it did.

Q.—And it has, in fact, been included?

A.—It has been included.

Q.—And this plan is of the month of March, 1926?

A.—Yes.

Q.—And the actual inclusion took place a year later, March, 1927?

A.—Yes.

30 Q.—What is the developed head at Chelsea?

A.—The tail water is in the neighborhood of 222, and the head water will be 318, sometimes a little higher than 319.

Q.—What is the elevation of the spillway?

A.—I forget. I think it is 315. I am not positive of that, I have not the plan before me.

Q.—You have seen these plans of the Chelsea development?

A.—Yes.

40 Q.—Will you file as P-36 this plan, certified by the Deputy Minister of Lands and Forests, signed by Mr. James H. Brace, registered with the Registry Office at Hull, on the 24th of March, 1926, and say if you recognize that as the plan of the work which was substantially carried out at Chelsea?

A.—This is a copy of the plan which I have seen in the Registry Office in Hull.

Q.—And at what elevation does that show the spillway?

A.—315.

Q.—Do you know if, in fact, there are stop-logs used above that?

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A.—There must be. I cannot say of my own knowledge.

Q.—You have not seen them?

A.—No, I have not seen them.

Q.—But there must be in order to get the water to 318 and 320?

A.—Yes.

Q.—Those plans P-35 and P-36 appear to have been registered at Hull in March, 1926?

A.—Yes.

10 Q.—Was there, or was there not, any market for electricity in the Ottawa-Hull district in 1926?

A.—There was.

Q.—What was the situation in that regard?

A.—I do know personally that there was a threatened shortage for power prior to 1926. How I happened to know that was, that a number of us at that time were putting in electric stoves for cooking purposes. Fortunately I got mine in. Some of my friends were refused the privilege of putting them in due to the shortage of power in our district.

20 Q.—How long did that last?

A.—Well, it was relieved shortly after. Then, when the development at Chelsea came on there was a sale of part of the power development at Chelsea to the Hydro-Electric.

Q.—Do you know how much?

A.—60,000 horse power.

Q.—What concern was distributing power for domestic purposes at that time?

A.—There are two. There is the Hydro and the Ottawa Electric.

Q.—Is the Hydro, the Ontario Hydro Electric Commission?

30 A.—Yes, linked up to the Ontario Hydro.

Q.—Were they, or was it the other concern who were refusing to allow additional appliances to be put in about 1926?

A.—We were on the Ontario Hydro.

Q.—Was it known that the Ontario Hydro was a purchaser for power?

A.—Yes. It was a matter of common knowledge.

Q.—What was the situation with respect to undeveloped water power susceptible of being used for hydro-electric development in the region at that time?

40 A.—I would say they were an attractive proposition for development.

Q.—In your opinion, what would have been at that time the market value of undeveloped water power, or capable of development, in the whole region?

A.—I have never negotiated the sale of any large power to this extent. I am familiar with the facts of some of the sales. I have examined the properties, one in particular which I am familiar with,

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is the sale of the Gatineau Power Company on the Lièvre to the James MacLaren Company.

Q.—Were you acting for the James MacLaren Company?

A.—Not in the purchase of this, but in another capacity, yes.

Q.—In connection with the development to which this was to contribute?

A.—Yes, I did appraisal work. I purchased all the small mill sites and one or two small water powers on the Lièvre.

10 Q.—What power was sold by the Gatineau to the MacLaren Company?

A.—It was part of the falls at Masson. I think that they are called Rheume falls. How I first came to know about this was, in 1920-1921. I had occasion to do a lot of work for the W. C. Edwards Company and the Riordon Company in connection with their transfer of the W. C. Edwards property to the Riordon's. I did a great deal of their work in those years, and I had knowledge of this property as belonging to the W. C. Edwards Company among others, which was turned over to the Riordon people.

20 Q.—Well, then, to continue the sequence, the properties of the Riordon Company were absorbed by the International Paper Company?

A.—Yes, they were.

Q.—And then, its subsidiary, the Gatineau?

A.—Yes, and I heard on the street that that sale had been made. I was looking for sales. I investigated the deed at the Registry Office and found that this sale had been made and that the price quoted was one dollar.

Q.—One dollar and other consideration?

30 A.—One dollar and other consideration.

Q.—Was it the whole flow of the river at that point or part of the flow of the river?

A.—It was just part of the flow. I got a copy of the deed and located on the ground where that would go. I also took certain measurements of the river. We had certain gauge readings taken on the river to find out what the discharge of that section of the river would be. I took the levels to find out the head. The head was 29.83. For purposes of calculations we called it 30.

Q.—29.83 feet?

40 A.—Yes.

Q.—Or, 30 feet roughly?

A.—Yes. I may say that at this point the Lièvre has three channels which passed down over these rapids. The one under construction is the most easterly one.

Q.—What proportion of the water discharges through that one?

A.—I found that 32 per cent went down.

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Mr. Montgomery: I object to this evidence as not referring to the Gatineau but to another river entirely, under different circumstances.

The Court reserved the objection.

Witness continuing: I found that 32 per cent went down the east channel, 60 per cent down the main channel and 8 per cent down the westerly channel.

10

BY MR. ST. LAURENT:

Q.—What is the flow of that river?

A.—Measurements were taken of the flow, of 3,492 cubic feet per second.

Q.—And what is the regulated flow of that stream?

A.—I cannot say definitely. I understand that it will eventually be about 4,000.

20 Q.—4,000 cubic feet second?

A.—I do not think it should be over 4,000. It has been under process of regulating—something around four thousand.

Q.—What would that head in that proportion of the flow give in horsepower, assuming it to be 4,000 cubic feet second?

A.—4,000 horse power.

BY MR. ST. LAURENT:

30 Q.—You stated just before the adjournment that you had taken communication of a registered deed of sale from the Gatineau Company to the James Maclaren Company, Limited, of the waterpower you were describing. Will you look at the copy I show you, from the Registrar's books, and say if it is the Deed to which you were referring, and if your answer be in the affirmative, will you file it as Exhibit P-37?

A.—This is the Deed, yes.

(The Deed in question is produced as Plaintiff's Exhibit P-37.)

40 Mr. St. Laurent: With the consent of my learned friends, I would ask your Lordship's permission to interrupt the evidence of Mr. MacRostie, in order to examine Mr. Kenny and Mr. Wilson, who are here and whose evidence will be very short. These two gentlemen are anxious to get away.

(And further for the present deponent saith not.)

*In the
Superior Court*

No. 19.
Plaintiff's
Evidence.
R. M. Kenny,
Examination
Sept. 22nd, 1931.

DEPOSITION OF ROBERT M. KENNY, A WITNESS EXAM-
INED ON BEHALF OF THE PLAINTIFF.

On this twenty-second day of September, in the year of Our
Lord one thousand nine hundred and thirty-one, personally came
and appeared

10

ROBERT M. KENNY,

of the City of Buckingham, in the Province of Quebec, Manager,
James Maclaren Company, aged 55 years, a witness produced and
examined on behalf of the Plaintiff, who, being duly sworn, deposes
as follows:

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

20 Q.—How long have you been connected with the James Mac-
laren Company as an official thereof?

A.—Twenty-five years.

Q.—Do you know personally of this purchase of a waterpower
by the James Maclaren Company from the Gatineau Company?

A.—Yes.

30 Q.—We have just filed, as Plaintiff's Exhibit P-37, a copy from
the Registry Office of the Deed of Sale, in which the price is said to
be "One Dollar and other good and valuable considerations which
the Vendor acknowledges to have received at the execution hereof,
whereof quit". Do you know what the other good and valuable con-
siderations were?

A.—I do.

Q.—What were they?

A.—The difference between the \$1.00 and \$200,000.

Q.—The real price was \$200,000?

A.—Yes.

Q.—That is the price which was paid, and for which a discharge
was given in this Deed?

A.—Right.

40

Cross-examination

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

Q.—This is on the Lievre River?

A.—Yes.

Q.—How far is it from the Gatineau?

A.—About thirteen miles.

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Superior Court*

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Evidence.
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(continued)

Q.—Sixteen miles?

A.—About thirteen miles.

Q.—This is a river lower down, running into the Ottawa?

A.—Lower down on the Ottawa.

Q.—How far from the mouth of the Ottawa is this particular piece of property?

A.—I should say about a mile and a half.

Q.—A mile and a half from the outlet?

A.—Yes.

10 Q.—What was the head involved in that piece of property?

A.—According to our estimate, a shade under 30 feet. 29.7 feet.

Q.—Concentrated within itself on that property?

A.—Yes.

Q.—I take it you purchased this property for utilization in connection with a power scheme of your own?

A.—Right.

Q.—Was it to be developed in itself on the Lievre?

A.—No.

20 Q.—How did you propose to utilize it?

A.—With our own properties which surrounded that part, and below.

Q.—And, your scheme of development, I think, is a development that will take place higher up than this property you purchased? The dam will be built higher up?

A.—Yes.

Q.—And a power house will be built?

A.—Yes.

30 Q.—And, you were going to divert the river down, and take it through penstocks, through your power house, to your principal power?

A.—Yes.

Q.—And practically divert the entire flow of the river to this point?

A.—Yes, divert whatever use of the water there was.

BY MR. ST. LAURENT:

Q.—It was to be part of a bigger scheme?

40 A.—Yes.

Q.—This was going to be used in the development of a water-power much bigger than this property you purchased?

A.—Yes.

BY MR. KER:

Q.—There was an existing power on that property when you bought it?

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Plaintiff's
Evidence.
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(continued)

A.—Yes.
Q.—Developed?
A.—Yes.

BY MR. ST. LAURENT:

Q.—Was it being used?
A.—Not at the time we purchased it, no.

10 (And further deponent saith not.)

*In the
Superior Court*
No. 20.
Plaintiff's
Evidence.
H. A. Wilson,
Examination
Sept. 22nd, 1931.

DEPOSITION OF HUGH A. WILSON, A WITNESS EXAMINED ON BEHALF OF THE PLAINTIFF.

20 On this twenty-second day of September, in the year of our Lord one thousand nine hundred and thirty-one, personally came and appeared

HUGH A. WILSON

of the City of Valleyfield, in the Province of Quebec, Secretary-Treasurer, Montreal Cottons, Limited, aged 58 years, a witness produced and examined on behalf of the Plaintiff, who, being duly sworn, deposes as follows:

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

Q.—You are Secretary of Montreal Cottons, Limited?

A.—I am.

Q.—And I understand you were acting in that capacity throughout the year 1929?

A.—No. Since the spring of 1930.

40 Q.—In the Annual Report of the Company for 1929 it was stated that the Company had entered into a contract with the Beauharnois Light, Heat & Power Company, leasing their water rights for seventy years, the consideration being \$1,975,000 cash, 5,435 shares of common stock of the Beauharnois Power Corporation, Limited, and 8,000 horsepower delivered on the Company's busbars free of charge with a further option for 4,000 horsepower at \$15.00 per horsepower. Have you the contract referred to in this Report?

(Mr. Montgomery, K.C., of counsel for defendant, objects to any evidence in respect to this transaction as not being in any way

(continued)
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Plaintiff's
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H. A. Wilson,
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(continued)

connected with the present case, and as being an entirely dissimilar transaction.)

His Lordship: Considering that this case will in all likelihood go to a higher Court, I would not like the Record to be sent back to me if the higher Court ordered I should have admitted the evidence. I will, therefore, allow the evidence to be made under reserve of Mr. Montgomery's objection.

10 BY MR. ST. LAURENT (continuing):

Q.—Have you the Deed of Agreement to which I have referred?

A.—I have the signed document, and I have a copy.

Q.—The signed document is a document under private writing; it is not before a Notary?

A.—No, not before a Notary. I would like to retain the signed document, but I can give you a copy.

20 Q.—You have the signed document here in Court, and as you do not wish to part with it you have had prepared, under your supervision, a copy of it which you now hand me?

A.—Yes.

Q.—And which you certify as being an exact copy of the original which you now have before you?

A.—Yes.

Q.—Will you file this copy as Plaintiff's Exhibit P-41?

A.—Yes.

Q.—This is dated August 14th, 1929?

A.—Yes.

30 (Mr. Ker, K.C., of counsel for defendant, declares he has no cross-examination to make of the witness.)

(And further deponent saith not.)

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Superior Court

No. 18.
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Evidence.
N. B. MacRostie,
Examination
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(continued)

CONTINUATION OF EXAMINATION OF NORMAN B.
MACROSTIE, ON BEHALF OF THE PLAINTIFF.

And the said witness

NORMAN B. MACROSTIE

10 reappearing, his evidence was continued as follows:

BY MR. ST. LAURENT, K.C.:

Q.—When I asked you about the value of undeveloped water-power you referred, as one of the things with which you had some connection and about which you knew, to this sale by the Gatineau Company to the James Maclaren Company on the Lievre River. Were you aware of what was the real price?

A.—Only from hearsay.

20 Q.—Was the information you had to the effect that the price had been \$200,000?

A.—Yes.

Q.—Was it on the assumption that the price was \$200,000 that you treated it in figuring your conclusion as to values?

A.—Yes.

Q.—Were there other deals of which you had special knowledge, or general knowledge, as an engineer, which affected your mind in coming to your conclusion?

30 A.—There was another small piece of land below this, carrying with it a certain head on the Lievre; purchased from Higginsons.

Q.—That was also a transaction appearing on the registers?

A.—Yes. I got it at the same time.

Q.—From the Registry Office?

A.—Yes.

Q.—To whom was that sale made?

A.—To the James MacLaren Company, from Higginsons.

Q.—How did that work out?

40 A.—There was a drop of 19 feet along the waterfront of the Higginson property. I just forget exactly what was the price as stated in the Deed. I have not here the memo I had appertaining to it.

Q.—What was your estimate of the horsepower that went with it?

A.—That was just one side of the stream, and it was very difficult for me to estimate what the horsepower in that property would be. I should judge, however, it would be in the neighbourhood of possibly 700 horsepower—that was the maximum.

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(continued)

Q.—Were there other transactions which you considered?

A.—Of course there was the sale of the Canada Cement, below Mr. Cross' property.

Q.—Did you know on what conditions that had been made?

A.—Only from hearsay. I do not know. I never had any definite information appertaining to that.

Q.—Did you know about the sale by the Montreal Cottons Company to the Beauharnois Light, Heat & Power Company?

10 A.—I just read the document. I am not familiar with the properties.

Q.—Were there others which you took into account in forming your opinion as to values?

A.—My general knowledge, from hearsay, of various sales.

Q.—At what conclusion did you arrive as to the fair market value of this undeveloped power of Mr. Cross?

A.—I should think in the neighbourhood of \$40.

Q.—\$40 per horsepower.

A.—Per horsepower, yes; in the raw.

20 Q.—Had you considered what it might cost to acquire the riparian rights which might be flooded by developing the power up to 14 feet?

A.—Yes. Mr. Cross owned quite a substantial part of the land that would be flooded. I would estimate that \$60,000 should cover the amount necessary.

Q.—Outside of his own?

A.—Outside of his own.

Q.—Up to elevation 318?

A.—Up to elevation 318, or a little above it.

30 Q.—In making that estimate had you taken into account these options which Mr. Cross had, or claimed to have, from certain riparian owners, and which he had registered by Deed of Deposit of May 10th, 1926, which I produce and file as Plaintiff's Exhibit P-38?

(Mr. Ker, K.C., of counsel for defendant, objects to the question, and to the production of the document as illegal, and inasmuch as the document is not in accordance with the rules laid down by the Code for the registration of real rights.)

40 His Lordship: I will permit it under reserve of the objection. I do not attach much importance to the document.

BY MR. ST. LAURENT (continuing):

Q.—Did you take the tentative agreement or option mentioned in Exhibit P-38 into account in making your estimate?

A.—No, in no way did I consider it. If I considered this the estimate would be very much smaller.

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(continued)

Q.—Did you consider the option he had from Caves?

A.—No, not as to value. I considered it as a right he might have to use that land; but in my statement the \$60,000 is based upon my own personal knowledge of prices brought in that locality. I have acted for a great many of the owners, and at the present time I am, and for nearly two years I have been, with a Board assessing damages similar to this.

10 Q.—Did you know of this Notarial Promise of Sale from David Caves to Freeman T. Cross, passed before Bertrand, Notary Public, on November 20th, 1916, which I file as Exhibit P-39?

A.—I have seen it.

Q.—And you took it into account merely because of the rights it might confer?

A.—Yes.

Q.—Did you take into account the purchase of riparian rights passed before F. A. Labelle, May 8th, 1926, from Levi C. Reid, which I file as Exhibit P-40?

20 A.—Not in my estimate of values; only in so far as it appertained to rights to use the river.

Q.—That is for the property just north of the Caves property?

A.—Yes.

Q.—You mentioned \$40.00 per horsepower as your estimate of the value of this development. Was that for the purpose of individual development, or for the purpose of inclusion?

A.—It was a price for either individual development or a price which he might secure in the open market.

30 Q.—In your opinion as an engineer which would be the preferable way to handle this property? Would it be alone, or as a part of a bigger scheme?

A.—As a part of a bigger scheme, most certainly.

Q.—With what other properties?

A.—With either the Canada Cement, or as it is being used today.

Cross-examination

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

Q.—You are a Civil Engineer?

A.—Yes.

40 1911? Q.—I understood you to say you graduated from Queen's in 1911?

A.—Yes.

Q.—Between 1911 and 1919 you were in private practice as a civil engineer?

A.—Yes.

Q.—In general what was the nature of the work you were doing in that period?

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Witness: After graduation?

Counsel: In 1911.

A.—I was with the Dominion Government for a short time, then I went with J. B. McRae on the construction of the High Falls dam on the River Lievre. I went from there to the City of Ottawa.

Q.—How long were you with the Dominion Government?

10 A.—Just the one summer.

Q.—One summer after 1911?

A.—Yes.

Q.—With what branch were you? The Waterpowers Branch?

A.—No, I was with the Topographical Surveys.

Q.—Your work was not then devoted directly to waterpower investigation?

A.—No.

Q.—Where did you go when you left the Dominion Government?

20 A.—I was with J. B. McRae on the construction of the High Falls dam.

Q.—Mr. McRae was in charge of that work?

A.—Yes.

Q.—Where was the High Falls dam?

A.—On the Lièvre River.

Q.—Who owned that dam?

A.—The James Maclaren Company.

Q.—That is not the same High Falls dam they have just recently completed?

30 A.—They raised that one up.

Q.—The present dam they have now raised is a hydro-electric dam?

A.—Yes.

Q.—The dam you were on with Mr. McRae was a timber dam?

A.—No, it was for hydro-electric purposes.

Q.—Did they generate electricity?

A.—No, they did not complete the powerhouse.

Q.—How long did that work take you in collaboration with Mr. McRae?

40 A.—I was a while in the spring of 1912; not very long—two or three months.

Q.—What was the magnitude of the work?

A.—I think the contract price was about \$330,000.

Q.—After 1912, that work being finished, you went into private practice?

A.—No: I was with the City of Ottawa as assistant roadway engineer, then engineer on special works for the City of Ottawa.

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Q.—How long were you there?

A.—Until 1916.

Q.—What did you do then?

A.—I was with the Imperial Ministry and the Canadian Army until I received my discharge in 1918.

Q.—You went to the war?

A.—Yes. In 1919 I went into private practice.

Q.—When you returned from the war you went into private practice as a civil engineer?

10 A.—In conjunction with J. B. Lewis, who was doing survey work.

Q.—You are not a land surveyor by profession?

A.—I am a qualified land surveyor, yes.

Q.—Of the Province of Quebec?

A.—No: of the Province of Ontario, and the Dominion of Canada. The practice of my firm, MacRostie & White, is possibly 30 or 35 per cent surveying.

20 Q.—What were you doing from 1919, when you returned from the war, up to 1926?

A.—General practice, through our office in Ottawa.

Q.—Have you particularly specialized in hydro-electric developments of any kind?

A.—No, but I have been engaged on some structures for the contractors, and work of that nature.

Q.—Before 1926 you had not studied the Gatineau exclusively with a view to its possibilities for power development?

A.—No, I had not.

30 Q.—I understood you to say that in 1926 you were retained personally by Mr. Cross to examine the possibilities of his site at Cascades?

A.—Yes.

Q.—In what month of the year would that be?

A.—March.

Q.—March, 1926?

A.—Yes.

Q.—I suppose you were then aware of the projected development of that river?

A.—I was.

40 Q.—And, I suppose your client, Mr. Cross, was also aware of it?

A.—I presume so.

Q.—What did Mr. Cross ask you to do in connection with that particular work?

A.—He wished me to take levels and give him an idea of the possibilities of that development.

Q.—At the Cascades?

A.—Yes.

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Q.—How long did you work on it?

A.—I have been associated with the project ever since.

Q.—What do you mean by “ the project ”?

A.—I have been retained by Mr. Cross ever since. I have not been working at it continuously, but as occasion arose I have been devoting my time to it.

Q.—Before the water actually was raised on this property how much had you done in the way of investigation of the possibilities?

10 A.—I did work one year to investigate and check the elevation of the water at different discharges.

Q.—Might I ask you whether you were making those investigations really with a view to the possible development of power, or was it with a view to making a case?

A.—Mr. Cross informed me it was his intention to develop, and on that assumption I went ahead.

Q.—As a matter of fact, as an engineer was there any actual hope in your mind that a development was ever going to come out of that project?

A.—I would not like to say.

20 Q.—As a matter of fact, you knew there was no possibility of it being developed?

A.—Mr. Cross definitely assured me it was his intention to go ahead with it.

Q.—The other development had already been authorized at that time?

A.—Yes.

30 Q.—In the back of your mind, as an engineer—and a very clear headed engineer—you must have known there was very little possibility of development taking place as far as Mr. Cross was concerned?

A.—I must say, as I stated before, I had the definite word of Mr. Cross that it was his intention to go ahead. I knew there was a conflict between Mr. Cross and the Gatineau Power Company, and that, of course, was a thing which could not be lost sight of, or should not be lost sight of.

Q.—Reverting for a moment to the Gatineau River. I would like to get a clear picture of the situation. The Gatineau River is a tributary of the Ottawa?

40 A.—Yes.

Q.—It runs into the Ottawa about four or five miles below Ottawa?

A.—It runs into the Ottawa River opposite Rockliffe, which is practically the easterly boundary of the City of Ottawa.

Q.—A few miles below Ottawa?

A.—No, it is right in Ottawa.

Q.—Right at Ottawa?

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A.—Yes.

Q.—The Ottawa River runs in a general east and west direction, and the Gatineau runs in a general north and south direction?

A.—Yes.

Q.—Taking the Gatineau from its mouth upwards: we have the dead water at Ottawa?

A.—Yes.

Q.—Running past the bridge at Ironside?

A.—You have rapids at the Ironside Bridge.

10 Q.—Above that point we have the great power concentrates in question here.

A.—Yes.

Q.—The Farmers' Rapids is the first one you arrive at going up the river?

A.—Yes.

Q.—What is the horsepower developed by the Farmers' Rapids?

A.—The tailwater at Farmers' Rapids is in the neighborhood of elevation 153, and the high water around 222.

20 Q.—What is its present capacity in the way of electrical horsepower?

A.—There may have been some units put in since. The last time I was there there were three units, I think, in operation.

Q.—And, shortly over a mile above the Farmers' Rapids comes the Chelsea Falls?

A.—Yes.

Q.—Generating how much horsepower?

A.—When I was there the units were being put in. There is a head there around 222 to 318 or 319.

30 Q.—Would you be prepared to take issue with me if I said there were over 200,000 horsepower generated at these two?

A.—No, I do not think so.

Q.—You would think there would be that much at least?

A.—I do.

Q.—Proceeding up the river from the Chelsea development, how far do you go before you arrive at the Cascades?

A.—Seven and three-quarters miles.

Q.—What rapids or falls existed in that space before the Chelsea development was built?

40 A.—There was one: Eatons Chute. That was one which was included with the Chelsea. It was owned by the Shepherd people—the same people.

Q.—About seven miles up you arrive at the Cascades?

A.—Yes.

Q.—I think you produced this morning a blueprint taken from the Quebec Streams Commission Report, showing a graph or diagram of how the river fell at various points along its course upwards?

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A.—Yes.

Q.—That is Exhibit P-28?

A.—Yes.

10 Mr. St. Laurent: In order to make the Record complete, I may say this was published by the Quebec Streams Commission with its Report of 1924, as Plate XII. Mr. Lefebvre has been kind enough to give me the thirteenth Report of the Quebec Streams Commission, in which the lithograph is to be found between pages 44 and 45.

Mr. Montgomery: When was that Report published?

Mr. St. Laurent: Printed apparently by the King's Printer in 1925. The foreword is dated December 1st, 1924, and the King's Printer appears to have issued it in 1925.

BY MR. KER (continuing):

20 Q.—Referring to Exhibit P-28, I would ask you to look at the portion called "Chute Cascades". This is the locality which is concerned in this case, so far as Mr. Cross' property is concerned?

A.—Yes.

Q.—Can you draw a line on this graph to show what part of that rapids, or chute, or fall would belong to Mr. Cross?

A.—I should say the tailwater of Mr. Cross' property would come just about where I indicate with the pencil mark.

Q.—So really the main chute, as shown there, is not upon Mr. Cross' property at all?

30 A.—The Canada Cement have a definite drop below that—two definite drops.

Q.—But, you are not answering my question. The main chute or drop actually shown upon that graph is not on Mr. Cross' property?

A.—Not the actual one shown on this plan, no.

Q.—As a matter of fact, there is nothing shown on this plan in the way of a chute belonging to Mr. Cross except the general bend in the line of the river?

40 A.—There is something which would indicate rapids—a rapid drop in the river.

Q.—Clearly the part below is more definite, or is different, because it is put in definitely as graded?

A.—Yes.

Q.—So below the black line you have drawn, the property is not owned by Mr. Cross, and above it is a slope to which you maintain he is entitled?

A.—Yes.

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BY MR. MONTGOMERY:

Q.—Will you please mark the letters “A” and “B” opposite the line you have drawn, so as to identify it?

(Witness does as requested.)

Witness: That slope above is actually and in fact taken up by two distinct drops. It does not come down as a straight chute: it comes in two distinct drops.

BY MR. KER (continuing):

Q.—In other words, of the Cascades Rapids, so called, Mr. Cross' rights consisted in two of the drops or rapids?

A.—Yes.

Q.—Which would be above the line A-B?

A.—Yes.

Q.—Neither of which are indicated on this graph of the Streams Commission?

A.—No.

Q.—You have made examinations of Mr. Cross' actual Cascades property?

A.—I have.

Q.—Mr. Cross has produced as Exhibit P-1 a photostatic copy of a plan of his Cascades property. Have you had occasion to examine this plan?

A.—I have seen this plan before.

Q.—It is an Exhibit produced by Mr. Cross?

A.—Yes.

Q.—What do you find on this plan to be the water level at the downstream limit on the west side?

A.—Just before you come to the extreme downstream limit, between the Island—what was the Island (which is shown, I think, on Exhibit P-35) there is a fall. Just at the top of that fall I made the elevation 301.9.

Q.—I was not asking you that exactly. I was asking you if you would take communication of this plan Exhibit P-1, and say what it appears to indicate as the level of the water upon the lower limit of this property on the west side of the river?

A.—I would not say it indicates the level of the water here at all.

Q.—You do not see anything which indicates water levels there at all?

A.—No. I see ground levels.

Q.—I notice the figures “306”. That is a ground level?

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A.—Yes, I presume so.

Q.—Do you see anything which you can distinguish as water levels higher up on his property on the west side?

A.—No.

Q.—Do you see anything which you can distinguish as water levels on the east side?—Opposite the little triangular piece?

A.—No.

10 Q.—I think you mentioned in your examination in chief certain water levels which you had taken on Mr. Cross' property?

A.—I did.

Q.—At what points on this plan Exhibit P-1 did you take the level on the downstream end?

A.—I took them at two places. I checked elevations at the point marked " C ", and at the point marked " D ".

Q.—And at the point " D " what did you find in the way of elevation?

A.—" 301.9."

Q.—At what date?

20 A.—On March 24th, 1926.

Q.—What was the flow of the river at that time?

A.—I think it was 3,420.

Q.—3,420 cubic feet second?

A.—Yes.

Q.—What did you find at the point " C "?

A.—It was about 302.5.

Q.—On the same day?

A.—On the same day.

30 Q.—What did you determine as the flow of the river on that day?

A.—I took the Record of the Department of Public Works.

Q.—You took that as being the stream flow for that day?

A.—Yes.

Q.—Are those all the levels you took on that property?

A.—No.

Q.—Will you tell me what level you got at the upstream end on the west side of the river, and will you show me on Exhibit P-1 the point at which you got it?

A.—In the neighbourhood of " E ".

40 Q.—What level did you find there?

A.—309.71.

Q.—On the same day?

A.—On the same day.

Q.—With the same stream flow, I suppose?

A.—I would presume so.

Q.—Have you any elevations at all at the northerly part of the white portion of this plan on the west side of the river?

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A.—The water where my hand rests, and at the point " F " would be fairly uniform across the river. I do not think I checked it on that day. I have not the elevation of that pool on that date.

Q.—What elevations did you check on the east side of the river?

A.—I just checked the elevations of the pools—the lower part of Mr. Cross' property.

10 If I might explain: the main draw comes in around " E " on the river, and impinging upon this point opposite " F " seems to shoot towards the easterly side of the river and goes in between some little islands that are there. The water is fairly deep around the pool " G ", and then goes back and flattens out towards " C ", and goes out on both sides of the island. It just touches the line between lots 20 and 21.

Q.—Am I to understand, then, that on the east side of the river you have no official measurement of elevation taken at that time?

A.—The water in the pool " F " was level across the river.

Q.—Have you any measurement at all taken on the shore or near the shore on the east side?

20 A.—Not on that date.

Q.—What was your level taken in the pool, so called?

Witness: The lower pool?

Counsel: The lower pool.

A.—At the point " C ", 302.51. At the point " D ", 301.9.

Q.—And at the point " G "?

A.—I did not take a level at that point on that date.

30 Q.—So that your evidence given this morning in respect to the difference in elevation between the entrance of the river on to Mr. Cross' property and its discharge from his property was based on levels taken entirely on the west side of the river?

A.—There are three pools. I had the elevation of three pools. I took the elevation of two of them on that day and the third later on.

Q.—That was in 1926?

A.—March 24th, 1926.

Q.—Were you taking those levels with a view to determining the possibilities of potential waterpower there?

40 A.—I was checking the elevations at that time. My first instructions were simply to go up and check the elevations.

Q.—What elevations?

A.—The elevations of the water.

Q.—That is, to determine them; not to check them.

A.—To determine them, yes.

Q.—With a view to what?

A.—Those were his instructions to me. Later on—about a month

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after—he began talking about his development.

Q.—At that time this development was well under way from the point of view of its authorization?

A.—Yes, it had been started almost a year before, as a matter of fact.

Q.—From the investigations you have made with respect to water levels within the property of Mr. Cross, what head do you determine as being upon that property?

10 A.—Above the line between the north and south halves of lot 21 on the upper side, and the line between lots 20 and 21 on the downstream side, it would be 7.21.

Q.—7.21 according to the determinations you have just spoken of?

A.—Yes.

Q.—And according to the levels taken by you at those times?

A.—Yes. That is using the elevation 302.5.

Q.—Within the four corners of his own property?

A.—Yes.

20 Q.—In your opinion would that 7.21 feet be good head for development purposes?

A.—I do not understand what you mean.

Q.—Is it balanced? Is it the same on both sides of the river?

A.—The upper pool, the elevation would be the same across the river. That upper pool would extend from Mr. Cross' property on to the property opposite, Mr. Cave's, which is referred to in the other Deed.

Q.—How do you know the elevation on the west side would be level with the other?

30 A.—Because water is level where it is not particularly swift. It finds its own level.

Q.—But, this is dotted with rapids, as it were, is it not?

A.—This is above the rapids. Above the rapid it is level. Going over the rapid it may be churned half a dozen different ways, but then you come to another pool, " G ", where it again seeks its level. Then it goes over a rapid or fall again, and comes to a level at the lower part, which is flat.

Q.—I notice your point " E " is opposite the right of way of the Canadian Pacific Railway?

40 A.—It is opposite the roadway that crosses.

Q.—Is it not opposite the C.P.R. too?

A.—They both come together, like a " V ".

Q.—It is opposite the property of the Canadian Pacific, as a matter of fact?

A.—The two cross together.

Q.—May I take it for granted that so far as Mr. Cross' property is concerned you have based your investigations as to the potential-

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ties of that 14 feet of head upon there being 7.21 feet developable on the property of Mr. Cross?

A.—Not necessarily.

Q.—What do you consider would be the developable head on the property itself?

A.—I think the 7.21, or in the neighbourhood of 7.21, is the developable head on his property, but the lower sheer (if I might call it such) which goes across the river from "G" to "H" is in the neighbourhood of 4 feet—3½ feet.

10 Q.—That would be what you would consider to be what I might in my ignorance call the net developable head on the property?

A.—No. They are divided. There is one sheer down across from lot 21-B to the point "H", and there is another which crosses from the point "E" going across to Cave's property.

Q.—Might I say the average developable head found within the lines of his own property would be 3½ feet, taking everything into consideration?

20 A.—No. I would like to leave the title end of it out altogether. I am simply talking about what is on the river. The lower sheer I estimate would run from 3 to 4 feet, and the upper one about 2½ feet.

Q.—So, may I take it that without regard to any properties above or below Mr. Cross has a developable head or possible head of somewhere in the neighbourhood of 4 feet upon his own property?

A.—No. I should say 7 feet.

Q.—Seven feet, according to you?

A.—Yes.

30 Q.—I think you spoke of there being a possibility of a development up to 14 feet head on this property?

A.—Yes.

Q.—So, going up the river you had to take 7 feet more to get your 14 feet?

A.—Yes.

Q.—You took that up between the northerly limit of Mr. Cross' property and the Peche Rapids?

A.—That includes the drowning out of part of the Peche Rapids.

Q.—How much of the Peche Rapids would be included in that drowning out?

40 A.—Up to elevation 318.

Q.—What is the level at the head of the Peche Rapids?

Witness: At what flow?

Counsel: Let us say at the normal flow.

Witness: 10,000 feet?

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Counsel: No. Take it at the normal minimum flow, 3,000 feet. To get your 14 feet you would entirely drown out the Peche Rapids?

A.—No.

Q.—I see 318.78 on this plan Exhibit P-28 for the head of the Peche Rapids.

A.—The flow there on that date is evidently in the neighbourhood of 6,000.

10 Q.—In a general way, making up your balance sheet on this matter of head, you get 7.21 on Mr. Cross's property, and you get a total of 14?

A.—Yes.

Q.—That elevation, of something like 6.80, you get above?

A.—Yes, from the slope of the river and the bottom of the Peche.

Q.—Do you take in the Peche?

A.—Yes, part of it.

20 Q.—How much of it?

A.—Up to elevation 318.

Q.—So you practically drown out the Peche?

A.—We would drown the Peche out at about 5,000 second feet.

Q.—And you would completely overwhelm it at 10,000?

A.—No. It goes the other way.

Q.—In making up your 14 feet head up to the Peche, what effect would the proposed 14 feet of head have upon the tailwater at Pagan Fall?

A.—I consider it would not have any effect on it.

30 Q.—Have you calculated carefully the backwater curve between Peche and Pagan?

A.—I have used those elevations that are shown, and I have the elevations deduced from the Alcove gauge, which show that at 10,000 second feet the head of the Peche is 320.6; so that 318 should not interfere with it.

Q.—Did you make any actual studies as to the effect of the backwater curve with respect to a 14-foot development?

A.—None beyond what I have heard.

Q.—You have not made any studies yourself?

40 A.—No.

Q.—So, you cannot really tell to what point on the Peche you could go without affecting the Pagan development by way of backwater curve?

A.—I would assume that at 318 it would not interfere.

Q.—That is an assumption?

A.—And from the information I have here of the gauges at Alcove.

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Q.—You have made no study or plotting out of the effects in various places on the river?

A.—No.

Q.—Do you know anything about the controlled elevation at the Weir at the Peche, where it goes over?

A.—No, I do not.

Q.—So, you have merely estimated by the taking of levels from Cascades up to the Peche that you could secure 14 feet of head available at Cascades?

10 A.—Yes.

Q.—Of course, it goes without saying that you would have to take head belonging to somebody else to make up your 14 feet?

A.—Yes.

Q.—That is, of course, understood?

A.—Yes.

Q.—You would have to take away the head of somebody else in order to get your 14 feet?

A.—Yes.

20 Q.—And you would have to pretty well drown out the Peche Rapids?

A.—Yes.

Q.—At the time you made those investigations, the Lieutenant-Governor-in-Council had authorized the use of that head above the Cross property by the Gatineau Power Company?

(Mr. St. Laurent, K.C., of Counsel for Plaintiff, objects to the question as illegal, inasmuch as the authorization of the Lieutenant-Governor-in-Council speaks for itself, and does not bear the construction put upon it in the question.)
30

Q.—There were plans then before the Government, approved or on the point of being approved, which would affect that portion of the river and involve the head between Mr. Cross' property and the Peche?

A.—Yes.

Q.—At the time you were making those estimates of a head of 14 feet, did you know or had you any idea of the property which was owned by your client, Mr. Cross, between Cascades and the Peche?

40 A.—Yes. I prepared a sketch showing the various titles he had indicated on that plan.

Q.—Indicated titles?

A.—By Deeds and Agreements which I had investigated myself.

This plan is simply a copy of the plan which was deposited in Hull by the Gatineau Power Company, on which I have shown the properties: first, registered Deeds for Mr. Cross, in pink; registered individual sales, in brown.

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Q.—What do you mean by that?

A.—I mean by that Cave's, and the document of Levi Reid.

Q.—As I recollect the Cave's document, it was not a sale at all.

A.—It was a document that was registered. I show the land covered both by Cave's document and Levi Reid's document outlined in brown.

The green shows options which he had in that little book of his.

10 Q.—As matter of fact, can you show me any one Deed for any riparian property between the Cascades and the Peche Rapids, other than the pieces at Meach Creek in question here, which belonged to Mr. Cross at the time you were calculating the 14-foot head?

A.—There were the Cascades, the Meach Creek. I do not know the date of the one at Peche.

Q.—It was shortly after the water was raised, in 1927?

A.—It may have been.

Q.—So, in your investigation in 1926 there was nothing in the Peche that belonged to Mr. Cross?

A.—I would not say that.

20 Q.—Would you say there was?

A.—No, I would not.

Q.—The Deeds will speak for themselves?

A.—The Deeds will speak for themselves.

Q.—You tell me, then, that so far as you are aware you can vouch for no Deed into Cross, or no ownership into Cross, between the Cascades and the Peche Rapids, other than the Farm Point or the Meach Creek properties mentioned here?

A.—As a matter of fact, I am not vouching for any of those titles at all.

30 Q.—Still, that is the fact?

A.—Yes.

Q.—So, so far as you are concerned, no head he drew upon to be utilized in his development between Cascades and the Peche was on his own riparian right or connected with his own riparian right in any way, except in so far as the Meach Creek property was concerned?

A.—Outside of whatever value you would give to Reid and Cave's. I was informed by Mr. Cross at the time he had those rights.

40 Q.—Reid was in October, 1926. Was that after your investigations?

A.—Yes.

Q.—And, after the whole plan was projected?

A.—Of course, I did not get into the valuation of the title to this thing at all.

Q.—I know you were retained as a professional man to make a technical investigation into the pretended possibility of a power development, taking it for granted he was in control of the river.

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A.—And based on the fact that Mr. Cross had the right to control the rights above him within certain limits.

Q.—How would he affect the people below him, or on either side of him?

A.—He would be protected on either side because he owns the land.

Q.—What land?

A.—The property as indicated on this Exhibit.

10 Q.—You mean so far as riparian rights on either side of the river were concerned?

A.—Yes.

Q.—I was thinking of it from the downstream point of view. Would he require to get any rights down there to make the development?

A.—I should think both Mr. Cross, or whoever owned this property, and the Canada Cement would have to come to some agreement, because the line is in an awkward position.

Q.—You do not believe he could do anything by himself?

20 A.—I do, yes.

Q.—What could he do?

A.—If there are 10,000 cubic feet per second flowing down the river, and he does not disturb those conditions, I do not see how he is going to interfere.

Q.—You have spoken of 10,000 cubic feet per second flow down the river. That, of course, is a controlled flow?

A.—Yes.

Q.—The next great concentration above this Chelsea power is at Paugan?

30 A.—Yes.

Q.—Paugan being 30 miles up?

A.—Yes.

Q.—Above that is Maniwaki?

A.—Yes.

Q.—And, at the head waters of the Gatineau you have the Mercier dam, built and paid for by the Gatineau Company?

A.—Yes.

Q.—To control the waters of the Gatineau?

A.—Yes.

40 Q.—And above that you have the recently constructed storage dam, paid for by the Gatineau Company?

A.—Controlled by the Quebec Public Streams Commission.

Q.—When you are reckoning your 10,000 feet per second running through Mr. Cross' property, this is made possible by the storage built at the expense of the Gatineau Power Company?

A.—Absolutely. I presume also anyone who wishes to use it for a development would have to pay his share of the toll.

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Q.—You would not suggest it would pay to put a reservoir such as is there now for the purpose of adding 10,000 feet to Cross'?

A.—No.

Q.—How do you estimate this 10,000 feet?

A.—This 10,000 second feet is a matter of common knowledge. I have been informed by Dr. Lefebvre to that effect.

Q.—What is the effect of the Mercier dam, or the Bitobie dam, as it is called, on the Gatineau, with respect to storage?

A.—I cannot separate them out. I know the recent ones have increased the storage considerably.

Q.—You do not know whether they have not brought it up to 10,000?

A.—I am informed by Dr. Lefebvre it has.

Q.—So that the Mercier would be something under that?

A.—Yes.

Q.—You are speaking of a 10,000-foot flow in order to produce your 15,000 horsepower. There was no storage on the river in 1926?

A.—Not to the same extent there is now.

Q.—Was there any?

A.—There was a very little storage.

Q.—Where?

A.—There were different storages they had, for logging purposes and so on.

Q.—How much did they increase the flow?

A.—Not very much.

Q.—What was the normal flow you might have been able to rely upon at that time?

Witness: Without conservation?

Counsel: Yes. Dependable flow.

A.—It is problematic. I should think for a 300-day development you would get—there is not a power development today to be found on the lowest flow that is ever known on the river. There is not a development that goes in on that basis.

Q.—I merely ask you what flow you would give to a development of this kind without storage? What dependable flow of the river?

A.—I would say for a 300-day development that you will get about 5,000 second feet on a 300-day.

Q.—Without storage would the average 300-day run?

A.—In the river as it was at that time.

Q.—What is the accredited normal minimum flow of the Gatineau River according to the books?

A.—About 3,000, I think.

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Q.—That is official, I take it?

A.—Your extreme low is in the neighborhood of 2,000.

Q.—1,970, I am informed?

A.—Yes.

Q.—It is rather flashy?

A.—Yes.

Q.—You would think you would be entitled to rely upon a flow of 5,000 feet for 300 days?

10 A.—With the river as it was, with the limited regulation that was on it at the time. That is borne out by Mr. Francis' report, and it is stated on your own report here.

Q.—Might I ask you what happens for the remainder of the 365 days?

Witness: You mean for the 65 days?

Counsel: Yes. I suppose street cars have to run, and people have to keep their percolators working.

20 A.—I know they do.

Q.—What would you propose to do about that?

A.—You can take care of it through your local storage.

Q.—What do you mean by that as applied to Mr. Cross?

A.—He has about five miles about there that he could use.

Q.—So, it is your pretension that although he develops to a head of 14 feet he may still make use of that water ponded?

A.—Yes, he can use it to a certain extent.

Q.—What is the area involved?

30 A.—I would have to figure it out. I cannot tell you offhand what the acreage would be.

Q.—Then, you have not given much thought to the effect of the ponded water?

A.—Yes, but I have not it separated in that way. I have included it from Chelsea to Wakefield, then I have included it from Chelsea to Cascades.

Q.—Have you ever known of people selling on the basis of 300-day guaranteed dependable power?

40 A.—No. You have mistaken me there. They develop on the basis of the flow for that period. They assume that is a reasonable basis.

Q.—What is your authority for saying that? Can you give me an example of it anywhere?

A.—Yes. It came up the last hearing we had. You will find it in the Records of the Ontario Public Works Department.

Q.—But, will you tell me what it is all about?

A.—You will find it in the records of the Public Works Department.

In the
Superior Court
No. 18.
Plaintiff's
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N. B. MacRostie,
Cross-examination
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(continued)

Q.—Just what will I find?

A.—You will find that one of the bases of estimating the power of a stream is to take the average minimum flow for a period of 300 days.

BY MR. ST. LAURENT:

Q.—Out of the year.

A.—Yes.

10

BY MR. KER (continuing):

Q.—It is clear that in that 300 days the water is going to go away below 5,000 feet a second?

A.—Sometimes, yes.

Q.—And you will trust to your pondage to keep going, or something of that kind; so you are relying on pondage as behind Mr. Cross' property in order to give a 5,000-foot second continuous flow?

20 A.—In my calculation I estimated 10,000—that Mr. Cross had the right to use a 10,000-foot flow.

Q.—You have been very generous to your client, inasmuch as you gave him credit for a 10,000-foot flow which did not exist at the time, and you gave him credit for 6.80 feet of head which he did not own, to make up your 15,000 horsepower?

A.—I assume he has the right to use this.

Q.—And it is on the basis of that assumption, and on the basis of storage which did not exist, you arrive at 15,000 horsepower?

A.—Yes.

30 Q.—Is that electric horsepower?

A.—Water horsepower.

Q.—Not electric horsepower?

A.—No.

Q.—What is the difference?

A.—The water horsepower is the product of the discharge times the height.

Q.—What is the difference? What is the loss when you come to convert water horsepower into electric horsepower?

40 A.—It depends on the efficiency of the wheels, and the generating efficiency.

Q.—What does that represent?

A.—The overall efficiency runs about 75%.

Q.—Depending on the size of the development?

A.—Yes.

Q.—This would not be considered a very large development?

A.—No.

Q.—It would not run as high as 75 per cent efficiency?

*In the
Superior Court*

No. 18.
Plaintiff's
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N. B. MacRostie,
Cross-examination
Sept. 22nd, 1931.
(continued)

A.—I am informed by the manufacturers of the electrical equipment that it would.

Q.—So, your estimate is he might run this suggested development of yours at 75 per cent efficiency?

A.—Yes.

Q.—When you estimate 15,000 horsepower it does not mean 15,000 electrical horsepower?

A.—No.

10 Q.—I presume the electrical horsepower would be something like three-quarters of that figure?

A.—Yes.

Q.—On what is your estimate of \$40 based? Electric or water?

A.—Water horsepower. I think I told you I based my \$40 price on, among other things, the sale of the Gatineau Power to the James Maclaren Company.

Q.—That was one of the things which guided you in putting it at \$40?

A.—Yes.

20 Q.—It was not because you figured the cost of making a development of that kind at Cascades?

A.—I based it on the sales.

Q.—You never figured the cost of developing it?

A.—I made a preliminary estimate.

Q.—Does it gibe with your \$40 per horsepower?

A.—Pretty well.

Q.—What do you mean by pretty well?

A.—I estimated a 14-foot development in Mr. Cross's case would be developed for in the neighbourhood of \$125 a horsepower.

30 Q.—And, that was taking the storage which was there into consideration?

A.—Yes. I have used the storage.

Q.—Which was not in existence at the time?

A.—No.

Q.—Is that per water horsepower or per electrical horsepower?

A.—Per electrical horsepower.

Q.—Will you please tell me how you worked out this 15,000 water horsepower on the head and flow—10,000 feet per second?

A.—Yes.

40 Q.—14 feet head?

A.—Yes.

Q.—How did you work it out, as a matter of arithmetic, or algebra, or whatever it may have been?

A.—Theoretical horsepower is $Q.W.H.$ over 550, which gives 15,883.

Q.—Give us the figures as you go along.

A.—Q, 10,000; H, 14; W, over 550.

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Superior Court

No. 18.
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(continued)

Q.—What is W?

A.—11346.

Q.—What is W?

A.—The weight of a foot of water.

Q.—What is that?

A.—62.5.

Q.—The calculation, therefore, is: 10,000, multiplied by 14, multiplied by 62.5, divided by 550?

A.—Yes: 15,883.

10 I told you this morning 15,600, trusting to memory.

Q.—How do you justify building up a cubic foot per second flow like that, which did not exist? You give Mr. Cross credit for it?

A.—I am telling you what I am doing. I am not going into the justification for it. My estimates are on the basis of 10,000 cubic feet per second.

Q.—Which you admit did not exist at the time?

A.—Certainly. I have said that half a dozen times.

20 Q.—And would not have existed in any way if the Gatineau Company had not gone on?

A.—Or some other Company.

Q.—And which certainly would not have been possible from the point of view of storage on Mr. Cross' property alone?

A.—No, certainly not.

Q.—You spoke of land values at \$60,000—that the rights could be acquired between Peche and Cascades?

A.—Yes.

Q.—Did you take into consideration the effect on the C.P.R.?

A.—No.

30 Q.—Have you any idea what would be involved in the movement of the right of way of the C.P.R. for a distance of five miles?

A.—That is away below this.

Q.—You do not think you would have to touch the railway to make the development of which you speak?

A.—No. I got a profile of the C.P.R., and estimated that possibly \$2,000.00 would straighten it up. I went over it with their Resident Engineer, and my estimate was \$2,000.00.

Q.—In other words, you estimated nothing for re-location of the C.P.R.?

40 A.—No. The re-location of it is all below this project.

Q.—What about the re-location of the highway? Is that all below the property also?

A.—Yes.

Q.—You need no re-location under your development?

A.—No.

Q.—Either of the railway or of the highway?

A.—No. The re-location is all below this.

*In the
Superior Court*

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Cross-examination
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(continued)

Q.—And the proposed upper level of your head pond would be 318?

A.—Yes. Of course in the spring it would be more than that, because in the spring the water is higher than that.

Q.—What slope, or drop, or difference in elevation, did you assume between the top of your 318 at the Peche, and the Cascades?

A.—I should say in the neighbourhood of four-tenths, or five-tenths.

10 Q.—That is water slope?

A.—Yes. I have checked it in the neighbourhood of that.

Q.—Have you computed it?

A.—No. I have checked it actually from levels several times.

BY MR. ST. LAURENT:

Q.—Four-tenths of what?

A.—Of a foot.

20 BY MR. KER (continuing):

Q.—Will you explain the mechanics of your checking?

A.—I checked it actually from levels.

Q.—At 10,000 second feet?

A.—Yes.

Q.—The 10,000 was not in existence then?

A.—No; it is since then. I actually checked the condition.

Q.—Have you any idea what it would be at 5,000 feet?

30 A.—It would be something less than that, flowing through the channel at the present level. As you diminish the flow your pool will flatten out. As you increase the flow it deeps up.

Q.—Have you made any estimate of what power, if any, could be developed upon Mr. Cross' property alone, utilizing his own head and without giving him the rather generous advantage of using things he does not own?

A.—No.

Q.—You do not know whether he has a developable, or a profitable, or a possible power development or not?

40 A.—All I would say is it is a possible power development. I would say it is a possible power development.

Q.—At what cost?

A.—Using the 10,000 second—

Q.—(interrupting) I am not speaking of that.

A.—I will not speak of any other, because I worked on the basis of 10,000 second feet.

Q.—You would not suggest there was any possibility of a profitable development without storage?

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Sept. 22nd, 1931.
(continued)

A.—No, nor on any other part of the Gatineau.

Q.—You have not made any estimate of what it would mean in the way of horsepower on his own property?

A.—No.

Q.—Am I to infer from your answer there would be no development on the Gatineau River which would be profitable without storage?

A.—Not to any extent.

Q.—Do you mean there would, or there would not?

10 A.—There might be some people who would stick a wing wall out in the river and run a small proposition, but I do not think the Gatineau would be considered to be developed seriously without storage.

Q.—I suggest to you as an engineer that it is a proper method of procedure according to the art of your profession or the art of the hydraulic profession to utilize the power concentrates of any river to the greatest advantage in the public interest.

A.—I agree with you.

20 Q.—And, to utilize these to the best advantage it is necessary to acquire and to utilize as much head as possible to develop as much power as possible?

A.—Yes.

Q.—What do you think is the natural concentration in this vicinity?

A.—The way it is being developed today.

Q.—You do not believe a scientific development would be arrived at by utilizing only Mr. Cross' power to the exclusion of every other power?

30 A.—Not the most scientific.

Q.—You believe, therefore, that in the best interests of the public, and of the river, and of the development of power, that it should be included in a greater development?

A.—Yes.

Q.—In other words, for himself it has not any really scientific value as a water power?

A.—I would not say that. Not as much to him as inclusion in a bigger one.

40 Q.—There is no other way possible except for the bigger ones to develop the little ones?

A.—I said that is the most scientific way.

Q.—And, I suppose that is the way it should be done?

A.—Yes.

Q.—In other words, just as in life, some people are born to dominate others?

A.—Yes.

Q.—And some power propositions are born to dominate others?

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Plaintiff's
Evidence.
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Cross-examination
Sept. 22nd, 1931.
(continued)

A.—Yes.

BY THE COURT:

Q.—Without causing any damage?

A.—Even causing damage, I think.

BY MR. KER (continuing):

10 Q.—I think your estimated cost of development was about \$125 per horsepower?

A.—Yes.

Q.—Can you give me the details of that?

A.—I have a summary, if it will answer your purpose. I have worked it all out, but it would take me about two days to get it together for you in detail.

20 I suggested using five and a spare unit, 162-inch runners, of the Koplan type. For that proposition a dam and powerhouse of concrete, and roofing, and so on, would cost \$206,000. The electric room and the wall, \$5,000; Excavation, \$27,000; Unwatering, \$45,000; Equipment (and these prices I am quoting you are prices we received from the Canadian Allis Chalmers Company and others), \$902,000; Stop logs, \$12,000; Crane, \$3,500. I included an item of \$25,000 for a transmission line, depending on where he would sell his power. I have not any particular place in view except the City limits of Hull.

That makes a total of \$1,225,000.

I add interest during construction, at 6 per cent, \$73,530; Engineering and Contingencies, 10 per cent, \$122,550.

30 Making a total of \$1,421,580.

To this I add land damages, \$60,000. Making \$1,481,580.

That development at a mean horsepower on the busbar should give 11,904.

These outputs again are given to me by the manufacturers.

That comes to \$124.80 per horsepower.

Q.—You speak of dam and powerhouse concrete, \$206,000. What is your unit price for concrete?

A.—I am afraid I will have to look that up. I cannot tell you offhand from memory.

40 As a matter of fact, all my unit prices have been checked by J. B. McRae, who went over the unit prices with me and who made certain revisions upward or downward in accordance with what he thought fit. My figures approximated his.

Q.—Will you bring your memorandum of these details for tomorrow's session?

A.—Yes, I will.

Q.—The unit prices on all these materials?

*In the
Superior Court*

No. 18.
Plaintiff's
Evidence.
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Cross-examination
Sept. 22nd, 1931.
(continued)

A.—Yes. I will not say I can dig up the quantities of material for you.

Q.—Did you make a plan, or a sketch, or anything of the kind, covering powerhouse construction and the location of the powerhouse?

A.—I have a suggested cross-section through the plant, but this is the only one I have.

Q.—How did you arrive at your quantities?

A.—I took them out on this basis.

10 Q.—Was this prepared by you?

A.—Yes.

Q.—For a possible development at this point?

A.—Yes.

Q.—Looking at the plan Exhibit P-1, can you tell me in a general way where the dam and the powerhouse would be located?

A.—Generally speaking, across through the line "G-H."

Q.—The powerhouse being where?

20 A.—On the side next the Railway—on the westerly side of the river.

Q.—Just about where?

A.—Over the full length of the space required to handle it.

Q.—Where would your spillway be?

A.—On the easterly side.

Q.—Had you ever designed a construction of that kind before?

A.—No.

I may say I checked these quantities over with a professor of hydraulic engineering at the University as well. The quantities are all right.

30 Q.—Could you make a corresponding indication of the location of your powerhouse on the plan produced by Mr. Papineau, Exhibit P-20, which indicates the soundings?

A.—I indicate it by the pencil lines "A-B." That would be approximately the location.

Q.—The location of the dam and works on the plan Exhibit P-20 would be between the parallel pencil lines "A-B"?

A.—Yes, approximately.

*In the
Superior Court*
No. 21.
Plaintiff's
Evidence.
H. L. Doble,
Examination
Sept. 23rd, 1931.

DEPOSITION OF HENRY L. DOBLE, A WITNESS PRO-
DUCED AND EXAMINED ON BEHALF OF PLAINTIFF.

On this twenty-third day of September, in the year of Our Lord one thousand nine hundred and thirty-one, personally came and appeared

HENRY L. DOBLE,

10

residing at No. 3228 Westmount Boulevard, in the City of Westmount, District of Montreal, Vice-President Canada Cement Company, aged 56 years, a witness produced and examined on behalf of the Plaintiff, who, being duly sworn, deposes as follows:—

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

20 Q.—You are Vice-President of the Canada Cement Company?
A.—Yes.

30 Q.—There was registered in the Registry Office at Hull a Deed of Agreement between the Canada Cement Company and the Gatineau Power Company, before G. C. Marler, Notary, at Montreal, dated October 10th, 1928, (of which I file a copy as Plaintiff's Exhibit P-42). In this Deed it is stated that the sale is made in conformity with the terms of an Agreement entered into between the parties under private signature on the 10th day of July, 1926, and that the consideration was the sum of "One Dollar and other good and valuable consideration which the Vendor acknowledges to have received; whereof quit." Have you, as Vice-President of the Canada Cement Company, Limited, the Agreement under private signature of July 10th, 1926, between the Gatineau Power Company and the Canada Cement Company?

A.—Yes, I have. This is a certified copy of the original. The original is with the Montreal Trust Company, held by them under a Deed of Trust securing our bonds.

Q.—I notice this copy is certified by you.

A.—Yes.

40 Q.—Was it prepared under your instructions, and do you vouch for its accuracy?

A.—Yes.

Q.—Can you leave this copy with us?

A.—Yes.

Q.—Will you, therefore, file it as Exhibit P-43?

A.—Yes.

*In the
Superior Court*

No. 21.
Plaintiff's
Evidence.
H. L. Doble,
Examination
Sept. 23rd, 1931.
(continued)

Mr. St. Laurent: I presume my learned friends for the Defence will not require us to have the original exhibited in Court by the Montreal Trust Company?

Mr. Ker: No, I think we will take this as a copy.

We do, however, object to the production of this document as irrelevant. This is a commercial contract between two Companies, and it has nothing whatever to do with this case and can have no possible bearing upon it.

10

(The objection is reserved by the Court.)

BY MR. ST. LAURENT:

Q.—Were there any other considerations paid for the property beyond what is provided for by this Agreement?

A.—No, that was all.

Q.—The Deed and the Agreement were the total consideration referred to in the Agreement of 1928, Exhibit P-42?

20

A.—Yes.

(Mr. Ker. K.C., of counsel for defendant, declares he has no cross-examination to make of the witness.)

(And further deponent saith not.)

*In the
Superior Court*

No. 22.
Plaintiff's
Evidence.
D. McCarthy,
Examination
Sept. 23rd, 1931.

30

DEPOSITION OF DALTON McCARTHY, A WITNESS EXAMINED ON BEHALF OF THE PLAINTIFF.

On this twenty-third day of September, in the year of Our Lord one thousand nine hundred and thirty-one, personally came and appeared

DALTON McCARTHY,

40 residing at No. 1208 Drummond Street, in the City and District of Montreal, Barrister, aged 35 years, a witness produced and examined on behalf of the Plaintiff, who, being duly sworn, deposes as follows:

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

Q.—I understand that in 1927 you were practising law in the City of Ottawa, as a member of the Ontario Bar?

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No. 22.
Plaintiff's
Evidence.
D. McCarthy,
Examination
Sept. 23rd, 1931.
(continued)

A.—Yes.

Q.—And in that capacity you had been retained by Mr. Cross, the Plaintiff in this case?

A.—Yes.

Q.—And you were acting for him?

A.—Yes.

Q.—You were acting for him, with Mr. Lafleur, in those proceedings which went on before the Public Service Commission?

A.—Yes.

10 Q.—Shortly after the decision of the Public Service Commission on the application, did you as Attorney for Mr. Cross prepare and serve a protest upon Mr. Gale, the representative of the Gatineau Power Company?

A.—Yes, I did.

20 Q.—We had notice served upon Mr. Gale, the Gatineau Power Company and their solicitors, asking them for the original. I understand that up to the present moment they have not been able to locate it. Will you, therefore, look at the document I show you—to be filed as Plaintiff's Exhibit P-44—and will you say if it is a carbon copy of the Protest you prepared on the date it bears?

A.—Yes, this is signed by me. I recognize my signature.

Q.—This is your signature to it?

A.—Yes.

Q.—This is dated May 6th, 1927?

A.—Yes.

Q.—Was the original or ribbon copy completed as to the affidavit, a carbon copy of which is annexed to this Exhibit?

30 A.—Yes, it was duly signed by Mr. Cross and sworn to before Notary Bertrand. I remember going over.

Q.—You were present when it was sworn to?

A.—Yes.

After having the document executed by Mr. Cross, and sworn to before Notary Bertrand, we took Mr. Cross' car, and Mr. Cross and I drove to the Jackson Building. Mr. Cross stayed out in front of the building, and I went up to interview Mr. Gale and serve him with the original copy of this.

Q.—You personally handed the original or ribbon copy of this to Mr. Gale?

40 A.—I personally handed it to him.

Q.—On the date which appears on the juret?

A.—Yes: on May 6th.

Q.—Very few minutes after it had been sworn to before Notary Bertrand?

A.—Maybe half an hour or an hour after.

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

Q.—How long were you with Mr. Gale?

A.—About half an hour, or an hour.

Q.—And finally you wound up by saying: “As a matter of form we will give you a Protest”?

10 A.—No. I went over deliberately, under the explicit instructions of Mr. Lafleur. I had prepared this under explicit instructions from Mr. Lafleur, and practically all the contents had been outlined by Mr. Lafleur. My visit to Mr. Gale was for the express purpose of serving the Protest on him, and fixing notice on his Company.

Q.—You called upon him by this to draw the water down?

A.—Yes.

Q.—On the ground that he was not authorized to have it there?

A.—Yes.

Q.—“Inasmuch as your Company is not authorized by law to flood this land”?

A.—Yes.

20 Q.—Later on you abandoned that attitude, and under Mr. Lafleur's advice you asked to have your damages assessed before the Public Service Commission?

A.—Of course that would be something I would rather you should take up with someone else.

Q.—You really do not know anything about it?

Witness: About what?

30 Counsel: About the subsequent attitude Mr. Cross took with respect to the matter of drawing the water down, under Mr. Lafleur's advice.

A.—Now that you ask me, personally I have always thought we had various remedies, and that it was quite within our power to take any one we desired. Mr. Lafleur also felt the same way about it. We could pursue our remedies under Part Two of the Water Courses Act, or we could go into Court.

40 Q.—But, you are not answering my question. I ask you whether it is or is not the fact that after serving this so-called Protest in 1927, did you, as a matter of form or otherwise

A.—(interrupting) It was not a matter of form.

Q.—Well, in any event, you called upon Mr. Gale or his Company to withdraw the water, and you receded from that position later on and took an action to have your damages assessed before the Public Service Commission. Is that correct?

A.—Yes. Of course, I was not on the case at that time.

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(continued)

Q.—Was it Mr. Lafleur who took that action?

A.—You would have to find that out by somebody else. All I can tell you is what I have personal knowledge of.

Q.—You have no reason to believe what I say is not correct?

A.—I have no reason to believe it is not, but you can better find it out from people who know more about it than I do.

Q.—Did you draw this so-called Protest yourself?

A.—Yes.

10 Q.—And, being an Attorney—and I am sure expert—you left nothing out?

A.—Modesty forbids me from commenting on that.

Q.—Did you check over the titles to the properties mentioned?

A.—Yes, to the best of my ability.

Q.—Where did you get your description of those properties?

20 A.—If I remember rightly, I took my descriptions partly from some of the original papers that had been served in the matter, or from my files generally, and checked them up in the Registry Office. I used any material I had, including abstracts I received from the Registry Office. I checked them up with some papers you had prepared and served in the matter, if I remember rightly. I think I may say I was very careful in checking them.

Q.—You did not actually base the description of the lands from which you called upon him to withdraw the water upon the actual area of land that was flooded?

A.—I tried to take in all Mr. Cross' property and holdings of any kind that had been affected by the flooding or by any of the work done by the Gatineau Power Company at that spot.

30 Q.—And you considered this document to be exhaustive of all that?

A.—I tried to make it to cover the case generally.

(And further deponent saith not.)

In the
Superior Court

No. 18.
Plaintiff's
Evidence.
N. B. MacRostie,
Examination
Sept. 23rd, 1931.

CONTINUATION OF TESTIMONY OF NORMAN B.
MACROSTIE ON BEHALF OF THE PLAINTIFF.

On this twenty-third day of September, in the year of our Lord one thousand nine hundred and thirty-one, personally came and reappeared

10 NORMAN B. MACROSTIE,

already sworn, who continues his testimony as follows:

BY MR. ST. LAURENT, K.C.:

20 Q.—While you were under examination in chief yesterday you referred to a sale of the Higginson property to the James Maclaren Company, which you said you had seen at the Registry Office. At the moment we were not able to lay our hands on the Registrar's certified copy, but we have since located it. Will you now please file it as Exhibit P-45 of the plaintiff, so that you may have it before you while you are being cross-examined?

A.—Yes. This is the Deed to which I referred.

Q.—I think you said it involved something around 700 horsepower?

A.—Yes.

Q.—For which the price of sale was \$25,000, in August, 1927?

A.—Yes.

Cross-examination
(continued)

30 BY MR. KER, K.C. (continuation of cross-examination):

Q.—When we adjourned yesterday afternoon we were discussing the location of your proposed power house under your development, both on the plan Exhibit P-1 and on the plan Exhibit P-20 filed by the plaintiff. Looking at the plan Exhibit P-1 would you say whether in your investigations as to the locality at which this power development was to be constructed you took into consideration what Mr. Cross' rights might be in the bed of the river arising from his riparian ownership on both sides?

40 A.—I assumed Mr. Cross had the right to use the property which was covered by the Deed, and that that carried with it certain rights across the river. If you put up a dam you have to have those rights. As I said before, I do not want to enter into the legal phase of his rights. If he puts a dam across there he has to use the bed of the river, and all the rest of it.

Q.—In the proposed location of your dam did you take into consideration whether or not that dam might be upon part of the river

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(continued)

owned by him, or might be upon part of the river owned by others?

A.—I considered it was within the bounds of the property owned by Mr. Cross.

Q.—In giving consideration to that question did you look into Mr. Cross' rights in the river bed resulting from his ownership of lot 21-B—the triangular lot on the east side?

A.—I worked on the assumption that Mr. Cross had rights in the river bed under the place where I proposed putting the dam.

10 Q.—Did the consideration of that question involve the production of the side lines of Mr. Cross' property into the river?

A.—I did not give any consideration to whether it went in at right angles, or whether it went across.

Q.—I should think that would make some considerable difference in the matter of locating your power house?

A.—The power house was on the opposite side of the river. The wing wall could be swung back or forward a little if necessary.

20 I would like to state that I think any owner has the right to choose and locate his works both at a time and in a position as circumstances demand. I do not say Mr. Cross would do what I had suggested—he might have done something else. My investigations, however, were conducted sufficiently far to assure me that it was an economic proposition, within reasonable limits. It might be subject to a lot of variations as conditions arose.

Q.—I take it you are a witness for Mr. Cross as to the possibilities of the development of this proposition?

A.—Yes.

Q.—And I suggest to you that with this idea in view it is fair we should be able to know upon what you base your assumption.

30 A.—And I am telling you.

Q.—You have not taken into consideration in connection with the development the effect in extent on the river bed of Mr. Cross' riparian rights on the shore?

A.—In so far as they might go out at right angles to the side line I have not considered them.

Q.—You would express no opinion as an engineer on that?

40 A.—I would say possibly that theory might work out advantageously to Mr. Cross, because at the lower side of the property Mr. Cross' long point runs down somewhat perilously close to certain falls on the Canada Cement property, and if he went out at right angles there to the mid-point of the physical river it certainly would include a very large portion of valuable property of the Canada Cement.

Q.—Of course neither you nor I can make those rights for him. If they exist, they exist; if they do not, they do not.

A.—If they exist, they exist; if they do not, they do not.

Q.—What I would like to find out is whether as an engineer you

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have ever given any thought generally, or with reference to this case in particular, to the scientific way of dividing the river bed proportionate to the rights of the riparian owners.

(Mr. St. Laurent, K.C., of counsel for plaintiff, objects to the question inasmuch as this is a matter of law.)

Q.—Did you hear the evidence of Mr. Papineau?

10 A.—Mr. Papineau spoke French, and I am sorry to say I did not catch it all.

Q.—Mr. Papineau was of opinion that those lot lines should be extended across the river to indicate the riparian rights. Do you agree with that? Have you given it any study?

A.—I understood that was the way they went.

Q.—But you do not know?

A.—I do not know. That is a point of law I have heard discussed with the lawyers.

20 Q.—You did not take it into consideration at all in connection with your development?

A.—Yes.

Q.—You did take it into consideration?

A.—Yes.

Q.—You were basing yourself on the lot lines running across the river?

A.—Yes.

30 Q.—I am afraid I was not quite clear yesterday as to your evidence in regard to the water levels on the Cross property. I am speaking of the levels entirely within the bounds of Mr. Cross' property.

Witness: What do you mean by the bounds? Under which theory?

Counsel: Let us take it on your own theory first. You said you took elevations at the points "C" and "D" downstream.

A.—Yes.

Q.—On the west side?

A.—Yes.

40 Q.—And you took the elevation at the point "E", opposite the C.P.R., on the west side?

A.—Opposite the highway.

Q.—Opposite the property somewhere?

A.—Yes.

Q.—At the point "E" on the plan?

A.—Yes.

Q.—Was I right in understanding you to say you had taken no levels on the east side?

A.—Not on March 24th, 1926.

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Q.—You took no levels there?

A.—Not at that time.

Q.—Do you remember what was the flow of the river when you took the levels at the extreme points on the west side? 3400, I think you said?

A.—3420, I think, if I remember rightly.

Q.—Is there any fall, or pitch, or drop on Mr. Cross' property between the point " E " and the point " G " ?

A.—Yes.

10 Q.—So, when I understood you to say (and I would like you to correct me if I am wrong) that you assumed the level at " G " to be similar to the level on the other side of the river, you did not take that fall into consideration?

A.—I did not say that.

Q.—What did you say?

A.—I said the fall at the point " E " was carried across the river. I would like to explain that approximately opposite the point where the C.P.R. crosses the roadway—just below that—there is a fall across the river extending across from Mr. Cross' property to
20 the easterly side of the river.

Q.—But, not on Mr. Cross property?

A.—Part of it over on the property opposite, Cave's.

Q.—And, that fall runs right across the river?

A.—Yes.

Q.—And it is opposite Cave's property on the other side?

A.—The line between the north and south halves would run somewhere around there.

Q.—In order to arrive at the point " G " the level will be lower
30 at " G " than it is at " E " ?

A.—Certainly.

Q.—Do you know what is the level at " G " ?

A.—I took it later on.

Q.—Under different conditions?

A.—Under different conditions.

Q.—Have you any means of comparing it with the west side under the same conditions?

A.—On September 25th, 1926, I made a detailed survey locating the ledges of rock and Islands across the river between 21-B
40 and the point marked " H " on the plan Exhibit P-1, and I took levels at many places on that date. The water levels on that date, just right below the falls—not at the extreme lower part, but right below the lower fall (if I may describe it as such). . . .

Q.—(Interrupting). The second rapid?

A.—The second rapid—was 303.95. The elevation at " G " was 307.54. The elevation at the point " E," also checked opposite Cave's property above the first rapid, was 310.08.

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Q.—And, below?

A.—I did not check that on that date.

Q.—That brings us to the point about which I wish to be clear. Within the bounds of Mr. Cross' property, on the east side there is a difference of about 3 feet in level between that and the west side.

A.—The fall cuts off as I indicate on the plan.

Q.—Am I right then in saying that between the point "E" and the point "G" there is a normal difference of about 3 feet in elevation?

10 A.—Two and a half to three feet.

Q.—How did you propose to take full advantage, from the point of view of head, of the full length between the lower part of Mr. Cross' property and the upper part when there was an intervening space which was three feet lower than the upper?

A.—Backing the water up from the dam constructed along the lines I suggested.

Q.—Do you mean that would not make a reduction in the head of 7.21 feet which you estimated yesterday?

20 A.—No. That 7.21 I indicated, of course, includes the full utilization of the fall which goes across on that property opposite Cave's.

Q.—It is utilization of head that is on Cave's property?

A.—Utilization of the two falls.

Q.—By utilizing the head on Cross' property, what would your developable head be—leaving aside Cave's?

A.—You wish to eliminate the second fall. The first is 3½ to 4 feet.

30 Q.—What is the average developable head within the four limits of Cross' property?

A.—The lower fall is 3½ to 4 feet.

Q.—That is the developable head on his property?

(Mr. St. Laurent, K.C., of Counsel for Plaintiff, objects to the question inasmuch as this is a matter for the Court to determine.)

(The objection is reserved by the Court.)

A.—I would not say that.

40 Q.—From a scientific point of view what is the amount of head, fall, elevation, difference in level, or whatever you may call it, that can be developed within the lines of your own property?

A.—The lower fall is from 3½ to 4 feet.

Q.—Lower than the upper part?

A.—No: that is the fall itself—the extent of it. The upper fall is 2½ to 3 feet.

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Q.—In your opinion would that indicate the amount of head on that property itself?

A.—It would indicate the amount of head in the lower fall.

Q.—Within the lines of Mr. Cross' property—taking his own property by itself and not borrowing from anyone else?

A.—Without giving any weight to this Deed from Cave's it would be 3½ to 4 feet.

Q.—Without giving any weight to the option or note book from Cave's?

10 A.—Not the notebook—the Deed of Sale.

Q.—The promise of sale, Exhibit P-39. In any event, at the time that water was raised the property did not belong to Cave's, and now belongs to the Company?

A.—I believe the Company has gone through expropriation proceedings in that respect.

In addition to that 3½ to 4 feet head Mr. Cross would have equity in the upper fall because part of it is on his property as described by the Deeds.

20 Q.—What is an equity in a fall?

A.—A certain right.

Q.—You mean an equity in Cave's fall?

A.—No, in the one he has on his own property.

Q.—I should think if it was his own he would have more than an equity.

A.—One may have an equity in a property which two persons own. I presume as a lawyer you would know that.

Q.—The lower fall you speak of on the east side, making up the 3½ feet, is not entirely on Cross' property?

30 A.—At high water you will find part of it on the upper end of the Canada Cement.

Q.—So that amount would pull down from your 3½ feet on Mr. Cross' property?

A.—As I stated yesterday, in the development of either Canada Cement or Cross you would require to have some reasonable arrangement between those two owners on account of the way that line goes across.

Q.—Otherwise Cross could not develop his property?

A.—I would not say that.

40 Q.—What is the alternative, if you cannot make an arrangement?

A.—Do the best we can in the circumstances.

Q.—What would you consider the best he could do if he could not make any arrangement?

A.—He could put a dam across where I say.

Q.—Can you give me any estimate of what horsepower would be developed with such a dam, sticking to his own lot, on the natural

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flow of the river?

A.—I would say it would not be an economic proposition on the natural flow.

Q.—You stated yesterday you had made estimates of the development going up the river to the Peche. I understand Mr. Cross did not own the Peche. Am I right?

A.—I understand he owns part of it.

Q.—Did he own any part of it at the time you were making your investigations?

10 A.—I did not say he did.

Q.—Is it to your knowledge he only purchased an acre of land purporting to border on the Peche some time after the water had actually flooded that point?

A.—It is my understanding he got the Deed after, but he had an agreement or consent before. I also know at the time of this discussion the Gatineau Power Company was going through.

Q.—In any event, is the Gatineau Power Company the owner of the Peche Rapids now, to your knowledge?

20 A.—They have gone through expropriation proceedings or have purchased part of it.

Q.—Of course, you do not know what they paid for it?

A.—\$1,500, I understand.

Q.—What is the drop at the Peche?

Witness: At what stage of the river?

Counsel: Do you mean at what flow of the river?

30 Witness: Yes.

Counsel: Say at the 5,000 feet a second flow—or, let us take the minimum of about 3,000, which is the Gatineau's normal minimum, I believe.

BY MR. ST. LAURENT:

Q.—Do you agree with the statement that the normal minimum of the Gatineau is 3,000 feet a second?

40 A.—No. Mr. Ker is just giving me an arbitrary figure.

BY MR. KER (continuing):

Q.—Perhaps we might refer to it on the plan of the Streams Commission.

A.—They refer to 5,000 feet there.

Q.—What is the drop?

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- A.—It is shown on the plan filed.
- Q.—About 6 feet?
- A.—Something like 6 feet. I can work it out exactly for you, if you wish.
- Q.—I think we may agree it is about 6 feet?
- A.—Yes.
- Q.—And this contains the concentrated head on that property, does it not?
- A.—Yes.
- 10 Q.—And you say they paid \$1,500 for it?
- A.—Yes.
- Q.—Mr. Cross seems to have about 3½ feet of fall on his property?
- A.—Yes.
- Q.—And he appears to want \$600,000 for it?
- A.—Mr. Cross estimates on it being developed to a higher head.
- Q.—But I am speaking now of utilizing the property within itself. Comparing the two properties for use within themselves, one has 6 feet of head and the other has about 3½.
- 20 A.—The 6 feet cannot be developed without in any way interfering with Paugan.
- Q.—Why do you stop your development at the Peche? Why do you not go up to Paugan?
- A.—Because it is the logical place to stop my development below it. There is no use taking the head off up above to add it below. There can be only one excuse for doing that, that is that you can have more pondage at the lower end.
- Q.—You would not think there would be anything gained by
- 30 Mr. Cross going up any farther than the Peche?
- A.—No; and not even to the top of the Peche, I should say.
- Q.—In connection with your researches on the matter of powerhouse construction on this property, you were developing on the basis of a 14-foot head, 10,000-foot flow?
- A.—Yes.
- Q.—Were the estimates you gave yesterday of powerhouse cost and cost of the work based upon any soundings made as to the nature of the rock below?
- 40 A.—I took a series of soundings, locating the bottom of the river and rock, across for a stretch of possibly 75 feet on either side of where we proposed to do the work. I took them every 25 feet.
- Q.—Did you make any plan showing those soundings?
- A.—I did.
- Q.—You did not, of course, make any borings?
- A.—No, I did not make any borings.
- Q.—Have you the plan of which you speak?
- A.—I think Mr. Beaubien has it.

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I may say those soundings agree substantially with the soundings taken by the Gatineau Power Company. I have seen their soundings, and they agree substantially with mine.

Q.—Your powerhouse was designed for operation under a head of 14 feet?

A.—Yes.

Q.—How many wheels did you propose to have?

A.—Six: 162-inch runners.

Q.—Six wheels?

10 A.—Six wheels, Caplin type, adjustable.

Q.—Each capable of

A.—2,500 horsepower.

Q.—That would be about 15,000 horsepower?

A.—About that.

Q.—What provision had you made for head under flooding conditions?

A.—That head would be reduced to about 9 feet under flooding conditions.

20 Q.—What would be the percentage of reduction?

Witness: The reduction of output?

Counsel: Yes.

A.—I submitted that question to the designers of the wheels, and the rating I gave you yesterday was the outcome of their investigations.

30 Q.—Perhaps I did not just get it. Do you remember what the percentage was?

A.—I did not give it in percentage.

Q.—What flood flow did you estimate?

A.—The flood flow varies.

Q.—Sometimes there is 97,000 cubic feet running down there?

A.—76,000.

Q.—And down to 1,900?

A.—Yes: that is non-regulated.

40 Q.—At what flood flow would your head be reduced from 14 feet to 9 feet?

A.—About 40,000 to 50,000 second feet.

Q.—How long would that continue?

A.—Under a regulator proposition, it is hard to say.

Q.—Under a non-regulated proposition?

A.—You would get a higher spring flood than that.

Q.—It would run up to 90,000 feet?

A.—No, I would not say that. 76,000 was the high before.

Q.—And it would run down to what, unregulated?

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A.—The lowest record, as I see it, is in the neighbourhood of 2,000.

Q.—You spoke of a sort of general minimum of 5,000 cubic feet?

A.—Yes.

Q.—How many months in the year would you expect the water to be below 5,000 feet a second, unregulated?

A.—This year you would have a very exceptional condition.

I would like to say at the time Mr. Cross would develop this he had purchased and sold the Paugan proposition above this, and any
10 regulation at Paugan, or any other regulation on the river, would materially affect the power development below. There is exceptionally good pondage at Paugan.

Q.—What I want to know is how many days the water runs below 5,000 cubic feet a second, and how you would propose to carry on in the days it would run below that figure?

A.—I did not propose to carry on with a 5,000-foot flow at all. I am suggesting a 10,000-foot flow.

Q.—So, all the estimates you have made are on the basis of the
20 utilization of storage bought and paid for by the Gatineau Company on the river?

A.—They are based on a 10,000-foot flow.

Q.—Based on the utilization of storage constructed and put in at the expense of the Gatineau Company?

A.—And towards which Mr. Cross would have to contribute his pro rata share if he developed.

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

A.—About \$1570 odd a foot head, for a period of 40 years.

Q.—What would that amount to on the power you thought of
30 developing? How much would it amount to per year to him?

A.—That would mean, in rough figures, an annual charge of about \$22,000, which would have to go against the revenue of any development.

Q.—\$22,000 a year?

A.—Yes; over 40 years.

Q.—I want to be quite clear on the fact that you have made no estimates of the possibilities of economical development or otherwise except by utilizing a 14-foot head and storage?

A.—I said my investigations of an economic proposition are
40 based on the use of a 10,000-foot second flow or substantially that.

Q.—And upon a head of 14 feet?

A.—Varying, of course, depending on high water and other conditions. I would not even say you could not develop a less head and make it economic. I have investigated heads that go down as low as 8 feet.

Q.—They are expensive to develop, are they not?

A.—Some of them. Some are not expensive, due to natural

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conditions.

Q.—It is the fact, is it not, that when you have to provide for flooding conditions on those low head propositions you increase the cost of your construction in the power house and other works?

A.—Not the power house, no. You have to make provision for your overflow or your spillway.

Q.—You maintain there was no re-alignment, or renewal, or raising, or interfering with either the road or the railway by your development?

10 A.—I said yesterday it would possibly require about \$2,000 on the railway.

Q.—Not more than that?

A.—And it is possible there would be a small amount on the road too.

Q.—Can you give me an estimate of the amount?

A.—I did not have the road profile. I had the profile of the railway, and I checked up my estimates with the Resident Engineer, and that is how I arrive at the \$2,000 for the railway. As to the road I have only my general impression of going over it. I would think there would be some small amount that would have to be done on the roadway.

20 Q.—How would your head be reduced for flows in excess of 50,000 cubic feet?

A.—If my memory serves me right I think the critical point is 40,000.

Q.—What do you mean by the critical point?

A.—Where you have your minimum head. I have one level taken at the discharge, of 46,000, if that will answer your question sufficiently closely. The elevation of the tailwater should be 310.85 under normal conditions.

30 Q.—The tailwater would be 310.85, under 46,000?

A.—Yes. In addition to your 18-foot head you would have the increase above 18. That is an abnormal condition. I would say you would have close to 9 feet.

Q.—It would be something below 9 feet?

A.—Around 9 feet.

Q.—Your head would be reduced from 14 feet to 9 feet?

A.—Yes. I told you that was the condition I worked under.

40 Q.—How much electrical power would you be getting out of your plant at that time, on the design of six wheels you speak of?

A.—I asked those people for a power development from 9 to 14 feet head—9 under flood conditions, and 14 under normal operating conditions—at 10,000 cubic feet per second. Five wheels would give me 10,930; operation of six, 11,904. That was the rating given me by the Company?

Q.—Between those heads, on the basis of 9 to 14?

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A.—Yes.

Q.—I do not want to be technical about this matter, but I would like you to tell me as clearly and as simply as you can about the question of pondage. You spoke in your examination in chief of the great advantage accruing to the defendant by being able to utilize pondage in the area including and above Mr. Cross' property, and I think you said it was about half the total pondage for the Chelsea development?

A.—No, I did not say that.

10 Q.—You said for a drawdown of 2 feet in the whole river up to the top of the part we are discussing now they would secure something like 77,000 additional horsepower?

A.—Spread over a period of 10 hours.

Q.—Assuming that instead of developing up over the property of Mr. Cross they stopped their development just below his property, in a manner not to interfere with it, they could arrive at the same result from the point of view of pondage by drawing down 4 feet instead of 2 feet for the same time?

20 A.—Yes, but it would be at a reduced head below. Their mean head would be reduced.

Q.—What would they lose in electrical horsepower—in mean head—by so doing?

A.—They would lose 2 feet in mean head, drawing down 2 feet instead of 4.

Q.—If they go up the whole river they only have to draw down 2, where they would draw down 4 below?

A.—Yes.

Q.—That 4 is a mean over, let us say, a week?

30 A.—Oh, no.

Q.—The average would be about 2?

A.—The 4 is a daily proposition.

Q.—So, it is the average over a day?

A.—During the period of the drawdown. It is the average running from your peak down to 4.

Q.—And the average of that—

A.—Is two.

Q.—Taking the lower part alone the average would be 2?

A.—Yes.

40 Q.—And taking the average up over the whole stretch, it would be one?

A.—An average of one of that, yes.

Q.—So, the difference between drawing down their own pool and the other is the average of the difference between 2 and 1?

A.—But it has to be spread over your two plants.

Q.—But, is not that the case?

A.—No, I do not think that is quite right. Let us go over it

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again, so that I may see if you are right. Give me a definite head to start from at Chelsea. Let us take it 304. Take 306 to 304, your average would be 305; 306 to 302, your average would be 304. I understood you were not including the upper one at all.

Q.—Perhaps we might take it only to the bottom of Mr. Cross' property for pondage purposes. We would be drawing down an average of between nothing and four?

A.—Yes.

10 Q.—Which is two?

A.—Yes.

Q.—If instead of stopping there we ran up the whole river and took all his so-called pondage, too, you say we draw down an average of 2 feet?

A.—I took a hypothetical case of a 2-foot drawdown in both cases.

Q.—Taking the hypothetical drawdown of 2 feet over the whole thing, that is an average for the time of one foot—from nothing to 2?

A.—Yes.

20 Q.—That is one foot, presupposing the whole river?

A.—It is equivalent to about 2,894 cubic feet per second over the period of 10 hours.

Q.—If we stopped and got no results of pondage at the upper part above Cascades, we could get the same result by drawing down our own pond within our own limits up to Cross' 4 feet?

A.—Yes.

Q.—That means we would be drawing an average of 2—from nothing to 4?

A.—Yes.

30 Q.—So, if you take an average of 2 on the lower part of the pond utilization, and an average of 1 by utilizing the whole river, you get the advantage of 1—that is, the difference between 1 and 2?

A.—Plus 14 feet of head constant.

Q.—Do you think that would represent any horsepower at Chelsea?

A.—As I stated yesterday the average of 1 foot over the 2 feet drawdown would be the equivalent of 5,300 cubic feet per second.

Q.—About 1,000 horsepower?

A.—More than that.

40 BY MR. ST. LAURENT:

Q.—What does 1 foot of head mean on the Gatineau River?

A.—One foot of head, and 10,000 feet. What efficiency do you want?

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Q.—Any efficiency you like to name. 1,000 horsepower.

A.—1,000 horsepower, roughly speaking, at 90% efficiency.

Q.—So, instead of being 77,000, which you estimate, really the only advantage in pondage is about 1,000 horsepower developed at Chelsea.

Witness: The pondage?

Counsel: Yes.

10

A.—1,000 additional, straight through, yes.

Q.—In other words, to put it simply, we would only lose 1,000 all the way through by sticking to our own pondage?

A.—No. Pondage is more valuable. You are trying to reduce it to a 24-hour basis. Pondage is more valuable as pondage than power on the 24-hour basis.

Q.—You do not know what is the area of land actually flooded on the Cascades?

A.—No, I do not.

20

Q.—You never measured it at all?

A.—No.

Q.—You have not estimated where the C.P.R. right-of-way might strike the river?

A.—No. I presume the plan Exhibit P-1 is correct. I would accept that.

Q.—Let us now go up the river to Meach Creek. When did your intensive investigation of the condition on Meach Creek begin?

A.—March, 1926.

30

Q.—At the same time.

A.—Yes.

Q.—Towards what were your investigations there directed? To what end were your investigations being made?

A.—Preparation for the case which was heard some time ago.

Q.—Which case was that?

A.—The case that was heard here in 1927.

Q.—In which the Company alleged there was not 200 horsepower on Meach Creek?

40 A.—Where the Company applied for rights to expropriate, and where they did not get them.

Q.—Meach Creek is a creek which runs into the Gatineau River above the Cascades, between the Cascades and the Peche Rapids?

A.—Yes.

Q.—On the west side of the river?

A.—Yes.

Q.—How far does the creek run back from the river before the land begins to rise violently?

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A.—I should say about 200 to 250 yards.

Q.—And then there is a very considerable slope up?

A.—Yes.

Q.—At the top of which Mr. Cross' dam is erected?

A.—Yes.

Q.—Of course, it is not at all in issue between the parties that the dam on the top of the hill is in any way affected by this flooding?

A.—No.

10 Q.—Nor is the quantity of water and debris which runs into that dam in any way affected by this development?

A.—No.

Q.—So if there is no water in the upper dam on Meach Creek it is not the fault of the Gatineau Power Company?

A.—No.

Q.—Coming down the slope along the creek as it runs down, there is, first, the dam which impounds the water, then there are the penstocks or pipes carrying this water down from the dam into the powerhouse?

20 A.—Yes.

Q.—What is the size of those pipes?

A.—30-inch.

Q.—How many are there?

A.—One.

Q.—There is only one 30-inch pipe?

A.—There is a 48-inch opening through the dam as well.

Q.—For the purpose of the sawmill?

A.—No, the sawmill and the powerhouse are both run off the 30-inch pipe.

30 Q.—The powerhouse is at the end of the penstocks?

A.—Yes.

Q.—And the powerhouse is shown on one of your photographs as an unpretentious looking little white building. It appears on the photograph Exhibit P-31, at the point where I put the arrow and mark "P.H."—a small white building with an opening in it?

A.—Yes.

Q.—What is the level of that powerhouse?

Witness: The floor?

40

Counsel: Yes.

A.—321.5. There is a decimal after the five, but I forget what it is.

Q.—The water runs through that powerhouse, generates the electricity, and then runs down into Meach Creek as tailwater?

A.—It runs through the draft-tube below.

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Q.—So if you back up the water of Meach Creek you are reducing the tailwater although you are not physically touching the powerhouse?

A.—Yes.

Q.—And I think you said the head would thereby be reduced somewhat?

A.—Yes.

Q.—To what extent?

10 311. A.—The bottom of Mr. Cross' draft-tube is around elevation

Q.—You said if it were cleaned out. Just what did you mean by that?

A.—Sawdust, and so on.

Q.—I suppose there is an accretion of mud, stones, sawdust, boulders, and so on?

A.—There is a certain amount of debris that gets in there from time to time.

Q.—And, everything that is in there reduces the head?

A.—It would.

20 Q.—Do you know exactly what the condition is with respect to what is in the bottom there?

A.—I know I put down a rod to the bottom of it .

Q.—To the bottom of what?

A.—The draft-tube.

Q.—Through the debris?

A.—Yes.

Q.—What kind of debris is there?

A.—I could not tell you offhand.

30 a matter of fact? Q.—It is rather important. It has never been cleaned out, as

A.—I would not say that.

Q.—In any event, it has not been since we have had anything to do with the case?

A.—I do not know. It has been flooded practically since you have had anything to do with it.

Q.—Whatever may be in it would have the effect of reducing the head just as would the backing up of the water?

A.—Yes.

40 Q.—If the tailrace were clean the total head would be 76 feet?

A.—Around that. Of course, it is sometime since I checked those levels, and I am speaking from memory. I know it is around 76 feet.

Q.—Is that powerhouse operating?

A.—Not at the present time.

Q.—I gathered the impression from your evidence yesterday that you seem to blame the Gatineau Power Company for the fact

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that it is not operating. Is that the case or is it not?

A.—Yes.

Q.—Will you tell me how, or in what respect, the Gatineau Power Company has prevented the running of the water through the penstocks into this powerhouse?

A.—They have reduced the output of that plant, which has resulted in many complaints being registered with the Public Service Commission, who, in turn, have ordered Mr. Cross to secure power from the Gatineau Power Company.

10 Q.—But, that is not an answer to the question I asked you.

A.—In any event, it is the fact.

Q.—That was what I understood you to say yesterday, and I would like to know exactly whether it is right or wrong. Through the operations of the Gatineau Power Company, as a matter of fact, the possibility of production of electrical energy in that plant has been reduced by 10 per cent, by reason of the flooding of the tailrace?

A.—Their power has been reduced, yes.

20 Q.—By 10 per cent.

A.—Yes.

Q.—Apart from that what other physical effect has the flooding had on the power development? Has it injured the powerhouse in any way?

A.—I think the water has been on the floor once or twice.

Q.—It always came up every spring?

A.—Yes.

Q.—You would not impute that as any great fault?

A.—No.

30 Q.—What other physical effect has resulted, apart from the reduction of head, by reason of the flooding of the tailrace?

A.—It has the effect that Mr. Cross' operations on Meach Creek, not only his power plant but his whole operations, have been disorganized.

Q.—But I am now speaking only of the power plant.

A.—It is all linked together. He has been seriously disorganized, with the result that he has neither had the opportunity nor has he looked after his storage above as he should have looked after it.

40 Q.—That is rather a left-handed fault to impute to the Gatineau Power Company. I suppose if Mr. Cross went out and got drunk (which he is not at all likely to do) the result might be the same—it is just as indirect?

A.—Oh, no.

Q.—To come back to the question of the effect on the actual power and on the powerhouse: all it consists of is a reduction of about 10 per cent in his head?

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A.—Yes.

Q.—He has only one wheel?

A.—Yes.

Q.—One penstock?

A.—Yes.

Q.—It has not taken one drop of water out of his dam?

A.—No.

10 Q.—Nor has it prevented one drop of water from running through his powerhouse?

A.—No.

Q.—So, if the power property is not running now it is not because the Gatineau Power Company has interfered with its physical operation, except in so far as its decrease of 10 per cent output is concerned?

A.—If Mr. Cross is selling power up to his capacity, and may be beyond his capacity, and if 10 per cent is taken off, that is spread over his system and results in complaints.

20 Q.—But I am speaking of the actual abandonment or closing down of the proposition. You say it is not operating, and I would like you to tell me whether that fact is due to any physical effect the flooding has had upon the power development?

A.—The Order of the Public Service Commission said so.

Q.—Which order?

A.—The one that was read yesterday in Court. Due to the flooding.

Q.—When was that Order issued?

A.—I believe in 1927; and amended in 1930.

30 Q.—But that had only to do with distribution matters between Kirk's Ferry and Cascades, several miles down the line?

A.—No. In 1930, when they were ordered to take the proposition over, that Order included all his distribution.

Q.—The 1927 Order is the one of which I am speaking.

A.—And that was amended in 1930, to include it all.

Q.—Between 1927, when the water went up, and 1929, Mr. Cross still continued to operate his power?

A.—Yes.

40 Q.—So he was not put out of business by any flooding that took place?

A.—No, but there were many complaints.

Q.—Had there never been complaints before about Mr. Cross' power?

A.—I presume there had been. I have never yet seen a system about which there were no complaints. I may tell you I have had a lot of complaints since the power from the Gatineau Company has been supplied.

Q.—As a matter of fact, Mr. Cross' power was never a very

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satisfactory power from the customers' point of view, even long before the Gatineau Company ever came on the river?

A.—It was the best they had.

Q.—And if they did not have it they would not have had any light?

A.—No.

Q.—What has been the flow over Meach Creek this summer?

A.—I have not checked it this summer.

10 Q.—Would you be prepared to take issue with me if I were to tell you there was absolutely no water running over that dam this summer?

A.—I do not know. I have not checked it this summer at all.

Q.—If it were the fact that there was absolutely no water running over that dam this summer, you would not blame it on the Gatineau Power Company?

A.—No.

Q.—If there is no water, the plant has, of necessity, to be abandoned? The wheels have to stop turning?

A.—Yes.

20 Q.—And is not that the actual condition at the present time?

A.—No: there was quite a bit of water the last time I was there.

Q.—When were you there?

A.—Two weeks ago last Saturday.

Q.—Was there enough water to move the wheels?

A.—Yes.

Q.—Power could be generated?

A.—I would judge there would be possibly 40 or 50 cubic feet per second going down.

30 Q.—Two weeks ago?

A.—Yes.

Q.—Did you see it before this summer?

A.—Yes.

Q.—Has the power been operating?

A.—No. He has been using it for the mill.

Q.—He has been utilizing his water to saw logs?

A.—Yes.

Q.—He has not been operating his regular system?

A.—No. It has been closed down since a year ago last July.

40 Q.—Because there was not sufficient water in his lake to run it?

A.—In a satisfactory manner, to give the power necessary for his distribution system.

Q.—He could not run his distribution system from the water that was available?

A.—I will say he has carried on in a way since 1912.

Q.—Since 1926 or 1927 he has not been able to run his distribution system really satisfactorily?

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A.—No.

Q.—Because he has not had sufficient water?

A.—He had lots of water in 1927 and 1928.

Q.—The Company has not interfered with that?

A.—No. There was lots of water in 1927 and 1928.

Q.—If the distribution system has been interfered with it was not due to the fact that the Company has cut his water off or interfered with his powerhouse at all?

A.—Not altogether.

10 Q.—Do you maintain it is because of this 10 per cent cut in the tailrace?

A.—That is one of the reasons.

Q.—But, it is not the sole reason?

A.—No. This year there is no doubt of the fact there has been an abnormal condition.

Q.—How would Mr. Cross be expected to meet such an abnormal condition as that, when there is no water at all in his dam? If the Gatineau Company were not on the river, his customers would have to go without light?

20 A.—Yes.

Q.—Do you not think that the fact that the Company was there, and that Cross was able to buy power from them to supply his customers is something in favour of the Company?

A.—I would not say it is not more satisfactory to take power from a large Company like the Gatineau Company rather than from a small proposition.

30 Q.—I gathered the impression from your evidence that you had some official mandate from the Public Service Commission to put this power property on its feet?

A.—Oh, no. We were simply asked to keep the books and everything because Mr. Cross had no proper system of books over years.

Q.—By whom were you asked to do that?

A.—Mr. Cross asked me to do it. It was suggested at the hearing that we do it.

Q.—Whom do you mean by "we"?

A.—MacRostie & White.

40 Q.—So you are now having the meters read, sending out the bills, collecting the money, and generally taking care of the administration; utilizing power you are buying from the Gatineau Company?

A.—Yes, and keeping a record of it.

Q.—And due to natural causes you would be unable to function this year if it were not for the fact that you were able to buy power from the Gatineau Power Company?

A.—Taking over the plant as it stands.

Q.—So we have saved something to you in the way of customers,

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by giving you power and enabling you to carry through a situation you could not have handled yourselves?

A.—Supposing the Gatineau Power Company were out of it, and I had anything to do with it, I would recommend Mr. Cross availing himself of the storage he has on Meach Creek. He has not done it as he should have.

Q.—That is storage which was never any good at all?

A.—Personally we are not at all responsible for the condition, you understand. I am stating the facts as they are.

10 Q.—You had no mandate from the Public Service Commission to go in and run the business there, as it were?

A.—No mandate. It was just suggested at the hearing that we do it. They asked for books at the time, and the books were not produced.

Q.—Some time in 1929 Mr. Cross had complaints from his customers, due to lack of water?

A.—Yes.

Q.—At that time the Gatineau Power Company offered to give him temporary power, to help him out?

20 A.—I do not know. I was not present. I was only present in June, 1930, I think.

Q.—As a matter of fact, for three months in 1929 he got power from the Gatineau Power Company, and then he started operating again. Again, in 1930, his plant fell down and he is now getting power from the Gatineau Power Company?

A.—Yes.

Q.—You are not aware of the report of the engineer of the Public Service Commission made on September 27th, 1929, on this plant? I show you a copy of the report, and ask you if you have ever seen it before.

30 A.—I rather think I have. I think Mr. Cross brought it in to me. I agreed pretty well with it.

Q.—I suppose you also agreed with the statement of the engineer that "the flow of the above creek does not seem sufficient to run the water wheel"?

A.—I agree with that; without storage.

Q.—And that is not the fault of the Gatineau Power Company?

A.—No.

40 I also know that after we became responsible for it I went over the system with the Chief Engineer of the Public Service Commission and put things in repair as suggested by him and obtained his approval to everything that had been done, and he said everything was O.K. as far as we could make it.

(The Report referred to is produced as Defendant's Exhibit D-5.)

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Q.—This Report also refers quite frankly to the fact that the tailwater has been affected by the Gatineau Power Company?

A.—Yes.

Q.—Will you look at the document Exhibit P-30, which is a copy of an Order dated September 3rd, 1927, signed by Mr. Macalister, Vice-President of the Public Service Commission, and will you say what it refers to in respect to Mr. Cross' Meach Creek plants?

10 A.—This is the first time I have seen it. I just heard it read in Court.

Q.—This appears to be in respect to giving electric service to people between Cascades and the next settlement down the river, Kirk's Ferry?

A.—Yes.

Q.—And it has nothing whatever to do with the Meach Creek powerhouse, or the Meach Creek property, has it?

20 Mr. St. Laurent: I think that question is objectionable. The document speaks for itself.

A.—I presume that applies to the ones on the lower side, which were on the line that was flooded out.

Q.—It refers to people who were flooded out along the road, and on other properties which had previously been served by Mr. Cross' distribution system?

A.—I presume so.

Q.—Do you know, as a matter of fact, how Mr. Cross' lines ran in the direction referred to in this Order?

30 A.—They followed down along the road.

Q.—They followed the public highway?

A.—Yes.

Q.—And where occasion arose they went in on to private property to serve a customer?

A.—Yes.

Q.—It is to your knowledge that public highway was submerged, and was closed by resolution of the Municipal Council, and replaced elsewhere?

40 A.—It is to my knowledge it was closed, and replaced elsewhere, and I presume the regular legal procedure was carried out.

Q.—Provision was made elsewhere?

A.—I understand so.

Q.—It is also to your knowledge that the great majority of the residences and homes between Cascades and Kirk's Ferry were expropriated, or purchased, or bought and paid for by the Gatineau Power Company, and the people had to go and find places elsewhere?

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A.—Within the flooded area, yes. I may say I have acted for many of them.

Q.—That, of course, is no particular reason why the Defendant should be imputed with fault in respect to loss of Mr. Cross' customers?

A.—That is a legal point. I would not like to commit myself upon it.

Q.—The Company purchased the land, and disinterested the people, and they did not require electricity there any more. Mr.
10 Cross lost certain customers?

A.—Yes.

Q.—And certain wires and poles between Kirk's Ferry and Cascades?

A.—Yes.

Q.—Have you any idea of the number?

A.—I think I have a record in Ottawa of about the number.

Q.—Is it to your knowledge he was notified to take those wires and poles away before the flooding?

A.—I do not know anything about it.

20 Q.—In your opinion was the physical property included in those poles and wires worth removing?

A.—I would not like to say, because I did not examine the lower stretch.

Q.—Especially in view of the fact that the customers had for one reason or another disappeared, the wires and poles would hardly have been worth removing?

A.—I would not like to say.

30 Q.—In any event, Mr. Cross did not think it was worth while removing them?

A.—They were not removed.

His Lordship: Was he in any way compensated for them?

Mr. Ker: No, your Lordship, except in so far as I think the Gatineau Power Company has made provision to carry certain of his lines on their own poles on the new highway.

BY MR. KER (continuing):

40 Q.—They did everything they could to accommodate his customers who were out of reach, by carrying his wires on their poles?

A.—I think I did hear of that.

Q.—That is all the Order of the Commission refers to—Kirk's Ferry?

A.—Yes.

Q.—Coming back for a moment to the Meach Creek property.

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Will you look at the plan Exhibit P-17 and will you tell me whether you were able to determine the extent or area of land actually flooded by this development?

A.—It is to the same scale as the other one. I would have to transfer the flooded contour from the large plan—I think it is plan Exhibit P-35.

Q.—In a general way, how many acres of land are flooded there?

A.—I do not know. I never measured it. The photographs show the condition.

10 Q.—In order to get a clear picture of it; there is this Creek, part of the land upon which is flooded, the water rising almost to the powerhouse and flooding to the level of about elevation 320?

A.—318 to 320.

Q.—And in so rising it has submerged certain buildings?

A.—It has affected certain buildings. It has submerged one building on the east side of the railway. There is a building there it has flooded out.

Q.—Where would that building be on this plan?

20 A.—It is not on this plan. It is beyond this plan.

Q.—It is not on Mr. Cross' property at all?

A.—There is one by the railway.

It affects the houses adjacent to the powerhouse.

Q.—Will you please put a circle around the houses it affects, on the plan Exhibit P-17?

(The witness does as requested.)

Witness: It affects those inside the hatched lines.

30 Q.—It affects five buildings within the flooded area.

A.—Yes, on that plan.

Q.—What kind of buildings are they?

A.—Frame.

Q.—Are they buildings of any great pretension?

A.—No, just ordinary workmen's houses.

Q.—Of a value of about how much each?

A.—Perhaps you would allow Mr. Cross to give me the sizes of those buildings, then I might be able to tell you.

40 Q.—In any event, they are wooden frame buildings?

A.—Yes.

Q.—Of perhaps two or three rooms each?

A.—No; they are two-storey buildings.

Q.—Designed for occupation by laborers?

A.—Yes.

Q.—And they are just those you show on the plan with circles around them?

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A.—The buildings affected on that plan are shown.

Q.—Are they so seriously affected as to be of no further use, or have they just been depreciated?

A.—I am somewhat at a loss to answer that, because I did not anticipate this question. I know they are affected, but I have not specifically examined them with a view to ascertaining the effect.

Q.—But you have produced photographs showing a lot of those things?

10 A.—Those photographs are produced to show the flooded area—
not the buildings.

Q.—From your general knowledge of the buildings can you not give me a rough estimate of their value?

A.—Generally speaking, those buildings—the houses themselves—somewhere in the neighbourhood of a couple of thousand dollars.

Q.—Each?

A.—Each.

Q.—What would you consider the land to be worth per acre?

20 A.—Taking it in conjunction with a mill, as a milling proposition

Q.—(interrupting) But, speaking of it as land with water on top of it.

A.—I think you have to consider that land as land in conjunction with Mr. Cross' milling operations, because it has much more value as such.

Q.—In what respect?

A.—As an industrial proposition.

30 Q.—But, it is vacant land. There is nothing industrialized on it at the moment.

A.—No.

Q.—What is the difference between it and ordinary vacant land?

A.—Because it was part of his industrial development.

Q.—What part?

A.—It was used as a piling ground.

Q.—How much land was he using as a piling ground before the water was raised?

A.—I cannot tell you the number of acres. Mr. Cross could tell you that.

40 Q.—You do not know by how much that piling ground has been reduced by this flooding?

A.—The photograph speaks for itself.

Q.—I mean, in acres?

A.—I could not tell you.

Q.—Leaving values aside altogether, what is affected? As I understand it, you say his piling ground is affected?

A.—Yes, and certain residences adjacent to it.

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Q.—What else?

A.—And his power.

Q.—We have already discussed the effect on the power.

A.—Yes.

Q.—What else in the way of land and buildings have been affected at Meach Creek?

A.—The piling ground which is not flooded has also been affected.

Q.—How?

10 A.—On account of the seepage that is coming up.

Q.—Seepage does not hurt a piling ground, does it?

A.—It certainly does. Mr. Cross has had to fill in on his roadways up through there, and has had to plank them over.

Q.—What area would you consider had been affected in that way?

A.—It is a question of measuring the length of the roadways.

Q.—Would it be 10 acres, or 12 acres, or 100 acres, or 1,000 acres?

A.—It is not 10 acres.

20 Q.—And you say it is affected by seepage?

A.—Yes.

Q.—It is still being used as a piling ground?

A.—Yes. It is just a reduced amount of piling ground.

Q.—It has not taken away the usefulness of the land as piling ground, as I understand it? It has not lost its usefulness as a piling ground.

A.—It has to be improved to use it as a piling ground.

Q.—But, it is still there?

30 A.—Yes. It is just a small area adjacent to the foot of the hill.

Q.—A small amount affected by seepage?

A.—Yes.

Q.—What area is actually affected by flooding?

A.—I should say the area affected by seepage would possibly be not over two acres. It is just a low part, then the hill goes back very abruptly back of that. The part right at the foot of the hill, which is not inundated at the present time, is affected by seepage, and Mr. Cross has had to plank over the roadways.

Q.—Let us deal with the part that is flooded.

40 A.—Have you not made some check on that?

Q.—Have you?

A.—No, I have not calculated it.

Q.—In any event, it is just vacant land, or land with a few of those workmen's houses upon it, which might possibly be used as a piling ground if it were clear?

A.—Yes.

Q.—It has no other commercial use than that?

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A.—In connection with his industrial use.

Q.—Where is the sawmill?

A.—About half way up the hill.

Q.—It has not been interfered with by the rising of the water?

A.—As a mill, no.

Q.—So far as the mill is concerned, he can saw as much wood as he ever did, if he has the limits to supply the mill?

A.—And the piling ground. In connection with the mill he is usually fortunate, because the sawing is generally done in the spring; 10 from when the thaw begins in the spring, onward.

Q.—So, apart from the effect there may be on this piling ground you see no reason why the Gatineau Power Company should be held to account for anything connected with Mr. Cross' sawmill operation?

A.—Not so far as the sawmill is concerned.

Q.—As a matter of fact, his sawmill was burned down after the water was raised?

A.—Yes.

20 Q.—And he rebuilt it?

A.—Yes. He had a lot of material there that had to be sawn up, and that was the only way he could dispose of it.

Q.—How many customers do you assume he has now?

A.—Somewhere in the neighbourhood of 175.

Q.—The sawmill was rebuilt in the same place?

A.—Substantially. There were some minor changes made, but it was rebuilt in substantially the same place.

Q.—How many of those 175 customers are complaining customers?

30 A.—I think in the last summer I have had complaints from about eight or ten or twelve, complaining about the power being shut off, and the rest of it.

Q.—What rates does he charge?

A.—The rates approved by the Quebec Public Service Commission. The same as the rates charged by the Gatineau Company.

Q.—Six cents a kilowatt for the first 50, and 2½ cents for the next?

A.—I really could not tell you.

40 Q.—What is the approximate total revenue of his distribution system?

A.—The stenographer in the office keeps track of that, and I would not like to say how large the bills are. It is somewhere in the neighbourhood of the amount we pay the Gatineau Power Company.

Q.—There is not much profit in it?

A.—There is no profit to Mr. Cross, after he pays for reading meters and so on.

Q.—Has there ever been much profit in Mr. Cross' distribution

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system up there?

A.—This is my first experience with it.

Q.—Apparently it has not been profitable in the past, as far as you can see?

A.—If he had to buy power at the present rates it would not be profitable.

Q.—And he has to do that or he cannot sell any power at all, seeing that he has none of his own?

A.—Yes.

10 Q.—It is not a very profitable exploitation?

A.—Mr. Cross can speak on that for himself. I know he took quite a bit of money out of it.

Q.—Is the Farm Point Electric Company a company that you run?

A.—That is the one whose accounts I collect.

Q.—Then, this distribution system is not being operated at all? What is the Farm Point Electric Company?

A.—Cross' distribution system.

20 Q.—Is it a joint stock company?

A.—No; Mr. Cross owns it all.

Q.—Is he the registered owner of it all?

A.—So I understand. He purchased a distribution system—I think it was called the Great Northwestern.

Q.—Are you in partnership with him in any way on the distribution system?

A.—No, in no way at all.

Q.—As far as you know he owns it all?

30 A.—That is my understanding. I never saw the papers for it, but I understand Mr. Cross owns it, and that he called it the Farm Point Electric Company to distinguish it from his interests in the lumbering business.

Q.—Can you give me any idea of what Mr. Cross would normally be entitled to expect per year as actual revenue out of the Meach Creek properties?

(Mr. St. Laurent, K.C., of counsel for plaintiff, objects to the question as irrelevant, inasmuch as there is no claim based upon this fact.)

40 (The objection is reserved by the Court.)

Q.—Can you tell me approximately what the annual revenue would be?

A.—No, I cannot say.

Q.—With respect to the Peche property, the third group mentioned in the Declaration: do you know anything about what property Mr. Cross purports to own at that point?

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A.—I have seen a Deed.

Q.—On reference to his Declaration I observe he purchased that property after the water was raised?

A.—The date of the Deed is after.

Q.—From the point of view of head, or other advantages of water power, there was not much there when he got the Deed? There was not much fall in the river in front of this property when he bought it in March, 1927? The water was raised?

A.—Yes.

10 Q.—What would you consider to be the special value of that piece of land? Is it a good wood lot?

A.—It gives him whatever rights there may be along there.

Q.—He thought it might be well to get some rights along there for the purposes of this matter, and he went and bought that land after the water was raised?

20 A.—The picture Mr. Cross gave me was this: that he either had in his own name or had covered by registered options or by personal agreements with the owners 90 per cent of the land necessary for his own development. That was the picture he gave me. Of course, as I have already told you, I wish to keep out of the legal aspects of the matter. I am only telling you the information he gave me.

Q.—I think you will find that really did not reflect the actual situation.

A.—It did, substantially.

Q.—In reply to one of my questions yesterday I thought you were unable to tell me one piece of land that Mr. Cross owned between Cascades and the Peche, other than Meach Creek.

30 A.—You are separating your titles. Including those three; actually owned, options registered, and agreements to purchase signed in his little book. Those three combined.

Q.—It is the little book that is in your mind?

A.—No, it is not. It is one of three circumstances.

Q.—What I want to know is this: at the time this water was raised, which was the moment Cross began to suffer damage, he was not the owner of anything between the Cascades and the Peche, save a piece of land at Meach Creek?

A.—As stated. Not the registered owner.

40 Q.—And after the water was raised he proceeded up to the Peche and took a Deed of one square acre purporting to border on the Peche Rapids?

A.—The Deed speaks for itself.

Q.—You merely heard the Maclarens had bought from the Gati-neau on the Lièvre River?

A.—Yes, I heard it. As I explained yesterday, I knew of the property being owned by the W. C. Edwards people, as I did a great deal of their work.

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Q.—As a matter of fact, it was not the Gatineau Power Company, in question in this case, who sold to the Maclarens?

A.—The International.

Q.—No, it was not the International. It was the Gatineau Company, Limited, with which the Gatineau Power Company has very little to do. I would not like you to carry away the impression that we had sold this property. I suppose we may take it you do not know much about the transaction.

10 A.—I did not know the difference between the Gatineau Company and the Gatineau Power Company.

Q.—Have you made any physical examination of the horsepower developable at that point?

A.—Yes, I have. I have checked the head. I have checked the discharge through that channel. As to the regulated flow, the discharge on the three days we did the work was 3,462 cubic feet per second. I said yesterday I understood it was possible that the regulated flow might be 4,000 second feet. That was my impression. I understand it is around 3,400.

20 Q.—You did not do anything beyond those checks you made?

A.—No. I checked the outlines of the property.

Q.—You spoke of 32 per cent of the flow on the east side?

A.—Yes.

Q.—You were taking that between the east bank and the two little islands? You did not go right out to the big island for that flow?

A.—No.

BY MR. KER:

30 Q.—Referring to the plan P-17, could you indicate to me on that plan where the contour line 319 to which you say your gauge readings showed the water has been kept, would come?

A.—You would have to transfer from the plan P-35 just to the same scale. It would take a little time to do it .

Q.—On the Farm Point or Meach Creek properties, which are the second group, let us say, which are referred to in the Declaration, you spoke of an ice house being on that?

A.—Yes.

40 Q.—That ice house is in no way affected by the flooding?

A.—No.

Q.—It is well up the hill?

A.—Yes.

Q.—And need not be mentioned at all so far as this case is concerned?

A.—No. It is away up the hill. It is almost opposite the saw mill.

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Q.—You also spoke of the water supply system. Is that system still functioning?

A.—I could not tell you.

Q.—You do not know?

A.—No.

Q.—You do not know any reason why it should not be, from the point of view of the present state of the river, except in so far as its source of supply, Mr. Cross' creek up above might fail?

10 A.—I don't know what condition the pipes are in, because they were down there, and I have never seen them. The only portions of the pipes I have seen is where the intake was just below the mill, off the 30-inch penstock.

Q.—Below the saw mill?

A.—Below the saw mill, and the portions that were above ground on the roadway.

Q.—Perhaps I can condense the matter. In any event the source of supply of the water works has not been interfered with by the flooding?

20 A.—No.

Q.—In no way?

A.—No. There would be possibly an inconvenience if you had to take up any pipes that are under water now.

Q.—I don't suppose there would be any difficulty involved?

A.—Just in a case of repair.

Q.—And in case it was necessary to relay them, I suppose they could be relayed?

A.—Yes, possibly at a little more expense.

Q.—But it is a physical possibility?

30 A.—Oh, yes.

Q.—And the source is not interfered with?

A.—No.

Q.—Leaving Meach Creek for the moment, you spoke about the power you had heard had been sold to the MacLaren's on the Lièvre River?

A.—Yes.

Q.—That power property you had heard of, and there had been evidence to the effect that it was sold for \$200,000 by another company to the MacLaren's?

40 A.—Yes.

Q.—I think you state that you personally had made some investigations into the technical, physical capabilities or features of that power?

A.—I just checked the head that is available on the property, which I made at 29.83.

Q.—Have you, just for the sake of reference, any sketch or plan, or anything of the kind which would show?

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A.—I have a photograph of it.

Q.—I wonder if I might see it. It may not perhaps indicate what I want, if it does not, I will tell you?

A.—Here is one for you.

Q.—I would ask you to look at the plan which I produce as Exhibit D-6, and would you say whether you recognize that as the sketch plan of the district, the location of the place which you are now considering on the river. I am not asking you to vouch for any of the measurements or anything of that kind, but does that represent it in a general way?

A.—In a general way it is the location. I saw one plan which showed the holding of the Gatineau Power Company as being adjacent to the corner of this island.

Q.—As a matter of fact, I think you stated in your examination-in-chief that your estimate of the amount of stream flow to which the selling company would be entitled, was 32 per cent. measured on the east channel?

A.—I said that the capacity going down the east channel on the date on which I made the work, was 32 per cent.

Q.—Would you vouchsafe that information as intending to convey the impression that that was what the seller was entitled to?

A.—As the part that he could normally develop by himself.

Q.—Would you mind pointing out to me on that plan just what you consider to be the east channel?

A.—I shall mark on the plan D-6 the letter "A" with a circle around.

Q.—Taking it for granted for the moment this was the fact, that instead of only owning out to that little island, this company owned half way to the big island, would that change your estimate of the amount of stream flow they were entitled to have there?

A.—It might change their interest in the river. Personally, that plan does not look to me to be exactly in accordance with the facts.

Q.—I am not asking you to vouch for the plan. I will prove the plan.

A.—It does not agree.

Q.—If this plan were correct as showing colored yellow on that point the holdings of the selling company, you would not be accurate in saying that 32 per cent was the actual amount of river they controlled?

A.—My 32 per cent applied only to the discharge of the east channel.

Q.—Could you say what the difference would be in percentage?

A.—No.

Q.—It would appear to be more by the look of that?

A.—It would appear to be more by the look of that.

Q.—I understood you to say that you had estimated the head

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at 30 feet, or approximately 30 feet?

A.—29.83.

Q.—Would you mark the letters "B" and "C" in pencil between the points on which you found 30 feet of head?

A.—I mark " B " in a circle and " C " in a circle,—at about the railway.

Q.—About to the railway?

A.—Yes.

10 Q.—Will you mark that point at the railway as " C " ?

A.—Yes.

Q.—So that it is between the points " B " and " C " that you estimated that 30 feet of head?

A.—Yes.

Q.—Are you, or are you not, aware that the sale which has been made of that property, and of which a copy has been produced, refers also as being part of the deal to a considerable portion of the river below the railway item, I think No. 7 of the sale?

A.—Might I see that item?

20 Q.—Would you turn over to the item known as " Sixthly " in the Exhibit P-37, and indicate to me, if you can, whether or not that refers to the property upon which the head was measured by you? In other words, did you take in item " Sixthly " with the measurement of the head, which was sold by this transaction? In any event, that piece is below the bridge?

A.—Yes, the plan which I had did not show this little portion down there at all.

Q.—That is, belonging to the selling company?

30 A.—No, it is out of the river and by itself is not a developable property.

Q.—Do you know anything about the head that was involved in that little piece which you have not taken into consideration below the bridge?

A.—I would not like to say.

Q.—Would you be prepared to contradict me if I told you there were only 16 or 17 feet there?

A.—I would rather agree with you because I checked the Higginson's.

40 Q.—You think, then, with that 30 there would be an additional 16, if this property is to be taken in?

A.—That is not a developable property.

Q.—I am not speaking about a developable property, I am asking you from the point of view of elevation, have you taken into consideration a 16-foot elevation or drop in the river in your calculations of a 30-foot head?

A.—No. That 30-foot head is from the little bridge up to the point " B ' .

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Q.—So that from the point of view of actual fall of the river, or actual difference in the elevation, you have to add at least another 16 feet to that 30?

A.—You would have to add some interest for that part.

Q.—Is it not true that the MacLaren's, by disinteresting the selling company from that little piece, were able to get a drop in land of another 16 feet?

A.—They bought a shore adjacent to this, which is the Higginson's, for \$25,000.

10 Q.—I am not speaking of this water right. Does that or does it not represent another 16-foot drop in this river which the MacLaren Company was able to utilize by disinteresting the selling company?

A.—It represents the bed of the river with a difference, if you will, of 16 feet, and the small portion of the bed of the river.

Q.—Were you basing your estimates, or your comparison between this power and the one in question here, when you were making your estimate about taking into consideration the actual area of land, not covered by water, which was conveyed by that selling company to the MacLaren?

20 A.—Yes.

Q.—What was the area?

A.—Those lands are specified.

Q.—What would the area be approximately? 20 acres?

A.—I would not think it would be that much.

Q.—Something in the neighborhood of fifteen acres?

A.—Something in the neighborhood possibly of 15 acres.

30 Q.—Did you take into consideration the fact that those 12 or 15 acres of ordinary land above water formed part of the village of Masson, in which a great industry was being established?

A.—Yes.

Q.—Just what difference would that make in your estimate on the \$200,000, seeing it was not all made up of power?

A.—I think, in my estimation, I considered that about \$25,000 would cover the land value there.

Q.—But the land value purchased one-tenth for \$25,000 right next door to it, from the Higginson's?

A.—No, they had shore rights.

Q.—But you make no comparison there?

40 A.—No.

Q.—So you believe, in so far as you are concerned, that \$25,000 would represent the intrinsic land value apart entirely for water power in the MacLaren sale?

A.—Yes, land. There is one flour mill there that is not operating, and I do not see that there is very much value attached to it. It has a considerable replacement value.

Q.—I mean to say your value of \$200,000 is not made up of

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water power?

A.—Possibly \$25,000, I took it at.

Q.—I think you state you had taken soundings in this portion?

A.—No, just levels.

Q.—How did you get at that work? How were you able to take those levels?

A.—I took the elevation from the lower water surface level to the upper surface elevation.

Q.—On the land?

10 A.—Just on the water's edge.

Q.—You did not get into the water?

A.—I got down to some rocks. I crossed the railway bridge out to the pier.

Q.—I understood you to say you had taken some soundings?

A.—No.

Q.—Because the river is more tumultuous at that point, and I do not see how you could do it?

A.—No.

20 Q.—How did you determine the proportionate amount of flow of 32 per cent?

A.—I was referring to these levels we took for head. We had a cross-section. We stretched a wire across, and made a cross-section of the river, for each of the channels.

Q.—And then you just took a percentage of the way across?

A.—No, not a percentage. We actually measured the depths across the river.

Q.—Did you make any stream flow measurements at all on the river?

30 A.—Yes.

Q.—With a current meter?

A.—Yes.

Q.—And you based your 3,420 on that?

A.—Yes.

Q.—Looking at point "A" on this plan, I see you have given the seller credit for 32 per cent of the stream flow there between that island?

A.—Yes.

40 Q.—What about this portion below the island? Are they not entitled to considerably more than that, even below the island?

A.—I was looking at the part which might be developed. As I stated, it is the east channel that I weired.

Q.—In your examination-in-chief I think you spoke of power shortage in 1926?

A.—1923 and 1924, if I remember rightly.

Q.—You were asked this question: "Was there or was there not a market for electricity in the Ottawa-Hull district in 1926?"

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and your answer is, "There was. I believe there was." Then you were asked: "What was the situation in that regard?" And your answer is "I know personally that there was a threatened shortage for power prior to 1926. How I happened to know was that a number of us were putting in electric stoves, and I got mine in." Just what years before 1926 did you estimate there was a shortage?

A.—The incident I referred to there was in 1923, I think, and 1924—the years 1923 and 1924.

Q.—Do you live in Ottawa?

10 A.—I do when I am at home.

Q.—Is there a gas system in Ottawa?

A.—There is.

Q.—Is it controlled by the same company as the Electrical Company?

A.—It is controlled by one of them. It is controlled by the Ottawa Electric Company.

Q.—You inferred that because they were not particularly anxious to put in electric stoves that there was a shortage of electricity?

20 A.—I was not on that system. I was on the Hydro system.

Q.—But that is the inference to be drawn from your answer?

A.—It is not the inference.

Q.—What other evidence have you as to the shortage of power other than the fact that some of your friends could not get it?

A.—Just as a matter of note in the papers at the time. It was also a matter of common knowledge.

Q.—At any rate, during that shortage, before 1926, Mr. Cross had done nothing to relieve the shortage?

30 A.—No.

Q.—And in 1925 the Ottawa River Power Company's Bryson development came into being?

A.—Well, it improved conditions.

Q.—And what did that produce in power development?

A.—I could not tell you.

Q.—Am I right in saying it produced about 25,000 horsepower?

A.—I would think so.

40 Q.—Do you know how long the Ottawa River Power Company operated on a production of 12,000, half of their capacity before they went up to 25,000?

A.—They went in slow, I would think.

Q.—So there was not any very considerable shortage when they came in in 1925, was there?

A.—There was a reasonable demand in those times. I refer to 1923 and 1924, and not only that, but the fact of the sales of power that had been made since that, proved there was a market for it.

Q.—That is another question.

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A.—Not only the Gatineau Company, but the MacLaren Company, and a recent sale was the Ontario Hydro at Beauharnois.

Q.—In great blocks?

A.—Well, for private delivery.

Q.—For delivery at Toronto?

A.—Not only for delivery at Toronto, but the Ontario border.

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

10

Q.—I understood you to say in answer to one of Mr. Ker's questions put to you that looking at Cascades as a whole, the main sheer drop came in the part of the property belonging to the Canada Cement Company?

A.—The biggest sheer spreading over the whole area, what is locally known as Cascades, yes.

Q.—What was the available head on the Canada Cement property?

20 A.—The plan of the Quebec Streams Commission shows the elevation there from, I think it is, 290, around 290 to 301.45.

Q.—From your own knowledge of the locality and the variations in flows, etc., what, in your opinion, is the actual developable head?

A.—I should say some place in the neighborhood of 9 feet.

Q.—After looking at the profile of the Quebec Streams Commission, do you find the figures which you gave me some time ago, correct?

A.—They have 289.22 to 301.45.

Q.—That is, at what flow?

30 A.—I do not know what flow this was taken at definitely. Just a minute and I will check the elevation again for the head at Alcove. I think it is around 6,000. Basing on the elevation of the water at Alcove, it is given in this plan at 318.78. The discharge which corresponds to that is 6,500 cubic feet per second.

Q.—In your examination in chief you stated with respect to the available natural average power opposite Mr. Cross' property there were more than 200 horsepower, and in cross-examination you stated you had made no calculation. Does your second answer destroy your first or are you able to make a calculation?

40 A.—I understood the question to be, did I make an attempt to do any design work for an economic development.

Q.—What is the normal high water mark of the high spring waters on the Gatineau, or what was it before the Gatineau Power Company development between Mr. Cross' property and opposite the Meach Creek property, and up to Wakefield?

A.—It varied greatly in the spring of the year. It has gone up to 323 and 324, opposite Mr. Cross' property. I have to depend there

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on hearsay. I believe it has been as high as 321.

Q.—324 and 325 would be up at Wakefield?

A.—Yes, and some years it has been as high opposite Mr. Cross' property as 321.

Q.—What would the normal year be? Have you been able to verify yourself?

A.—No. I should say around Mr. Cross', that it would be in the neighborhood of 318. That would be taking an average over a period of years.

10

BY MR. KER:

Q.—That is high water in the river under natural conditions?

A.—Under natural conditions.

Q.—Without any development?

A.—Yes.

BY MR. ST. LAURENT:

20 Q.—You were asked to put certain indications by means of letters on the Exhibit P-1, and I believe you put the letter " D " as showing the elevation of the water on a certain date, March, 1926?

A.—Yes.

Q.—Was that elevation taken at the lowest point?

A.—No, it was just taken at the break of the little fall which ran between the island and the main land.

Q.—Did you, yourself, make a tracing or sketch of your operations at about that point, either at that time or later, showing where the ledge ran across?

30 A.—I made one across the section G-H in September, 1926.

Q.—When was that sketch made?

A.—It was made in September 1926. The actual field work was done in two or three days at the period, September 24th and 25th—September 23rd to 25th.

Q.—Will you file that sketch as Exhibit P-46?

A.—Yes.

BY THE COURT:

40 Q.—In what year was that?

A.—1926. I started to work on September 23rd and finished the field work on the 25th, and the plan was made subsequent to that.

BY MR. ST. LAURENT:

Q.—I understand you were there practically at all seasons, and at all the stages of flows of the river?

A.—Yes. I have been there and seen the river under the differ-

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ent conditions since that time.

Q.—To clear up that matter, I would like you to state clearly just how, from your actual observations there, when you have been there, the flow goes through that portion of the river?

A.—Excluding your high water conditions, there is a flow down the river, and the projection of land at the point " F " diverts the water across towards 21-B and it impinges on that side and flows back again approaching Mr. Cross' property at " C ".

10 Q.—Does this sketch P-46 show elevations of the rock ledge on both sides with a break between two islands?

A.—Yes, it does. It shows the islands that were then in existence. I ran a traverse line across as indicated on dotted line, and tied in these islands, and took the elevations to locate the condition of the river at that time.

Q.—And what is there between what is marked as the rock islands, one being above your traverse line, and the other being below your traverse line on the lefthand side of the plan?

A.—The deep place in the river is to the west of the submerged rock marked " submerged rock " on my plan.

20 Q.—And then, from the rock island I see elevation 306, what is that?

A.—That is just a ledge of rock.

Q.—A ledge of rock which at that elevation 304 runs out to the west bank?

A.—Yes.

Q.—What is the dip then of the rock on the east bank?

30 A.—The rock generally dips towards the upstream side, and adjacent to the submerged rock there is apparently a piece of this ledge broken through where most of the swift water comes through, and as you approach the east bank this ledge appears again along with a number of boulders and large rocks.

Q.—From your knowledge of conditions and of the locality, what is the elevation of the effective tail water for the water that flows over the Cross property?

A.—I gave you that yesterday as 302.51.

Q.—Is that the minimum elevation of the water on the Cross property?

40 A.—No, it is not the minimum. It is in the pool, below this fall that I have indicated at point " C " on plan P-1.

Q.—That would be at what flow?

A.—3,420 I think—yes, 3,420.

Q.—What would the effective tail water elevation be at the flow, say 10,000 cubic feet second?

A.—It would be just around 304.

Q.—And would that be the lowest point on the Cross property?

A.—No.

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Q.—What would the lowest point be when it was at 304 as the effective elevation on tail race water?

A.—I did not check the lowest point at that elevation. I would not like to say definitely.

Q.—From your knowledge of conditions, what would it be?

A.—I would say it would be considerably lower. Possibly it would be another foot lower.

Q.—What happens to the eastern side of the river when the flow is 3,420?

10 A.—On the date at which I made those examinations I was walking out over the rocks on the east side. The end of my traverse line, which is shown dotted on that plan, is 114 feet upstream from the iron bolt placed upon the lot, between lots 20 and 21, indicating the boundary line between Mr. Cross and the Canada Cement property, and down at that point I was walking out over the bare rocks on the river.

Q.—Is that iron bolt placed on rock at greater flows covered by water?

20 A.—Yes.

Q.—At what flow would that iron bolt be covered?

A.—I would not like to say.

Q.—Have you been there at times when it was covered?

A.—Yes.

Q.—And at that time it was uncovered?

A.—It was uncovered at that time. I referred to it and tied into it.

30 Q.—Then, at that time, is the great bulk of the water being forced through this place shown on Exhibit P-1 as the break between the two rock islands?

A.—The bulk of the water is going through adjacent to the submerged rock.

Q.—Could you indicate on this Exhibit P-46 where this iron bolt would be?

A.—No—I beg your pardon, I have it marked “R-B” for ring bolt.

Q.—That is up on the shore?

A.—Yes, it was up on the shore. I possibly walked out 25 or 30 feet at the time.

40 Q.—From the point where the ring bolt is indicated here?

A.—Yes.

Q.—On Meach Creek you spoke of there being roughly about two acres of the remaining piling ground around the saw mill affected by seepage?

A.—Yes.

Q.—Is that about two acres of land that is above the contour 318 and 319?

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A.—Yes. I would like to say that the Gatineau Power Company have held the water in the past higher than 318 on many occasions, if not to 320. It has been held closely to 320 for considerable periods at a time.

Q.—What proportion would this be to the former piling ground, a part of which is under water?

A.—It was quite a small proportion, maybe a third to a quarter. I would not like to say how much of the vacant land Mr. Cross has used at maximum periods, because I do not know. I have never
10 seen the mill operating at its maximum capacity.

Q.—But it is two acres above the portion which was flooded?

A.—Yes.

Q.—With respect to the Lièvre, you showed Mr. Ker a photograph which was not filed, and then you spoke of the eastern channel. Is that eastern channel the channel which appears to be opposite the tower?

A.—Yes, the tower is in the background.

Q.—The tower is in the background and the channel is the one
20 seen opposite that tower?

A.—Yes.

Q.—Will you file that photograph as Exhibit P-47?

A.—Yes.

Q.—And it is the flow through that eastern channel that you weired on that occasion?

A.—Yes.

Q.—How far is the Lièvre river from the Gatineau river?

A.—It is probably 14 miles down the Ottawa river, and below the Gatineau 14 or 15 miles, and runs north from the Ottawa river,
30 and its water course is approximately parallel with that of the Gatineau.

Q.—You say it runs north. I suppose you mean it runs north-south into the Gatineau?

A.—It does not run into the Gatineau, it runs into the Ottawa. When I say the trend of the river is north from the Gatineau, it runs south into the Ottawa river, but from the north side of the river; the drainage area is north.

BY THE COURT:

40

Q.—On the north side of the Ottawa.

A.—On the north side of the Ottawa river.

BY THE COURT:

Q.—In other words, parallel to the Gatineau?

A.—Approximately parallel to the Gatineau.

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Q.—It is not due north?

A.—Not quite. Mont Laurier is right on the Lièvre. It extends beyond Mont Laurier, and the works of the James MacLaren Company, their storage area extends almost up to Mont Laurier, about fourteen or fifteen miles south of Mont Laurier.

Re-cross-
examination

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

Q.—As to the point " C " on P-1, you took a level of that point?

A.—Yes. When I say " C ", point " C ", it is approximately in that location.

Q.—Did you take any levels immediately opposite the point " C " ?

A.—No. I would like to explain in that respect, that when you came down below the second fall the water flattened out. There was
20 a pool there where the surface water is level across both sides.

Q.—At what point on that plan would that be?

A.—That would be across as indicated between the Gatineau River—the word " Gatineau " on the plan and the west shore. It would extend to the shore line.

Q.—That is a pond?

A.—It is not a pond.

Q.—It is dead water?

A.—It is not dead water, but water the surface of which is level,
30 naturally flowing downstream.

Q.—Is that what you have just outlined, presumably, the same level, level " C " ?

A.—Yes.

Q.—Is the greater portion of that level on Mr. Cross' ground?

A.—It is up near G-H. Some of it is on his land, and some is not. Just immediately below G-H it is all on his land, and as you go downstream it enters off his property, gradually getting more and more off his property, and when you get across his line there is nothing.

40 Q.—Do you know what the difference in elevation is on the east side of the river between the north limit of Mr. Cross' property, and the south limit, in the river? Do you know the difference in elevation?

Witness: You refer to between the two?

Counsel: I am referring to between the two lines of his property?

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Witness: What point on the line?

Counsel: At any point entering his property. Take it on the shore line, for instance, what is the difference in elevation between the time the water enters his property on the north, till the time it leaves it on the south, on the east bank of the river? Now, that is what I want to know?

10 A.—I never checked it at those two points. I would say from the point marked " K " to the point marked where the swift water comes in—the water does not flow up there, at the times I investigated it, at all, because that was absolutely bare.

Q.—To where it normally leaves the Cross property on the south side, what would be the difference in elevation? The shore line is the place it normally leaves?

A.—There is a slope from the west.

Q.—Do you know what the difference in elevation is on the shore?

20 A.—I have never checked it at that point.

Q.—Would you be prepared to say that it was not about 11 inches difference in elevation?

A.—I would say it would be a lot more than that.

Q.—That is your opinion?

A.—It was distinctly more than that during the time I was there. Naturally I did not check it.

Q.—But you have not any information as to the levels on the east side?

A.—No levels taken there.

30 BY THE COURT:

Q.—You have drawn a line there?

A.—Yes.

BY THE COURT:

Q.—What does that indicate?

A.—That indicates the portion of approximately level water.

40 BY THE COURT:

Q.—From one point to another?

A.—To a fixed point from "A".

BY MR. KER:

Q.—Between points G-M, O and H is what?

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A.—Is level water and it stretches out as it comes down to the bottom here. I don't know where it stretches out as it goes down to the bottom.

BY MR. SCOTT:

Q.—Approximately?

A.—Approximately.

10 BY MR. KER:

Q.—Looking at this sketch Exhibit P-46, I see noted here on the right hand side of that sketch the words "triangulation station"?

A.—Well, that was just simply my triangulation station that I ran across here. I had a whole series of triangles.

Q.—Could you give me the distance between the point called triangulation station and the line of the ring bolt marked R-B?

A.—It is 114 feet 7 inches actual measurement down.

20 Q.—114.7 feet?

A.—Yes.

Q.—You say you went out about 25 feet into the river to make these investigations?

A.—I said opposite the ring bolt. I would not say that that ring bolt is in a correct position. I simply put it there as a matter of reference.

Q.—You walked out about 25 feet into the river?

A.—Yes.

Q.—How wide is the river—600 feet?

30 A.—The width between my triangulation states it was 778 feet at the time.

Re-Re-
examination

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

Q.—As you have put on there where the calm water is, it would be of assistance to have an indication where this rapid comes?

A.—It is in the evidence that it is approximately along the line G-H.

40 BY THE COURT:

Q.—On what plan?

Mr. St. Laurent: Exhibit P-1.

BY MR. KER:

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Q.—That is the line of the power house?

A.—This is approximated on the same line too. The power house is just at the bottom so that at the west side it would be above H and at the east side it would be around G some place.

Q.—What was the level of that still water area?

A.—302.51.

10

(And further deponent saith not.)

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DEPOSITION OF JAMES M. ROBERTSON, A WITNESS
PRODUCED ON BEHALF OF THE PLAINTIFF.

20 On this twenty-third day of September, in the year of our Lord one thousand nine hundred and thirty-one, personally came and appeared

JAMES M. ROBERTSON,

of the City of Montreal, Civil Engineer, aged fifty-seven years, a witness produced on behalf of the plaintiff, who being duly sworn doth depose and say as follows:

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

30

Q.—Mr. Robertson, I understand you are a Consulting Engineer?

A.—I am.

Q.—Will you tell us from what University you graduated?

A.—I am a graduate of Toronto University.

Q.—What year did you graduate?

A.—In 1893, and I graduated from Cornell University in 1894, that is in special courses.

40 Q.—At present I understand you are practising your profession in Montreal?

A.—I am.

Q.—How long have you been living in Montreal?

A.—Practising?

Q.—Practising?

A.—I have been practising professionally since 1908.

Q.—And I presume you are a member of various engineering bodies?

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A.—I am a member of the Profession Engineers of Quebec. In fact I am the Vice-President of the Corporation. I am a member of the Examining Board of that body. I am a member of some other engineering bodies, some of which are out of the country. I am, of course, a member of the Engineering Institute of Canada.

A.—I understand you also act in the capacity of adviser to the City of Montreal?

A.—I am a member of the Technical Commission of the City of Montreal.

10 Q.—And you are Vice-President of the Southern Canada Power Company?

A.—Yes, and a director of the Power Corporation of Canada.

Q.—I may take it then you have had a fairly large connection with hydro-electric enterprises in the Province?

A.—I have been connected with hydro-electric enterprises ever since their inception.

Q.—Have you had occasion to visit Mr. Cross' property at Cascades?

20 A.—I have.

Q.—On more than one occasion?

A.—Well, I have seen it in the summer and in the fall before the water was raised, and I have seen it since the water was raised.

Q.—And you know that the lower part of those falls formerly belonged to the Canada Cement Company?

A.—Yes, I have seen the various plans and exhibits that have been filed here, at other times.

Q.—Would you say that Mr. Cross' property lent itself for inclusion into a larger scheme of development lower down the river?

30 A.—Yes.

Q.—Say at Chelsea?

A.—Certainly.

Q.—Before the years 1925, 1926 and 1927, and perhaps prior to 1925, is it to your knowledge as an engineer, that there had been a large increase in the demand for power?

40 A.—Yes. The loads of the various power companies had been growing quite rapidly, and it was anticipated they would continue to grow, and during a period there was a considerable endeavour on the part of the companies to protect their future by acquiring such further power points as might seem to them applicable to their particular business.

Q.—As a matter of fact, on the Gatineau River is it not a fact. . . .

Mr. Montgomery: I object to this as suggestive.

BY MR. SCOTT:

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Q.—Had there been another purchase in about the year 1926 on the Gatineau river, the Paugan falls?

A.—You mean Paugan Falls?

Q.—Yes.

A.—Yes. Of course, the collecting together of the elements of Paugan Falls, and putting it into a proposition, that was one which concentrated a great deal of interest in Gatineau. Prior to that time the Gatineau was just a river up in the bush, so far as the ordinary people were concerned.

10 Q.—Was the Paugan Falls the one about which there was some litigation in the Privy Council?

A.—There was some litigation, but the details of which I do not remember.

Q.—At Mr. Cross' property at Cascades, would you say he had over 200 natural horsepower capable of development for industrial purposes?

Witness: Before the raising of the water?

20 Counsel: Before the raising of the water.

A.—Yes.

Q.—What was the policy of the Quebec Streams Commission during that period and of the provincial authorities with reference to storage of water on rivers?

30 Mr. Montgomery: I object to this question. Is this witness competent to give the policy of the Quebec Streams Commission and the Provincial Government?

BY MR. SCOTT:

Q.—During that period had they been building storage dams on rivers in order to assist in hydro-electric development?

Mr. Montgomery: If you ask him as to whether storage dams had been built, that is another thing.

40 Witness: During that period the Quebec Streams Commission were constructing and encouraging the construction of dams on the upper waters of the streams of the province in order to conserve the flow.

Q.—What would you say the prospects were around 1925 and 1926, after the Paugan Falls had been sold as to the storage or conservation of water on the Gatineau river?

A.—I think it was quite obvious to any one who understood

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the conditions of conservation of that river. They are surely coming.

Q.—Assuming Mr. Cross had a potential development at Cascades of 14 feet head with a regulated controlled flow of 10,000 second feet and capable of developing 15,000 electric horsepower, are you in a position to express to his Lordship any opinion as to the valuation of it?

Witness: You mean the value of the site?

10 Counsel: Yes.

A.—In my opinion, and basing myself upon my experience, both in buying and selling, and assisting other people to buy and sell, which of course, I have had to make myself familiar with as many transactions as I could find records of, I should say that powers at that time were worth in the neighborhood of forty dollars an undeveloped horsepower.

20 BY THE COURT:

Q.—Forty dollars a horsepower?

A.—\$40.00 for each horsepower.

BY MR. SCOTT:

Q.—Will you please give us some instances of sales to support your opinion? Are you familiar with the Oureau river?

30 A.—I am. On the Oureau river there was a sale of two falls, the Dorwin and Manchester.

Q.—First of all, the Oureau River runs into what river?

A.—The Oureau river runs into the L'Assomption river, about thirty or thirty-five miles east of Montreal.

Q.—Is that a regulated river?

A.—No, not any more so than there may be an odd little lake with a lumberman's dam on it.

Q.—Do you know the river personally?

40 A.—Yes, I have been on it. As a matter of fact I looked at these falls twenty-five years ago for some other person who was thinking of purchasing. That transaction was recorded as \$200,000 paid in cash, and the amount of power available is just a little less than 4,000 horsepower, which is about \$50 a horsepower.

Q.—Will you file as plaintiff's Exhibit P-48 a copy of deed of sale passed before G. C. Marler, Notary, on the 27th of April, 1928. The sale is from the Dorwin Falls Improvement Company Limited to the Gatineau Power Company. And will you also file at the same time with it, as Exhibit D-49, a Memorial of Agreement of the sale

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deposited with D. M. Rowatt, Notary, on the 27th day of May, 1927. This document P-49 shows that there was deposited on that day with the Notary an agreement deposited under private signature on the 10th day of December, one thousand nine hundred and twenty-six, between Dorwin Falls Improvement Company, Limited, and the Quebec Southern Power Corporation, which was not a developed water power?

A.—It was not a developed power.

Q.—Will you refer to the official list of water powers?

10 A.—As a matter of fact, the amount of power which I have given I have taken out of that book.

Q.—You have taken it from the official book entitled "List of water powers in the Province of Quebec, co-operatively prepared by the Dominion Water Power and Reclamation Service. The Department of the Interior, Ottawa. The Quebec Streams Commission, and The Hydraulic Service Department of Lands and Forests, Quebec." That book, I understand, is referred to by all engineers?

A.—It is recognized as the official document regarding water powers in Quebec.

20 Q.—At how much per horsepower does that work out at, which the company paid?

A.—It works out at \$50.00 per horsepower.

Q.—These two falls, the Dorwin and Manchester Falls, I understand have never been developed?

A.—The development of these would have to be on a very much larger property.

Q.—But they have not so far been developed?

A.—No, they have not so far been developed.

30 Q.—Can you give us any other instances of fairly recent sales of water powers?

A.—The falls on the Maskinonge River, St. Ursule Falls, and the little Falls above it were sold by the local interests who owned them to the Shawinigan Company.

40 Mr. Montgomery: I would like to enter an objection, and perhaps I need not repeat it but make it general, to introduction of evidence in respect to other rivers, with which the witness is not familiar as to their power. For instance he quite frequently tells us he is simply taking what he says is the available horsepower. There is nothing to indicate whether there is any degree of parallel between the site of the Cross property on the Gatineau and of that sold.

His Lordship: The evidence might come later.

Mr. Montgomery: My objection is that until some parallel has been shown between the two, that the evidence is irrelevant.

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His Lordship: I will allow the evidence under reserve.

BY MR. SCOTT:

Q.—Have you seen these falls yourself?

A.—I have. In fact, I looked at them with the idea of purchasing one of them at one time.

Q.—Did it appeal to you?

A.—No. I turned it down.

10 Q.—You were reporting for clients?

A.—I was one of the clients, that is, I was partly acting for myself.

BY THE COURT:

Q.—You were interested?

A.—I was interested.

BY MR. SCOTT:

20

Q.—Is the Maskinonge a controlled river?

A.—No, it has a lake on the upper waters, but unfortunately the development of the summer cottages on the shore of the lake makes the use of the lake for storage purposes practically impossible.

Q.—At certain seasons of the year the Maskinonge is very low?

A.—It is very, very low. That is the disadvantage of this property because the storage facilities are practically impossible. I take into account the possibilities.

30 Q.—Will you file as Exhibit P-50 deed of sale dated 14th August, 1925, from Charles A. M. Lefebvre to Dame Marie Alice Sylvestre, widow of Michael Lefebvre, to the Shawinigan Water and Power Company on the 14th of August, 1925, the deed of sale being passed before Dakers Cameron? What was the purchase price paid?

A.—The consideration was \$125,000 cash, and the amount of power involved was just a little less than 3,000 horsepower.

Q.—That was the power which could have been developed?

A.—Which could have been developed, perhaps.

40 Q.—In other words, that works out at how much per horsepower?

A.—That works out at \$44 per horsepower.

Q.—Can you give us any other instances of sales which you took into consideration in valuing Mr. Cross' property?

A.—The Reford family sold the Falls on the Metis river to the Lower St. Lawrence Power Company.

Q.—Will you file as Plaintiff's Exhibit P-51 a Promise of Sale from Dame Mary Elsie Meehan, wife of Robert W. Reford, to

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Jules A. Briand, executed on the 13th of April, 1922, before Cholette, Notary, and will you at the same time file as Exhibit P-52, deed of sale by the same Mrs. Reford to Jules Briand, executed before Dion, Notary, on the 22nd of August, 1922? First of all, are you familiar with Metis?

10 A.—Yes, I have examined this site. I examined it with the idea of giving a report. I examined it particularly with that in view. The utility which is operating there tried to make an alliance with some of my people, and I made an examination of the whole property with a view to determining whether we were interested, so I examined this incidentally as a part of the general scheme.

Q.—You know the waterfall that is covered by those deeds?

A.—Yes. The purchase price is stated as \$85,000.

Q.—The amount of power available at a little less than 2,400 horsepower?

A.—Which makes a cost per horsepower of \$35.00 to \$36.00.

Q.—The Metis river flows into the St. Lawrence a good many miles below Quebec City?

20 A.—Yes, it comes down from the Gaspé hills.

Q.—Do you know the price at which the Paugan Falls were sold by the Hull Electric Company?

A.—I know \$4,750,000 was paid for the Paugan site, together with the Hull Electric.

Mr. Montgomery: Put it the other way around.

30 Witness: The only difficulty about Mr. Montgomery's argument is, the Hull Electric was not worth anything, whereas the Paugan Falls was the whole amount.

BY MR. SCOTT:

Q.—What is the capacity of Paugan Falls?

A.—They are supposed to have purchased 100,000 at Paugan, 10,000 second feet at 100-foot head.

Q.—And did you examine Paugan Falls yourself?

40 A.—I had examined it, but I had examined the data and engineers' reports more particularly, that is, I had seen the Falls, but I had not made physical survey or any examination of that kind.

Q.—Are you in a position to give us some idea of the horsepower value of that sale?

A.—If one deducted from the \$4,750,000 the \$750,000 as perhaps the value of the Hull Electric, that would leave \$4,000,000 for 100,000 horsepower, or about \$40.00 per horsepower.

Q.—On the same river?

A.—On the same river.

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Q.—You were in court yesterday and this morning. I understand you were in court when Mr. Dobell gave evidence this morning?

A.—Yes.

Q.—When he filed a power contract, and he told us the consideration that was received by the Canada Cement Company for selling and transferring to the Gatineau Power Company, the defendant, their rights in the lower part of the Cascades?

A.—Yes.

10 Q.—Will you look at that contract which was filed by Mr. Dobell as Exhibit P-43. He told us that contract represented the consideration for the sale of the Canada Cement Company's right for the bed and banks of the Gatineau in the lower part of Cascades. Would you attach any value to that contract?

A.—I would.

Q.—Would you explain it in your own language, just what value it possessed?

20 A.—This contract provides for the supply of 3,000 electrical horsepower at a price of \$10 per horsepower delivered at Chelsea or Farmers' Rapids, at the option of the Power Company, that is, delivered at either the Chelsea power plant or Farmers' Rapids power plant of the Gatineau Company.

Q.—For how long?

A.—In perpetuity.

Q.—With certain privileges to the Cement Company?

A.—With certain privileges to the Cement Company of cancelling, and so on.

Q.—How would you put a valuation on that contract?

30 A.—I would say that that contract was worth about \$450,000.

Q.—To the Cement Company?

A.—Yes, to the Cement Company.

Q.—The Vendor?

A.—Yes.

Q.—How could you arrive at that \$450,000?

40 A.—I would place a differential between the price to be paid under this agreement, and the price which they would have had to pay on the open market, at at least \$10 a horsepower, which would mean 3,000 horsepower at \$10.00, or \$30,000 per year of a saving, and I would have capitalized \$30,000 a year to mean about \$450,000 of capital.

Q.—How many years?

A.—In perpetuity. It is that much money.

Q.—Are you familiar with the market prices for power in blocks of 3,000 in Montreal, around that time?

A.—Certainly.

Q.—What would they have paid in Montreal?

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A.—Not less than \$30.

Q.—If a person wanted to buy 3,000 horsepower

10 Mr. Montgomery: I object. Why introduce power in Montreal as a basis of what the Cement Company should pay for power up at Ottawa? Why should he go into the question of the price of power in Montreal when we are dealing with the supply of power to a company which has a power site which can get a low price for power, and who no doubt bought that power site for that purpose.

Mr. Scott: It is just an element, my Lord. It is well known the price around that time was worth about \$30.00.

Mr. Montgomery: What was it in New York? What is it in Toronto. It is just a question of degree?

BY MR. SCOTT:

20 Q.—What is it now?

A.—I don't know what it is now at all.

Q.—You have told us you have seen and are familiar with Cascades before the flooding?

A.—Yes.

Q.—Would you consider the Cascades, the lower portion belonging to the Canada Cement, as attractive or more attractive than the portion belonging to Mr. Cross above.

30 Mr. Ker: I submit, my Lord, that that question is suggestive.

(The Court reserves the objection.)

BY MR. SCOTT:

Q.—What is your answer?

Mr. Ker: He is only entitled to answer one way.

BY MR. SCOTT:

40 Q.—Which would be considered to be the more valuable?

A.—I would think the Cross property was more valuable.

Q.—Why?

A.—Because the Canada Cement property being immediately below the Cross property has absolutely no storage, that is, water storage at all, and the difficulties of operation at that point without interfering with the Cross property would be almost too great to be worked. I do not think it could be used.

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Q.—They would have no storage without interfering with Mr. Cross?

A.—Exactly.

Q.—That is, unless they combined with him?

A.—I presume he would be independent. Your question was as to one or the other.

Q.—And would your answer be modified by the fact that the Canada Cement Company might have a little greater head than what Mr. Cross had?

10 A.—I am taking into account the figures that have been submitted in the evidence as to the heads at the two points, that is, 9, 10, or perhaps 11 under certain conditions for the Cement Company and up to fourteen feet for the Cross property.

Q.—Fourteen feet potentially?

A.—Yes.

Q.—Referring once more to that contract between the Canada Cement Company and the defendant, the Gatineau Company, and assuming that the Canada Cement Company had a head at Cascades of first of all 9 feet, what would that work out that they
20 received per horsepower?

A.—Of the order of \$50.00, a little more.

Q.—If the Canada Cement Company had 11 feet head at Cascades, how much would it work out at Cascades?

A.—That would be just about \$40.00.

BY MR. MONTGOMERY:

Q.—And that is based on Canada Cement getting power for
30 \$10.00 that it had to pay \$20.00 for?

A.—Yes.

BY MR. SCOTT:

Q.—You have been in court while this case has been proceeding, and you know that it is in evidence that the head between the Cross property at Cascades and further up the river has been included in the Chelsea Development of the defendant?

A.—Yes, I have heard that.

40 Q.—A matter of some fourteen feet?

Mr. Montgomery: No, that is not correct. My learned friend does not state the evidence correctly. The evidence of Mr. MacRostie is that it is 3½ feet. His 14 feet is derived by taking in all the properties for miles above up the Peche.

BY MR. SCOTT:

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Q.—At any rate, the waters of the Gatineau have been backed up from Cascades further up the river, a distance of 5½ miles.

A.—Up to the Peche Rapids.

Q.—Does that prove of benefit to the Gatineau Company development at Chelsea?

Witness: You mean the Chelsea development being 14 feet, is it to their advantage. Is that what you say? It certainly is.

10 Q.—Does that pondage have a value for them also?

A.—The pondage has a very large value.

Q.—Does that pondage have a value to the plant at Farmers?

A.—Certainly.

Q.—The defendant's plant at Farmers Rapids?

A.—It has a value to both plants or rather to some of the two plants.

Q.—In what way? You might explain?

20 A.—All of the water which is stored in this pond is used over the two developments in series, and additional water made available at the time of heavy load, thereby permits both of the plants to operate at higher loads, that is, the same water passes through the plants, first through one, and then through the second.

Q.—What time of the day does the heavy load usually occur?

A.—Usually early in the day and late evening, aside from special conditions.

Q.—What portion of the 24 hours does that heavy load represent?

A.—That is a thing that varies very widely with different plants.

30 Speaking generally, most of these plants operate at a load factor between 50 and 70 per cent, that is, the measure of the continuity of use of the power is in some plants as low as 50 per cent and in some plants as high, perhaps, as 70 per cent.

Q.—Is it possible for you to put any figure upon the value to the defendant of this increased pondage

Witness: You mean the pondage alone as distinguished

40 Mr. Montgomery: We have not had an opportunity of submitting authorities to your Lordship upon that point, but my learned friend quite frankly asks the witness as to what was the value to us. Obviously, the question before your Lordship is not the value to us, it is the value of which he was deprived, namely, the value to him. The Cedars Rapids case was sent back to the Superior Court by the Privy Council for this very reason, that they had taken not the value to the taker

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Mr. Scott: I submit we are entitled to make that proof, because we are entitled to put before your Lordship evidence as to the value, the fruits of which we have been deprived of. This is not the case here at all. That was an expropriation, and you had to take the market value at the time expropriation proceedings were taken. We say we have been deprived of property of which we were owners, unjustly deprived for a period of three or four years during which time, you, the defendants, by reason of depriving us, have enjoyed very considerable revenues.

10

Mr. Montgomery: My learned friend's argument shows more clearly than I could put it how absurd the evidence is. He talks about civil fruits of which they have been deprived. If they want to make evidence of the value of what these fruits were of which they were deprived, that is, what revenues they were getting from this property and so on, of which we deprived them, all very well, I would not have any objection to that. That evidence would be quite relevant. We put this thing to a certain use and derived certain things from it. That has nothing to do with them at all. It is quite obviously irrelevant. I am just taking the principle my learned friend laid down. He said this is not a case of expropriation, that it is a question of their having been deprived of certain civil fruits. Let them make evidence of the civil fruits of which they have been deprived, which they were enjoying.

20

His Lordship: I should imagine the question is legal, according to law. What do you want to add to that? It strikes me that way, because it might be an element.

30

Mr. Montgomery: Your Lordship has not seen the judgment of the Privy Council in the Cedars Rapids case.

His Lordship: I will reserve the objection.

40

Mr. St. Laurent: I do not agree as to that expropriation case that the needs of the taker are not to be considered. In ordinary bargaining the value to the purchaser and the value to the vendor are things which are balanced together, and the purchaser buys because of the value of the thing to him. In expropriation the needs of the person authorized to expropriate are not to be considered, but the value to anybody else who might be in the same line of business is proper value, and here we are not on expropriation proceedings. They have taken our property and have used it, and we say, you derived from the use of our property so much benefit, and from that we conclude we are entitled to a sum as being the annual value of our property which they have used. If they take my field which was

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not under cultivation, and they cultivate it and grow crops from it, and reap those crops, and then I sue them to return my field to me, if they are possessors in bad faith, they not only have to return the field, but they have to return the fruit which they derived from the field.

Mr. Montgomery: I am glad to hear my learned friend suggest that as the basis of his action. I should be very glad to meet him on that basis.

10

His Lordship: I have decided to admit the evidence under reserve. There is quite a difference between the defendant's exploitation and the plaintiff's. I think there is quite a difference.

Witness: If I understand the question correctly you mean the value to the Gatineau company, and the ability to raise their head water fourteen feet.

20 BY MR. SCOTT:

Q.—No, the increased pondage which is made available to them by reason of the flooding.

A.—The increased pondage as distinguished from the increased power?

Q.—Or both, that is since the increased head. I mean by having the storage place five or six miles further back?

30 A.—But in order to get that storage five or six miles further back, it is necessary to raise the water still higher which adds to the storage on the downstream portion of the reservoir. Am I to take that into account?

Q.—Yes?

40 A.—The total value to the Gatineau Company of the water which would be stored in their upper pond—the additional water which would be stored in the upper pond due to the rise in level of about 14 feet, would be something like 60,000 or 70,000 horsepower per 10 hours every day. That would mean that the company could store water at night which would make available to them something like 60,000 or 70,000 horsepower the next day, and the first value of that would be enormous. It would mean an item of \$700,000 a year. It is a very large figure.

Q.—And the Farmers development?

A.—I have added that in in making my calculation.

Q.—Would you tell us what, in your opinion, would be the value to the defendant company in being able to include and make available this extra 14-foot head on the increased pondage at their Chelsea Development?

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Mr. Montgomery: The witness has just answered that question. He said \$700,000 a year.

BY MR. SCOTT:

Q.—That is the pondage alone? In other words, having 96 foot instead of 82 feet, what is the value to the defendant company?

10 A.—The defendant company obtained an advantage of something like 15,000 additional electrical horsepower due to the 14 feet in head, and the cost of obtaining that 15,000 horsepower from the construction standpoint would be very much less than the average cost of the plant, because the increased head would reduce the united cost of the machinery required, the result being that they would make economies in the cost of construction, so that to all intents and purposes they would pretty well get that 15,000 horsepower for nothing, perhaps not exactly, but for some figure approaching that.

BY MR. MONTGOMERY:

20 Q.—You have not given the value on that yet. I think it would be of interest to have your valuation on that?

A.—I would suggest that an increase of 15,000 horsepower in the capacity of the plant was worth the cost of 15,000 horsepower of the development, and I don't know the exact cost of development at Chelsea, but it is perhaps of the order of \$100 to \$125 a horsepower, which would mean \$1,500,000, more or less.

BY MR. SCOTT:

30 Q.—When you gave us those instances of sales on which you based yourself for your valuation of Mr. Cross' property, did you take into consideration a sale between the Beauharnois Power Corporation and the Montreal Cotton Company which was filed yesterday as Exhibit P-41?

A.—I did. I have a memorandum of that here, but I did not offer it.

40 Q.—Memorandum dated 14th of August, 1929. Will you explain after looking at that contract, what that transaction covered, what head was affected or what water power was being transferred, or flow, or anything else?

A.—The Montreal Cotton Company located at Valleyfield, on a small branch of the river were using water from Lake St. Francis under a head of about 10 feet for the operation of their mills. The Beauharnois Company, that is the new Beauharnois Corporation, are now constructing a canal, more or less adjacent to this point, which would permit water flowing out of Lake St. Francis to be

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used over a head of about 80 feet, that is, if water which is now being allowed to go out on Lake St. Francis over a head of 10 feet to be diverted, to go out over a head of 80 feet, it would be just eight times as efficient. The Beauharnois purchased from the Montreal Cotton Company the rights which they had to divert water from Lake St. Francis under several leases. I think there were three, although I am not absolutely sure.

Q.—From the Dominion Government?

10 A.—Yes, leases from the Dominion Government, that is authorizations to divert water, and they sold these authorizations to the Beauharnois Corporation.

Q.—How much water was the Montreal Cotton Company authorized to divert by these leases?

A.—To the best of my knowledge it is about 13,000 cubic feet per second. I think there is some dispute as to the exact amount, that is, the interpretation of these leases is not quite definite, but it is about 13,000. The price the Beauharnois Corporation paid was two million dollars in cash.

20 Mr. Montgomery: We have the deed here. It has been filed.

Witness: It was \$2,000,000 in cash, 8,000 horsepower delivered to the mills.

BY MR. SCOTT:

Q.—Free?

30 A.—Free. 4,000 additional horsepower at a price of \$15.00 per horsepower per year, and a block of stock which at present has some doubtful value. I would estimate that the total value of all those payments was about \$4,700,000; as the amount of power which the Beauharnois Company could realize from this diversion would be something like 104,000 horsepower, the price paid would be something like \$45 per horsepower.

Q.—That is, assuming this 10-foot head was included in the larger scheme?

40 A.—Yes, that is for inclusion in the larger scheme. Naturally the price which was paid for the power which would be developed as it was would be eight times that.

Q.—And it works out at a price of how much per horsepower?

A.—On the basis of the larger development, about \$45 per horsepower.

Q.—Somewhere around 13,000 cubic second feet?

A.—Yes, and placing no value whatever on the shares.

Q.—So that the purchaser was really getting 13,000 feet which he could use on an 80-foot head?

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A.—Precisely.

Q.—How much does it work out per horsepower?

A.—\$4,700,000, \$45 per horsepower.

Q.—You were in court yesterday when Mr. Kenny produced a deed of sale from the Gatineau Company to the MacLaren Company?

A.—Yes, I was.

Q.—Are you familiar with that branch of the Lièvre River?

10 A.—I have examined it. I have physically walked over the property and looked it over.

Q.—What would you say with reference to the sale price there?

A.—Basing myself on the information I have regarding what was transferred, I would estimate that the amount of power involved was of the order of 3,300 horsepower.

Q.—And Mr. Kenny told us there was a 30-foot head?

A.—I am assuming a 30-foot head and as \$200,000 was paid for the property, that would be at the rate of \$60.00.

20 Q.—I don't know if you happen to know whether the properties in that case were owned and controlled by the present Gatineau Company?

A.—I understand so.

Q.—It is a subsidiary?

A.—It is a subsidiary. That is what I have understood.

Mr. Ker: That is absolutely not the fact.

Mr. Montgomery: Mr. Robertson has sworn that it is.

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30 CONTINUATION OF DEPOSITION OF JAMES M. ROBERTSON, A WITNESS PRODUCED ON BEHALF OF PLAINTIFF.

On this twenty-fourth day of September, in the year of Our Lord one thousand nine hundred and thirty-one, personally came and reappeared the said witness,

JAMES M. ROBERTSON,

40 and his cross-examination was commenced as follows:

CROSS-EXAMINED BY MR. GEORGE H. MONTGOMERY,
K.C., OF COUNSEL FOR DEFENDANT:

Q.—Mr. Robertson, you told us in your examination-in-chief that you have been connected with the Hydro-electric developments in this part of the world practically ever since their inception?

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A.—Yes.

Q.—And no doubt you have been connected with the purchase of a great many water powers for development, either in a consulting capacity or otherwise?

A.—Yes, I have been connected with quite a number.

Q.—You are a director of the Southern Canada Power Company?

A.—I am Vice-President of the Southern Canada Power Company.

10 Q.—That company has developed some powers, has it not?

A.—It has.

Q.—Would you mind telling us about a few of the other powers with which you have been connected? What was the last development made, for instance, at the Southern Canada Power?

A.—The last development made at the Southern Canada Power was at Hemmings Falls, about three miles above the Town of Drummondville, on the St. Francis River. That is the last large one. They have made one or two smaller ones.

20 Q.—How large a development is that?

A.—About 40,000 horsepower, not quite.

Q.—40,000 firm horsepower and installed?

A.—There is not quite that much water altogether. There is only about 20,000 firm horsepower.

Q.—Did you say installed capacity?

A.—I would not like to make a definite statement from memory, because so many of these things go through my mind. I could easily look it up.

Q.—That commercial horsepower you would put at 40,000?

30 A.—Yes.

Q.—When was that site sold?

A.—That site is leased from the Quebec Government.

Q.—Do you recall what they paid for the lease?

A.—No. That lease was made about twenty years ago and covered all of the powers on the St. Francis River between Hemmings Falls and the St. Lawrence, and it is a lump sum figure for the whole thing, and the price was to be paid in at that time.

Q.—Was that lease made by the Southern Canada Power Company direct?

40 A.—Part of it was made by the Southern Canada Power Company direct, and it is all conveyed to the Southern Canada Company at present. Some of it was made by an old company that had some rights there, the South Shore Pulp and Paper Company, which was an antecedent of the Southern Canada Power.

Q.—Speaking about Hemmings Falls, was that one of those that was made over to the South Shore Pulp and Paper Company?

A.—I would not undertake to say from memory.

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Q.—Do you recall, then, what the Southern Canada Power Company required to pay for their raw power?

A.—No, I would not undertake to say from memory. I can easily look the figure up and get it for you.

Q.—Perhaps you might be good enough to do so. That would be the total cost to them?

A.—Of the presently developed site.

BY MR. SCOTT:

10

Q.—Apart from riparian lands?

A.—Oh, yes. The Southern Canada Power Company owns all the riparian lands adjacent to this development, bought and paid for with its own money.

BY MR. MONTGOMERY:

20

Q.—I suppose that, in effect, was a condition of the lease, was it not?

A.—The Quebec Government has always maintained that its ownership of the St. Francis River water powers was not to be questioned.

Q.—They contend that it is a navigable river, and that the bed belongs to the Crown?

A.—Precisely.

Q.—But as a matter of practice they require any person applying for a lease of the bed of the stream to show title to the riparian properties where they propose to do their development, do they not?

30

A.—That is correct.

Q.—Then the title, I take it, would be the riparian properties on which the dam or development abuts, and the lease from the Quebec Government giving the right so far as they are concerned to the bed of the stream at that point?

A.—What is your question?

Q.—I say the title of the Southern Canada Power Company would be the riparian properties on which the development abuts plus the rights of the Crown through the Province of Quebec to the river bed?

40

A.—That is correct.

Q.—And perhaps you can find out for me what the Southern Canada Power Company paid for the riparian properties adjacent to the development, and what they are paying the Province of Quebec?

A.—I will do so.

Q.—When was that development made?

A.—About four years ago.

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Q.—Have they made any other development?

A.—They have another development at Drummondville.

Q.—That was made some years ago?

A.—It was made prior to Hemmings Falls. Those are the only developments they have made in recent years for themselves.

Q.—When was the Drummondville development made?

A.—About ten years ago.

Q.—How did they acquire the title to that development?

10 A.—I am speaking from memory again. I think that was one of the titles they acquired from the South Shore Pulp and Paper Company. It is of the same order of title as the other.

Q.—Perhaps you could get that information for us?

A.—I can get that, too.

Q.—Those are the only two recent developments made by the Southern Canada Power Company?

A.—Yes. They made a small one at what we call Burroughs Falls, but it is too small to enter into this argument. It is a matter of only a thousand kilowatts.

20 Q.—How many horsepower?

A.—You can call it 2,500 to 3,000 horsepower, but it is a special plant designed to operate only a few hours in the day, in order to furnish additional power at the time of maximum load in the afternoon. It is not something that is in any sense parallel with the kind of plant we are talking about.

Q.—We are talking about the one at Farmers' Rapids?

A.—Plants of that kind or like Hemming Falls and Drummondville are run continuously.

30 Q.—Let us leave the Southern Canada Power and take some of the other companies with which you are connected. What other developments have you been connected with in recent years?

A.—I have not been directly connected with the development for instance carried on by the Power Corporation of Canada. They have their own engineering department. I do not do any engineering for them. I only consult with them about difficulties they may have over there, in an advisory capacity from an executive standpoint.

Q.—Well, they for instance took quite a prominent part in the development of the Montreal Island Power, did they not?

40 A.—Yes.

Q.—That was rather a costly development, was it not?

A.—It was.

Q.—It was a low head development?

A.—Fairly low.

Q.—And, consequently considerably more costly than the development of a one hundred-foot head or anything of that sort?

A.—Certainly.

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Q.—I suppose you have no particulars as to what was paid for the raw power there?

A.—No, I do not remember. I made a more or less unofficial report on it before the matter was taken in hand by the people who afterwards developed it, and the information which I submitted probably had some bearing on the matter, although I do not say they acted in accordance with my report.

Q.—In the course of that study did you make any investigation as to what the raw power stood then?

10 A.—I did, but I have not got a figure in my head. This is four or five years ago.

Q.—Perhaps then, if you have those records in your office, you can get the information from them?

A.—I will look and see. I am not sure whether I have this record in my office. I have this memorandum which I submitted to them.

Q.—They were connected were they not, with the presently undeveloped power site at the Rivière des Milles Iles?

20 A.—Yes, but I had nothing to do with that.

Q.—Then are those the only ones with which the Power Corporation has been connected, and with which you have had to do? I am speaking of course in this vicinity?

A.—In this vicinity, yes.

Q.—I am not speaking of their western plants?

A.—I was thinking of those.

Q.—Then, with what other developments have you been associated?

A.—Recently?

30 Q.—Yes.

A.—None.

Q.—And by the term “recently” you are covering what period of years?

A.—Ten years. I am speaking of development which has been actually carried through.

Q.—I suppose eventual schemes would not help us very much, would they?

40 A.—Oh, but I am not talking of eventual schemes, I am talking of several schemes that have been carried through. They are turning out kilowatt hours and when it comes to the final show down the interest is to see what money they can make out of it.

Q.—Is that the principle upon which you have approached this case?

A.—How much money I can make out of it? Not at all. I am not interested in this as a water power scheme.

Q.—I understood that the Power Corporation had also developed the Calumet property at Bryson?

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A.—They owned it at one time, or at least, it was a subsidiary of their own, and they did engineering work in connection with the development.

Q.—Have you any particulars as regards the cost of that power?

A.—No. I did not have anything directly to do with it, merely any information I have, I would just have to get.

Q.—Then, apart from the sales which you have mentioned, you are not able to cite to us any others which you have had personally to do with?

10 A.—I can, excepting that in two or three instances the prices paid, etc. include other considerations than just the raw power. It would be a matter of opinion.

Q.—Which makes it somewhat difficult to segregate the price paid for the power?

A.—I am interested in negotiating the thing from the owner's standpoint. What the division was, the deed proves. It is a somewhat different matter.

20 Q.—I want to put this question frankly to you, and I am sure you will answer quite frankly. There is no such thing as a market value for the raw power, is there? It is a thing that depends on one hundred and one different circumstances, is it not?

A.—There is no one price which is applicable to all raw powers.

Q.—There are a great many factors which necessarily enter into a consideration of the question as to whether a power site shall be acquired, and if so, what the purchasers can afford to pay for it, or, what it is worth to the vendor?

A.—That is true.

30 Q.—Then, take one important element. In the first instance, the cost of development of the power enters very materially into its value, does it not?

A.—It certainly does.

Q.—Some powers have their head concentrated in one point, and a high head, and lend themselves to a very cheap development, do they not?

A.—They do.

Q.—And a power site of that kind will naturally be worth very much more than a lower head proposition, would it not?

A.—Provided other circumstances applicable. . . .

40 Q.—I am just taking this one instance?

A.—The answer is not yes. The answer is, provided it is located in such a place as provides a market for the power.

Q.—But market is a different question.

A.—But a highly desirable plant location in a totally inaccessible position has no value.

Q.—I quite appreciate that. The next consideration I was going to point out to you was the question of market. I am just dealing

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with the same consideration which you as an engineer would have to think about, which is the question of the cost of the development of the power?

A.—The answer to your question is, yes, always with the reservation of these other things.

Q.—I am only taking them one at a time?

A.—I do not want you to pin me down that I said yes, without a reservation.

10 Q.—Perhaps while you are on that question, you might give us the other factors which enter into. You have just mentioned the market. I suppose that is one important factor?

A.—The cost of the development is, of course, a very important factor. Then, the availability of the market, that is, the ability to dispose of a power that you have developed is often a more important thing because, if the market for power at that particular point is too low, even a highly desirable site may not be profitable as a business enterprise. On the other hand, a less desirable site near a high priced power market may be a much better commercial proposition—the two together.

20 Q.—This question of nearness to the market is perhaps less important than it used to be, is it not?

A.—It is certainly less important than it was ten or twenty years ago.

Q.—In other words, the problems of transmission of electricity have been very largely met, or at least there has been a very considerable advance?

A.—There has been a very considerable advance.

30 Q.—So that different properties which were at one time inaccessible to a market are now, we will say, well within reach of a market because of transmission lines?

A.—That is true.

Q.—Over what distance is power transmitted today?

A.—Two hundred and fifty miles perhaps. There are perhaps a few instances where net works extend further than that through transmission.

Q.—Whereas in the old days, in connection with one of your earliest plants with which you were connected, twelve miles was a considerable distance?

40 A.—Twelve miles was a considerable distance. In fact, it was with extreme doubtfulness that the transmission was supposed to be possible.

Q.—So the factor of market as a factor has been, to that extent, reduced, as a consideration? When I speak of market, I mean distance from market?

A.—The increasing of the possible transmission distances has widened the market.

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Q.—What other factors would an engineer have to consider if he were called upon to advise in connection with the acquisition of a power site?

A.—The cost of development. I presume he would include the cost of acquiring all the rights necessary for development, so that would be only one item. The only other items that are there are the physical difficulties which are also a part of the cost of development, that is, assuming that a development can be made separate. It would be only a question of a few dollars more or less, which is part of the cost of development, so there are really no other things.

Q.—I did not quite understand your last answer. You say that the cost of development is only a question of a few dollars more or less. You would not want that to be taken that way, would you?

A.—I mean that any site that can be physically developed can be developed at a cost of some additional money. I mean the difficulties can be surmounted by spending money.

Q.—But that sum of money may be not only a question of a few dollars, but a very considerable difference between the two?

A.—Then it becomes undesirable.

Q.—But some of them may be abnormally cheap?

A.—Some of the sites.

Q.—Take for instance, just for the sake of comparison, the power of the Shawinigan Company where you have a concentration of a high head, and a possibility of developing it by just running your works across the curve, the hairpin curve. That is by nature a very cheap development, is it not?

A.—Yes.

Q.—Grand Falls is much the same, is it not?

A.—Yes.

Q.—A development of that sort would not be comparable, for instance, with the Montreal Island Power development, or the Lachine development as regards cost of development, would they?

A.—No. They would be cheaper developments.

Q.—Consequently, one could afford to pay much more for a site like Shawinigan per horsepower than for either of the sites I have mentioned?

A.—Certainly one could pay more.

Q.—And very considerably more?

A.—I am not prepared to say very considerably more without knowing what I am talking about, as to how much that is.

Q.—And you are aware, are you not, that the prices paid for power sites have varied exceedingly?

A.—Do you include the lapse of time in that variation, or transactions made about the same time?

Q.—You can put it both ways if you like, give your answer either way?

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A.—Over a period of time the prices have varied very considerably.

Q.—In the between period?

A.—That is, they have multiplied by five, six or seven over a period of perhaps twenty-five years.

Q.—That is, in the earlier days, twenty-five years ago a power site would probably be worth, particularly if it were remote from a market, only one-fifth, or one-sixth, one-seventh of what it would bring today?

10 A.—Precisely.

Q.—Then, leaving aside the period of years, and taking as more or less the same period, there has been no fixed price for raw power, has there?

A.—Not absolutely. There are logical and defensible variations in the price.

Q.—In the first place, it depends, as you said. You have to work backwards to get at the value of raw power?

20 A.—It is like any other business transaction. If you have a hydro-electric plant, and you propose to sell power, you might get so much for your power, from which you can deduce about how much you can afford to pay for the completed plant, including the raw power and the cost of development.

Q.—Precisely. You figure how much your revenues are going to be from that development when you get the thing operated.

A.—You do.

Q.—Then you deduct from that the cost of your development? When I say "deduct" you understand what I mean?

A.—Yes.

30 Q.—And then the difference, less any factor of profit that the promoters might look forward to, would represent what they could afford to pay, the maximum that they could afford to pay for the raw site?

A.—At least it is an indication of the limit of what they could pay, but as a matter of practice the payment is never anything like that.

Q.—Naturally, in that case, Mr. Promoter obviously is looking forward to some profit?

A.—Some of them do.

40 Q.—And unless there was a profit in the thing, it is not likely he would undertake it?

A.—Well, I would not.

Q.—As to this particular site, are you putting forward its maximum value as being, as you said, for inclusion in a larger scheme, or as being an independent development?

A.—The figure I put on that is based upon an independent development feature basis. For inclusion in a larger scheme, it is really

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worth much more than that.

Q.—I am rather surprised at your answer, because you have not said one word about an independent development of that property in your examination in chief?

A.—I was not asked about it.

Q.—You have given us a figure which you said you based upon certain sales, the particulars of which you furnished to us, is that not correct?

10 A.—Yes, I based it partly on that. I am sufficiently familiar with the selling prices and the sales that have been made to have an opinion of my own. Aside from these individual instances I have quoted, I simply quoted those as in a general way supporting my figures.

Q.—From the point of view of inclusion of a larger development—before making that answer, that it added to the maximum value in the inclusion of a larger scheme; did you work out any figures to see what its value was in the inclusion of the larger scheme?

20 A.—Well, I worked out some tentative figures that would give me, in a general way, a picture of what that value might be. I do not pretend to submit a figure accurate to a dollar, or even to a thousand dollars as to its value, because that is something again that is a matter of opinion.

Q.—Either you have made calculations upon which you have given your figures, or you have not. Those calculations to be worth anything necessarily have to be somewhat exhaustive?

A.—No, they would not, excuse me.

Q.—Well, that too, of course, is a matter of opinion?

30 A.—There was never a water power bought yet that was bought on exhaustive calculations. It was bought and sold by two people. You make deals by two men sitting down at a table and one man offering the other a price which is either accepted, refused or varied, and in the end the sale is consummated.

Q.—Is that the basis upon which you have given your evidence?

A.—It is not. I have made sufficient calculations to have an opinion, but nobody's opinion is accurate to a dollar in a matter of this kind.

40 Q.—Let us take your calculations, such as they were. Have you worked out what the cost would be of acquiring 14 or 15 feet of additional head (because I am now taking it on your basis of the Cross property extending up to Paugan Falls or to the Pêche Rapids)? Have you worked out at all what the cost would be of raising your power development so as to include that head?

A.—I am afraid I do not quite understand what is included in your question. I think your question does not represent what you want me to answer.

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Q.—Perhaps you will correct me.

A.—Were you not enquiring as to my opinion of the cost to the Gatineau Company of acquiring the necessary lands and rights to raise fourteen feet at Chelsea, not just raising fourteen feet at the Cascades?

Q.—Well, whether it be to the Gatineau Company or not?

A.—One thing or the other?

Q.—Or to any one else?

A.—The answers are very different on the two cases.

10 Q.—Let us take the development, we will say, at Chelsea, and a person faced with the question as to whether or not it would be worth while to acquire that additional 14 or 15 feet of head, naturally they would have to figure what it would cost them to obtain it, would they not?

A.—Certainly.

Q.—Have you worked out any estimate of what that would be?

A.—No, I have not. I have heard various figures, but I cannot state as to their accuracy.

20 Q.—And if it would cost as much as they would get out of it, why its value would not be much?

A.—You mean if it cost one hundred cents of what they could get out of it?

Q.—If it cost 98 cents?

A.—Its value would be correspondingly small, of course.

Q.—That there would be cost goes without saying?

A.—Certainly.

30 Q.—I think you have given us a figure based upon the rough and ready method which you have described, as to the value that extra included, which you put at 15 feet, I think, the value to the taker, and I am asking you this under reserve of my objection, you gave us a value as to that fifteen feet, did you not?

A.—I gave you a figure for the value of the power, which would be obtained by the use of, I think, 15 feet of head, and another figure which was an estimate of the valuation that might be obtained by the Gatineau Company from the use of any additional pondage. Which figure do you refer to?

Q.—We will take the 14-foot figure first. I think you mentioned \$900,000?

40 A.—No, I mentioned \$600,000. I said 14 feet of head was about 15,000 feet of horsepower, which at \$40 was about \$600,000.

Q.—But I think you mentioned \$900,000 to us, did you not, as to the value to the taker?

A.—I think if you look at the evidence you will find I did some rough and ready figuring on the pondage, and the amount of additional power that that additional pondage would make available to the Gatineau Company, and I said in conclusion that it was to the

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order of five or six or seven hundred thousand dollars a year in values, to which your rejoinder was that that was more than ten thousand dollars.

Q.—Well, that was correct, was it not?

A.—Apparently.

Q.—I have not had an opportunity of reading over your deposition, so I may be confusing your evidence with that of Mr. MacRostie. Either you or Mr. MacRostie referred to a figure of \$900,000?

10 A.—I think you are mistaken in attributing it to me. I do not think I used any figure of \$900,000.

Q.—You did not put any value to the Gatineau Company for the extra 15 feet?

A.—No, I placed a value of \$600,000 on it, which is the value to Cross.

Q.—Which is the value contained in Plaintiff's Declaration?

A.—Yes.

Q.—It is a happy coincidence of minds?

20 A.—I will say it is. In other words, the colors of the two statements are unquestioned.

Q.—Besides being identical? And, in support of that item of \$600,000, you have done nothing more than make the rough figures which you have given?

A.—You mean on the question of figures paid for properties?

Q.—I understood really that you based that figure on the basis of \$40 a horsepower, for 15,000 horsepower, and then you produced sales which you said justified that figure?

30 A.—That is correct. My opinion was that the value of the undeveloped power at that site was about \$40 a horsepower, and I supported my statement by these cases.

Q.—As to the value to Mr. Cross, what would you say was the value to the Gatineau Company? You have told us it would be very much more. This is all under reserve of my objection to this kind of evidence.

A.—I don't know. I would not be prepared to state what I think its value to the Gatineau Company would be. It would certainly be more than that figure.

Q.—How much more you are not prepared to say?

40 A.—Not on the spur of the moment, not having anticipated that you would speak from that side.

Q.—You have never heard that taken as a basis of valuation since the Cedars case?

A.—I certainly heard it in the Cedars case.

Q.—In fact, you remember that the record was sent back because that was taken as a basis of valuation?

A.—Yes.

Q.—You remember the values of sites which were testified to

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in the Cedars case?

A.—Yes.

Q.—There were dozens of sites put in evidence, were there not?

A.—There was quite a large number, but it should not be forgotten that those transactions were some years back, and that the prices have varied very materially.

BY MR. SCOTT:

10 Q.—How many years back?

A.—The Cedars discussion started about 1910.

BY MR. MONTGOMERY:

Q.—But I am referring now to the arbitration which you will recall took place between 1917 and 1921?

A.—Yes.

20 Q.—And the evidence in the first case that you are now referring to was exceedingly short, was it not?

A.—Yes.

Q.—That was not based so much on sales of sites but on certain calculations as to value to the taker?

A.—Based on valuations which were ruling about 1910 or 1911.

Q.—I just want to be sure that you are accurate about that. If you are not, I would not want you to give an erroneous answer. Are you sure of that?

30 A.—I won't swear that I know that now. I have not looked at the Cedars case for ten years, but of this I am sure, that the value of a lot as expropriated is determined at the time it is expropriated, not at some other time.

Q.—I won't enter into a discussion with you as to the effect of the 1909 Statute, and other things of that kind which played a large part in that case, but you must surely recall that the evidence was put in of sales right down to the date of the evidence?

A.—I won't undertake to remember. I have no such remembrance.

Q.—Do you remember when the Ile au Héron site was sold?

A.—Yes, but I cannot recall the details.

40 Q.—Let us take Cedars. Do you remember what the horsepower was there?

A.—Oh, it was 56,000—it was about 180,000 horsepower. I am speaking from memory.

Q.—If you had applied your \$40 rule, to that, what would the proprietors have obtained?

Mr. Scott: I do not wish to take up the time of the court in

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objecting, but in the Cedars case it was not a question of expropriating the water power, it was simply a question of expropriating an island, and a point of land. My learned friend is putting in the mouth of this witness, horsepower for water power at Cedars. There was no question of water power at Cedars.

Mr. Montgomery: I only wish my friend's views as to the position of the Cedars proprietors, on the basis of the award were correct. Unfortunately they claimed to own and control the water
10 power just as much as Mr. Cross claims he owns so many feet.

Mr. Scott: I cannot agree with my learned friend on that.

Mr. Montgomery: How can you make a statement of that kind? Mr. Dessaulles and I lived with that case for eighteen years, and surely know more about it than you do, and I have to say your statement is quite incorrect and I am sure it is based on your ignorance of the record.

20 His Lordship: I will allow the evidence.

BY MR. MONTGOMERY:

Q.—180,000 horsepower at \$40 a horsepower, what would that come to?

A.—Something over seven million dollars.

Q.—You are aware that no such sum was considered by the arbitrators?

30 A.—Yes, but I do not agree that the amount that was awarded under the arbitration represented the value of that water power. It did not in any sense whatever. Not any.

Q.—You yourself testified, did you not, that that point in the island controlled the water power?

A.—Yes, but it did not carry ownership of the water power with it. It meant that whoever acquired the water power would more or less of necessity be compelled to build his power house on that site, but that did not mean it gave him ownership of the water power.

40 Q.—What did he lack for ownership of the power?

A.—He lacked his ownership of the water from the province and the rights to use it, and then, approval from the Federal Government.

Q.—Are you suggesting that Mr. Cross in this case was not subject to approval before he could develop?

A.—Only approvals that cost no money.

Q.—Mr. Robertson, you are not seriously suggesting that the

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approval of the Lieutenant-Governor-in-Council which is required by statute to any development is not a serious thing?

A.—No, I did not say it was not a serious thing.

Q.—Frankly, because I am not going to keep this to ourselves, I will communicate it to the court? Do you know the policy of the Lieutenant-Governor-in-Council in regard to the approval of sites for the development of water sites?

A.—I have some knowledge.

10 Q.—Would you expect that they would authorize the development of a site that would be likely to interfere with the development of very much larger sites?

A.—I have no opinion. They would require to protect the interests of the owner of the smaller sites.

Q.—The Lieutenant-Governor-in-Council is acting primarily in the interest of the public, is he not?

A.—Presumably.

20 Q.—And you, for instance, would not expect the Lieutenant-Governor-in-Council to authorize the development of a site independently right in the middle of a large stretch of rapids, which lent themselves to concentrated development?

A.—If the development of the larger sites were scheduled for the immediate future, I would think the greater interest of the greater number should be served by taking care of the larger development, and protecting the interests of the smaller owner.

Q.—And as an instance of that, when these Chelsea-Farmer schemes came up for approval, you are no doubt aware that Mr. Cross made his protest down there at the time it was authorized by the Lieutenant-Governor-in-Council?

30 A.—I have heard that.

Q.—And under the circumstances, I suppose you are not surprised that they authorized a larger rather than a smaller scheme?

A.—No, I was not surprised.

Q.—If you were administering the Department you would do the same thing, would you not?

A.—With the reservations I have already made.

Q.—Consequently, at that period you would really have to eliminate Mr. Cross' alleged water power as an independent development, would you not?

40 A.—If it lent itself to inclusion of the larger scheme to greater advantage, I should permit it, if I were in control, permit it to be included in the larger scheme, and would protect the interests of the owner of the smaller one.

Q.—What permission has been given the court will have to be construed, but what would be your answer? I take it, from your point of view the proposition really comes down to a question as to what this was worth for inclusion in the larger scheme?

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A.—That is one factor, certainly.

Q.—Is there any other factor?

A.—The property had some intrinsic value, and it had also value for inclusion in the larger scheme.

Q.—But if it is not likely that the development of such power there would be permitted independently, then its value must necessarily come down to its value in the inclusion in the larger scheme?

A.—It must be remembered that at the time Mr. Cross acquired this property there was no such thing as the Gatineau power.

10 Q.—I am not speaking of at the time of acquiring the property, whenever that was. I am speaking of the time after the judgment in this case, that is to say, when the two schemes were up for development, the Cross claim had not been developed?

A.—If it be assumed that. . . .

Q.—Do not make an assumption. Take the facts?

A.—The facts are that it has been included in the larger scheme.

20 Q.—The facts were at the time the Gatineau Company applied for authority to develop and to raise the water to 318 or 320, or whatever the figure was. Cross' property had not been developed and no development had been authorized? That is correct?

A.—That is correct.

Q.—And you have already testified that Mr. Cross raised his protest against the approval of the larger scheme?

A.—Yes, I was told so by Mr. Cross.

Q.—So you take it that whatever its inherent value may have been (and I will come to this later), it had no value except for inclusion in the larger scheme?

30 A.—It was evidently considered by the Lieutenant-Governor-in-Council that the greatest good to the greatest number would be served by including it in the larger scheme.

Q.—You have told us that considerable attention had already been directed to the Gatineau by the concentration of the Paugan properties that had been going on since 1919?

A.—That is correct.

40 Q.—Consequently, frankly, you would not have expected the Lieutenant-Governor-in-Council to have authorized the development on the Cross property which would have interfered with that immense value to which you have spoken of the pondage alone, for the larger falls below?

A.—The action which the Government took was quite natural. I don't know. I can express an opinion as to what I would have expected.

Q.—You were asked yesterday whether Mr. Cross' property was capable of development to the extent of 200 horsepower, which you answered in the affirmative. I would ask you about the Pêche Rapids, as to whether they, too, were capable of development for

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200 horsepower for industrial purposes?

A.—I do not think so.

Q.—What fall was there in the Pêche Rapids?

A.—The fall, as I understand it in a general way, varies from three or four feet to perhaps seven or eight, at the maximum.

Q.—Depending on the stage of the water?

A.—Depending on the stage of the water in the river.

Q.—You are now speaking of the unregulated flow?

10 A.—Even the regulated flow, because even with the regulated flow, the flow is not constant.

Q.—Is it your suggestion that does not lend itself to a development, the 200 horsepower for industrial purposes?

A.—I do not think so.

Q.—How do you distinguish the Cross property from the La Pêche Rapids?

A.—Because on the Cross property one would have a certain degree of freedom in determining from time to time the elevation of its head, whereas on the Pêche Rapids he would not.

20 Q.—Then you are including in the Cross property, when you are speaking of that, the pondage on the Cross property at La Pêche Rapids?

A.—I certainly am.

Q.—When you answered that question you were speaking of the Cross property alone?

A.—No. If you will limit your question to this 200 horsepower, I would say it could be developed on the Cross property, but it is quite obvious that is something which would never be done.

30 Q.—The Cross property alone, without rights to the properties above, was not susceptible of commercial development?

A.—No, I would not say that. In a literal way, I would say it was.

Q.—Don't speak in a literal way. We are dealing as practical men. That property was not susceptible of development in itself?

A.—No, I cannot agree with that. I would say that it was, that is, that there is possible of development on the Cross property more than 200 horsepower without going off it, and it could be developed.

Q.—For 200 horsepower?

A.—More than 200.

40 Q.—You would not in that case dam the whole river or anything of that kind, and put in any such development as spoken to by Mr. MacRostie?

A.—No, certainly not.

Q.—You are thinking of some little wing development, or something of that kind, out of which you can get 200 horsepower?

A.—I am speaking of developing something more than 200 horsepower on the Cross property, which is all the law requires me

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to do.

Q.—How much more?

A.—I don't know. I could not answer that, but I certainly know it is more than 200.

Q.—That is not the kind of development that would ever have been authorized by Quebec?

A.—Probably not.

Q.—Is it your suggestion that on the Pêche Rapids you could not put in some kind of development out of which you would get
10 200 horsepower at least?

A.—Continuously, no, because there are no Pêche Rapids at all at times.

Q.—Omit the word "continuously" just for the moment. I understand Mr. Cross has a water power on Meach Creek, and we have it in evidence that it is not by any means continuous. That is still a water power, is it not?

A.—Yes.

Q.—You, yourself, attempted to prove that it had 200 horse-
20 power, did you not?

A.—Yes, and I think I did prove it.

Q.—And admittedly, naturally it is by no means continuous?

A.—It was continuous within the meaning of the act. At least the evidence at that time is such that it appeared to be.

Q.—What would you say with regard to Meach Creek? I have no knowledge whatever of Meach Creek.

Q.—We have it in evidence there was practically no water coming down Meach Creek?

A.—I also heard Mr. MacRostie state that that did not agree with his observations, so I know nothing as to the fact.
30

Q.—Mr. MacRostie spoke of having been up there two or three weeks ago and of having seen the water?

A.—But I know nothing about that.

Q.—You have lost interest, then, in Meach Creek?

A.—Naturally. We had proved our point, and consequently it was not necessary for me to waste any more time on it.

Q.—And whether subsequent developments have borne out your evidence or not, you are not prepared to say?

A.—I do not know.

Q.—You have heard it testified to that the Meach Creek plant
40 has been shut down for the last couple of years?

A.—Yes, I heard that.

Q.—And shut down for lack of water?

A.—No, that is not the way I heard it. I heard it was shut down, and I heard the statement there was no water, but I did not understand the plant was shut down on account of lack of water.

Q.—You have heard two statements, first, that it was shut

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down, and secondly, that there was lack of water. Do you not think that those two factors could be connected together in the mind of any reasonable man?

A.—No. My understanding was that the shutting down of the plant had no relation whatever to the shortage of water, that was at a time long before there was a shortage of water.

Q.—Evidently you were not here during Mr. MacRostie's cross-examination?

A.—I was.

10 Q.—And that is the impression you gained from it?

A.—Yes.

Q.—I have just been handed a circular from the Department of the Interior, the Dominion Water Power's Branch, showing for instance, what the flow was on September 16th, 1931, and the indication is that the discharge was .3 of a foot cubic feet a second. That would not indicate any water coming down Meach Creek would it?

A.—The indication would certainly not be such.

20 Q.—Well, it would not be enough to operate the Meach Creek plant, would it?

A.—Certainly not.

Q.—Then, if your evidence was correct, as regards Meach Creek, I assume we would have to concede that La Pêche has, at least, 200 horsepower? You never heard of the flow at La Pêche Rapids dropping down to three-tenths of a foot?

A.—No, I have not heard it.

Q.—Nor do you think it is likely that it will ever happen?

30 A.—No. I think probably it has never happened. At the same time it has happened that there is no head there, and if you have no head you have no power.

Q.—How do you know that?

A.—I am just looking at the Government records of elevations. I have not that proof before me, or any figures before me.

Q.—I would ask you now whether you can testify to that statement?

A.—No, I cannot testify from personal observation.

Q.—From search of the Government records?

40 A.—I have no figures here, or anything like that. My understanding is that at high flows the Pêche Rapids practically disappears.

Q.—That is not as strong a statement as you made at first, but I put it to you it is still a little stronger than the records bear out, that there was no head at Pêche Rapids?

A.—When I say, of course, no head, I mean no head that would be utilized. I do not mean a few inches or feet.

Q.—We are only talking about 200 horsepower, which, of course,

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is not very much in a stream of this size, is it?

A.—No, not very much.

Q.—I mean, such pondage as there is in La Pêche?

A.—There is no pondage. My understanding is there is no pondage at La Pêche, that the head water at La Pêche is the tail water of Paugan.

Q.—But we are only dealing with 200 horsepower?

A.—That is true.

10 Q.—And it is your suggestion that La Pêche is not capable of development for 200 horsepower?

A.—Practically, yes.

Q.—Well, practically?

A.—For continuous operation of 200 horsepower.

Q.—Well, Mr. MacRostie gave us his idea of continuous operations, being 300 days a year?

A.—I do not think that 300 days a year is continuous operation in the meaning of the statute. I do not wish to be put in the position of interpreting the statute.

20 Q.—Then, you would not agree that 300 days a year, as being the standard for measuring water power?

A.—I agree that ninety per cent continuous operation is a fair basis upon which to estimate the amount of power. . . .

Q.—I understand that the lack of head of which you have spoken did not refer to lack of water?

A.—It did not refer to lack of water. The trouble is there is too much water.

Q.—Are you giving evidence that flood conditions would last more than ten per cent of the time?

30 A.—No, I do not know how long they would last.

Q.—Then, if you do not know how long they would last, how are you in a position to say that 200 horsepower could not be developed?

A.—I have not said that I thought that under the Statute the maintaining of 200 horsepower for 90 per cent of the time was all that was required. I don't think it is.

Q.—Let us take it according to the Statute and see what your answer would be?

40 A.—The Statute is not 90 per cent of the time. I said that under the Statute the 200 horsepower must be available all the time, in my opinion.

Q.—Is that the interpretation that you gave to the Statute in the Meach case?

A.—I think so.

Q.—I thought there was some question as to the meaning of the word "permanent."

A.—There was. Even if I did take it there, which I am not sure

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of, there was no decision on that point.

Q.—Let us take it at 90 per cent of the time, which you say is the rule of one province, Quebec or Ontario?

A.—I don't know that it is an official ruling. Anyway it is just commonly used.

Q.—Let us take it according to the commonly used, 90 per cent?

A.—This is your question, do I think there would be 200 horsepower available at La Pêche Rapids 90 per cent of the time?

Q.—Yes.

10 A.—I think there would be technically that much available, but I do not think it would be usable. I do not think anybody would go back there and try to do it.

Q.—Any more than with Cross' power?

A.—I do not agree with that. I think you can do it easily with Cross' property, but I do not think it can be done easily at La Pêche. I do not say that there is not some kind of freak installation that would do something.

Q.—As to whether or not it will be a practical commercial thing at Cross' property is going to remain an argument?

20 A.—The practical commercial thing would be to use Cross' property and the rights that are more or less annexed to it up above.

Q.—And you would not suggest putting an independent power proposition on Cross' property alone, unless you acquired the rights above?

A.—Anybody in his senses would expect to use the rights above.

Q.—Before we go afield, let us deal with the Gatineau itself. The principal concentration on this section of the river is at Chelsea and Farmers, is it not?

A.—That is correct.

30 Q.—And there you have a head of how much?

A.—My memory tells me it is about 160 feet for the two. I won't guarantee within a foot or two.

Q.—So they were, of course, the key points for the development of the lower stretch of the river up at Paugan?

A.—That is correct.

Q.—Any person getting those would expect to get the properties above?

A.—He might naturally expect to get them, yes.

40 Q.—Have you any idea what was paid for these two large properties which are the key of the present development?

A.—No, I do not know.

Q.—Would it surprise you to learn they were put up at public sale in September, 1924?

A.—I just do not remember. It may be so.

Q.—You know where they came from, do you not?

A.—Yes.

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Q.—Where did they come from?

A.—They came from the Riordon and other interests, and the Gilmour and Houston, as I recall it. I won't guarantee that. I have heard all those things, but they do not make much impression on me.

Q.—Did you make a study for the purpose of determining what the value of raw power was on the Gatineau river before giving your evidence?

A.—Yes.

10 Q.—Then, of course, you would first turn, would you not, to the larger sites which are included in this development?

A.—Not necessarily, because I was not very much interested in them. They are too large for comparison.

Q.—Oh, they are too large for comparison?

A.—Yes.

Q.—Let us get, then, your range on your \$40 a horsepower. Let us get that range as to what you would apply that to. You have told us that a high head development is more valuable than a low head development?

20 A.—Providing other things are all right.

Q.—A high head development is considerably more valuable for a development than a low head, all things being equal?

A.—Yes.

Q.—Then if a low head development, such as the Cross development, was worth \$40 a horsepower, what would a high development under similar circumstances be worth?

A.—I would have to have other information of the high amount, and other information.

30 Q.—Take the Cross horsepower. We will give you the full benefit of your fourteen feet for the sake of argument and compare that with your 160 feet which I think you testified for Farmers' and Chelsea. Obviously that would be worth more per horsepower than at Cross'?

A.—Of course, the 160 feet is split up into two parts, which would decrease the value.

Q.—Take them in two parts?

A.—The difference in price of the raw power sites which is based upon differences in head is something, but not very much.

40 Q.—But, in any event, a high head is worth more per horsepower than a low head?

A.—It certainly is, other conditions being equal.

Q.—Just take it for the sake of argument at your \$50 per horsepower or take it at the same figure, \$40 per horsepower, what would you have said that the Chelsea and Farmers' sites were worth as raw powers in 1924, 1925 or 1926?

A.—That would be on the order of 160,000 horsepower at \$40,

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which is apparently six and a half million more or less.

Q.—Is it your understanding that any such figure was paid for these sites?

A.—I don't know.

Q.—You surely know, do you not, if you were following water powers at that time that this property, with all the timber limits adjacent to it, was put up at public auction with very extensive advertisements in September, 1924?

A.—I know that, but I do not remember what was paid for it.

10 Q.—In a publicly advertised auction with an auctioneer, and everything else, and you cannot remember what price was paid for it?

A.—I do not remember.

Q.—That surely would have been one of the factors which you should have considered in making a valuation?

A.—Oh, there are a multitude of other things I might have considered, but which I did not think it was necessary to consider, and not having the information, I did not.

20 Q.—In other words, you picked out the highest sales you thought could be figured into a basis of \$40?

A.—No, I do not agree with you. I picked out the ones I thought were the most à propos.

Q.—A propos, because they came the nearest to your calculations on coming to your \$600,000?

A.—No, I do not agree with that. They were of the size and type and location that was comparable with this.

Q.—You gave us Paugan. Was that a size or type which is comparable?

30 A.—You will remark I left Paugan out at first, and I put it in more or less by request, leaving it out in the first place, because I thought it was not so à propos.

Q.—Well, then, the other power site which has been spoken of on the Gatineau was Paugan, and there you told us that some \$4,750,000 was paid for the capital stock of the Hull Electric, which carried with it Paugan, and you were generous enough to attribute \$750,000 of that to the other things that went with Paugan. That is correct, is it not?

A.—Yes, that is what I said.

40 Q.—You mentioned the head there as 100 feet. Are you sure as to that figure?

A.—I cannot prove it. My understanding was that the original sale carried with it 100 feet head.

Q.—Do you know under what head they are operating Paugan?

A.—I don't know.

Q.—Would it surprise you if I told you they were operating it under a head of 140 feet?

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A.—140, something of that order is true, but I understand that is not what was included in the purchase price.

Q.—Do you know that?

A.—I do not know.

Q.—Consequently the extent by which the power was on a higher head than 100 feet, or a greater number of horsepower than 100,000 horsepower, would naturally vary your calculations to that extent ?

10 A.—If those rights were purchased within the purchase price named, not if they were purchased afterwards for other considerations.

Q.—Then take it at that for the minute. Taking your figure of 100 feet head were purchased with properties above it, lending themselves to purchase, we will say, in the same way, as the 14 extra feet lend itself to purchase above Cross, would that be an element that you would take into consideration?

A.—It would. Any power site that has adjacent to it possibilities of increasing the presently available amount of power would raise the purchase price.

20 Q.—And in addition to knocking off your \$750,000, you would have to make some allowance for that. That is deduction No. 1?

A.—No, I would not take anything from the purchase price. I would pay that purchase price, because those are things where they are expecting to have to pay additional money to get them.

Q.—But that would not be the portion of the price which would be attributable to that 100 feet alone?

30 A.—I might have to pay for these additional equities above, an amount of money which would be proportional to the one hundred thousand, in which case I would be paying the same unit price both for the original purchase and for the additions to it.

Q.—Do you know how much the installed capacity is at Pagan?

A.—Not officially.

Q.—If I tell you it is 238,000 horsepower, would that check with your information?

A.—My understanding is it is of that order. I do not know exactly.

40 Q.—What did you include in that allowance of \$750,000 which you were good enough to make?

A.—I did not include anything. I don't know anything about the Hull Electric. I just took off the odd figures as representing perhaps some kind of value for a property which was well understood to be unprofitable.

Q.—You are testifying, and testifying seriously, that \$4,000,000 or \$40 a horsepower was applied to 100,000 horsepower?

A.—I applied \$4,000,000 of the purchase price of \$4,750,000 to

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the water power site.

Q.—And you just deducted, without knowing anything about the value of the Hull Electric Company was. You deducted \$750,000 because that was the odd figure over your \$40 per horsepower?

A.—Yes, that it looked as if it might bear some relation to the value.

Q.—In order to value your deduction of \$750,000 either you must have considered what the Hull Electric Company was? Paugan had only recently been acquired, had it not?

10 A.—By the Hull Electric, yes.

Q.—And the Hull Electric Company was quite an old company?

A.—Yes, it was.

Q.—Tell us what the Hull Electric Company was, and what it possessed?

A.—It possessed a street railway system and an electric light and power system in the City of Hull.

Q.—Those are things of some value, are they not?

20 A.—Some of them are sometimes of no value. I will sell you two or three tramway systems for a dollar.

Q.—That sounds very clever, but I am talking now about a seller who was lucky enough to find a purchaser for his entire properties. First, his consideration would be to get his money back, and then he would talk about profit?

A.—His first consideration would be to get as much money as he could get, not to get his money back.

Q.—Do you know how extensive that distributing system was?

A.—I have no details. I have seen it many times, but do not know anything about it.

30 Q.—Hull is quite a large industrial city, is it not?

A.—Yes.

Q.—Are you aware that the Hull Electric system had an exclusive franchise in the City of Hull?

A.—I don't know.

Q.—You do not know of any other company that was operating there?

A.—No.

Q.—Did you give that any consideration?

40 A.—I did not give any details any consideration because I did not know anything about it.

Q.—Well, you must have known something in order to separate that price into \$4,000,000 on the one hand and \$750,000 on the other.

A.—No, I just made a guess of what I thought might represent a figure of value for the Hull Electric Company as distinguished from the water power site. The value might be several hundred thousand dollars out of the way for all I know.

Q.—So we cannot attach very much importance then to your

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figure of four million dollars?

A.—You can attach very considerable importance to the figure of \$4,000,000, but you need not attach too much importance to the \$750,000, because I can vary the \$750,000 up to about twenty-five or fifty per cent without appreciably affecting the four million dollars.

Q.—In other words you would get \$3,250,000? If it was only 100,000 horsepower it would reduce it 32.50 instead of 40?

A.—It would, but I cannot even suggest that the Hull Electric was worth at that time one million and a half.

10 Q.—You have told us frankly you did not know anything about it. Why do you make those statements. You are here as a responsible witness?

A.—Oh, but I know something about the utility game.

Q.—Either you do know what the Hull Electric Company was, or you do not.

A.—I do not, I have told you I do not.

Q.—Then, how can you take the responsibility of putting a value of \$750,000?

20 A.—Because I can take any community I like and can tell you what a utility in that community is worth.

Q.—And that is, without knowing how many customers it has?

A.—Yes, because when one buys a utility in a community one does not buy that number of customers.

Q.—Without knowing what its load is?

A.—One knows what the load should be.

Q.—If you knew what the load should be, let us see what load you allowed to the Hull Electric?

30 A.—I did not allow any. I don't know anything about the load, I don't know anything about it.

Q.—You knew what the load should be in making up that \$750,000. What did you take as the basis of the load that they had?

A.—I did not take anything. I made no computations whatever. I simply subtract \$750,000.

Q.—Simply because that was an odd figure over the four million dollars?

A.—And it looked reasonable.

Q.—What facts led you to believe it looked reasonable? I want to pin you down to this?

40 A.—I have told you already I don't know anything about it.

Q.—Then we are not to rely at all on your deduction of the figure of \$750,000 other than it appeared to be an amount over four million dollars?

A.—Not quite as far as that. Had the amount over four million dollars been \$5,000 I would not have deducted \$5,000, so I did not deduct it just because it happened to be the amount over.

Q.—I understand that the \$750,000 was apparently allowed by

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you just as a pure matter of disinterest, because your evidence was that the Hull Electric was not worth anything, whereas Paugan Falls was the whole amount, and I wish to know if you adhere to that statement?

A.—Of course, that may be somewhat exaggerated. I do not think the Hull Electric was of more value.

Q.—Let us take what the Hull Electric Company was in the first place. It had a charter from Quebec, had it not?

A.—I presume so.

10 Q.—And a special charter from the Province of Quebec?

A.—I don't know.

Q.—But that was not a fact you considered? It had an Act from the Dominion, declaring it to be a work for the general advantage of Canada?

A.—I don't know that it had.

Q.—It had an exclusive franchise for the industrial city of Hull? Is that a fact which was considered?

20 A.—I presume it had, from some knowledge as I had. I took that for granted. I could not have proved it.

Q.—Is that a factor to which you gave any value?

A.—Yes.

Q.—How much?

A.—You have the total value I put on it of \$750,000.

Q.—You had not any figures in mind segregating that \$750,000?

A.—I had not.

Q.—It had a tramway system in the City of Hull?

A.—Yes.

Q.—With an exclusive franchise?

30 A.—I presume so.

Q.—It had the entire electric system in the City of Hull?

A.—I don't actually know that, but I presume so.

Q.—With an exclusive franchise?

A.—I don't know.

Q.—And the City of Hull is a very important industrial community?

A.—Fairly important.

Q.—Have you any idea of how many customers it had?

A.—I have not.

40 Q.—Would it surprise you if I told you it had over 4,000 customers?

A.—I would not be surprised greatly. I have no knowledge. I mean, I have nothing with which to check it.

Q.—Where did it get its power from?

A.—I do not even know that.

Q.—Are you aware that it had a developed power on the Ottawa river?

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A.—I don't know whether it owns that power. I know it obtains power from the plant there, but as to ownership I know nothing.

Q.—Then, in giving your figure of \$750,000, you were not even aware that it had a power plant of its own?

A.—I told you I did not know anything about it.

Q.—Do you know what the investment was in the Hull Electric Company, the actual cash put into it as an investment, apart from Paugan?

A.—That would mean the tramways and distribution.

10 Q.—Yes, the power development?

A.—No, I do not.

Q.—Then if you are not able to give us any more accurate separation of the figures as between Paugan and the property of the Hull Electric than you have given us this morning, can you assist us by telling us what Paugan had cost the Hull Electric Company?

A.—I don't know.

Q.—It had only been acquired just prior to that sale, had it not?

A.—Well, shortly before.

20 Q.—In making a study of values of power sites on the Gatineau river, did you not think it would have been of interest to check the separation of the Paugan value by ascertaining what Paugan had cost the Hull Electric Company shortly before?

A.—No, because I did not think, and do not now think, that the acquisition of the Paugan site by the Hull Electric was done in such a way that the figure would be applicable to this argument. I did not know. I have only heard.

30 Q.—So you were not even interested in making your study of water power valuation or of finding out what Paugan had cost the Hull Electric just before, or shortly before, their sale to the existing company?

A.—No, I did not determine that.

Q.—Consequently, your study, at least, of the Gatineau River was not a very thorough one, if you did not determine what was paid for either the big sites on the Chelsea and Farmers sites, or for Paugan just before?

40 A.—I have already told you I did not consider these larger sites—that the price paid for these larger sites was as good an index of values as the price paid for smaller sites, which were more nearly in line with the one we are talking about.

Q.—But we have your evidence already very definitely that a higher head under similar circumstances is worth more per foot than a lower head?

A.—They are.

Q.—Consequently, you would at least have been interested in finding out what these higher head propositions had cost, so that you might make whatever seemed an appropriate deduction for the

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lower head?

A.—Not necessarily. I figured that I had enough information to back up my more or less previously confirmed opinion.

Q.—So you started out with a fairly formed opinion based upon the Plaintiff's Declaration? You looked around for sales, that you thought might bear that out?

A.—That is entirely incorrect. I started off with a previously formed opinion based upon twenty-five years' connection with this business.

10 Q.—I have examined you as to your connection with the business, and have asked you about sales, and you told us that earlier sales were no guide?

A.—Exactly.

Q.—And that only the more recent ones could be relied upon, and I have asked you in respect of all the more recent ones, to give us any sales with which you had been connected, other than this particular case, and you told us you had not any others, so I think you have your 25 years' experience fairly well covered?

20 A.—I said I had others, but on account of other factors being included in the price than just the raw site, it became a matter of opinion, and my opinion as to the subdivision, therefore I did not use these examples.

Q.—You have given us that in your opinion that could be used?

A.—But I did not say, and I did not admit that those are the only sales and the only prices which give me experience on which I base myself, when I say I think a thing is worth \$40.

30 Q.—If you were called upon not as a witness, but as an independent engineer to make a valuation of a site, and you were basing yourself on actual valuations, don't you think you would make an exhaustive study of the prices which had been paid for powers on that same river within the last two or three years?

A.—I might or I might not—not necessarily.

Q.—And in this case you did not think it necessary?

A.—In this case I did not, because I did not think they were comparable.

Q.—I have tried already to get you to say why you did not think they were comparable, because they were very much bigger?

A.—Because they were very much larger.

40 Q.—And consequently, would be very much more valuable per horsepower, because they had a higher head?

A.—Not just so.

Q.—Are you going to withdraw from that?

A.—I have already admitted, and I do not withdraw my statement, that in my opinion a higher head, other conditions being alike, is more valuable than a lower head, but it is possible to have a power so large that its price is down because it is somewhat difficult to

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utilize it.

Q.—But here you are not suggesting any particular difficulty in utilizing either Farmers or Chelsea? They were comparatively easy of development.

A.—There were no very serious difficulties, they were ordinary developments.

Q.—Consequently you would not exclude them for that reason?

A.—No. I simply excluded them because they were large by comparison with the one that was under discussion.

10 Q.—And, as a matter of fact, if you had applied your \$40 a horsepower rule to them, you would have reached a figure that you would recognize would be absurd?

A.—Meaning the \$6,000,000—not necessarily.

Q.—Then, if it would not necessarily be absurd, why not have taken the trouble to check them up?

A.—Because it is not absurd, it is not necessarily applicable à propos.

20 Q.—Why was it not à propos? You told us it was large. If the largeness does not make it difficult to develop, it is not a source of deduction, it is a source of addition?

A.—I do not agree with you. In order to be reasonably comparable things have to be reasonably the same.

Q.—But then, certain factors might make one more comparable than the other. You might have to make a deduction from a high head power because you are dealing with a low head power, but otherwise other conditions being equal?

30 A.—I might have to make an increase in my price on my low head power, because of its particular suitability and capacity for some particular work that was to be done, while on my high head with its very much larger capacity, I might be faced with the serious difficulty of having too large capital expenditure to carry the property on for years, while I could find my load.

Q.—In any event, you did not consider any of these factors?

A.—I did not.

40 Q.—You spoke of the value of the pondage from Cross' property up. What did you take as being the extent of that pondage?

A.—The word "extent" means what?

Q.—Area?

A.—I took the area of the river from Chelsea up to La Pêche.

Q.—I am talking about Cross' property, not Chelsea.

A.—You are talking of the pondage on the Cross property only.

Q.—I did not take it that there was any pondage attached to Cross' property?

A.—Available above Cross' property?

Q.—There was pondage available above Cross' property. I do not suppose you are asking us to pay for the pondage below, are you?

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A.—At least I am not anticipating that you would.

Q.—Then let us take the pondage that you did take into consideration?

A.—I do not recall that I answered any questions regarding pondage above Cross' property yesterday. I am open to correction, but I do not remember doing so.

Q.—Then, your evidence is not to be taken as giving any value to the pondage above Cross' property?

10 A.—Not at all. It certainly has value. I will just point out that I do not think anybody asked me that question. I do not want to be pushed into a position I cannot support, but I do not remember answering any such question. If you will ask the question now, I will answer it.

Q.—Well, I am asking it now; what was the pondage available, first, we will take it on Cross' own property, because we after all had to buy the riparian properties above that from other people?

20 A.—How much drawdown, that is, how much available change in elevation are you going to permit me? Shall I follow Mr. MacRostie's evidence?

Q.—I am not asking you that. I am asking you how much pondage there was on Cross' property?

A.—There is no answer to that, unless you tell me how deep the water would be.

Q.—As a matter of fact, Cross' property taken alone had no pondage? It would depend on the properties above which had different riparian proprietors, would it not?

A.—That is true.

30 Q.—Take it that he had rights or could acquire rights on the 14 feet above his property. When I speak of 14 feet, you understand I refer to head backing up towards the top of La Pêche. What area of pondage had he there?

A.—He would have an area of something like four and three-quarter miles by something like a thousand feet, by whatever depth he would choose to use.

Q.—Have you any opinion to offer as to whether it is more profitable from the operating point of view to use that as pondage at the expense of drawing down your head, or to run at 100 per cent, keeping your head constant?

40 A.—The operation to be conducted on the 14-foot head only or on the higher head below? On the Cross property? You are confining yourself to the Cross property, you are not talking about Gatineau power now?

Q.—I am talking about the Cross property?

A.—Under normal conditions, one would do part of each. One would run the water down at times when it was wise to do so, and would refrain from doing it at other times, but I do not think you

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could make any statement that you would always do one or the other.

Q.—In the first place, it is a question of drawing the water down during the peak, and replacing that drawn water in off peak hours?

A.—That is correct.

Q.—It is not a question of piling the water above normal, in which case you would affect Paugan?

A.—Yes, if the piling were done above the tail and elevation at Paugan.

10 Q.—In other words, you have to consider whether it is more profitable to draw your head down, one, two, three or four feet and to get water at the expense of head, or vice-versa?

A.—Exactly. It becomes a question of the operating standpoint, of the extent at which you can vary those factors and get the greatest amount out of your power.

20 Q.—I think you were present during Mr. MacRostie's evidence, and I do not want to go over all that again, because I have no doubt your conclusions would be the same? The Chelsea plant, as a matter of practical operation, could get the same extra flowage at an average difference of one foot, could they not?

A.—I am afraid I do not understand.

Q.—Well, I thought possibly you were here when Mr. MacRostie was examined, and that I would not need to go into the details?

A.—I confess Mr. MacRostie's evidence on that point went by me. I did not understand the computation. Maybe I did not hear it all.

Q.—Did you follow Mr. MacRostie's evidence?

30 A.—I followed it. I was in the room, but I confess there were some points in connection with that discussion I did not get. I did not understand what he said, or its application.

Q.—Before we leave the Gatineau, you were asked a question as to storage, as to the policy of the Quebec Streams Commission and the Quebec Government. I think you were led up to say that storage would probably have been put in by the Quebec Government and the Quebec Streams Commission on the Gatineau independently of Mr. Cross. Is that a fair summary of your evidence?

40 A.—If I recall, I said I thought storage would have been provided on the river when stipulated, he may not have provided it.

Q.—You perhaps have been following the attitude of the Quebec Government in regard to storage schemes since the storage question was taken up by them years ago?

A.—To some extent, yes.

Q.—Have you noticed any particular change in their attitude in respect to storage in recent years?

A.—I can only say no. I am not sure that I have in mind what

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you might be thinking of. I do not know of any other particular change.

Q.—You are aware that the Quebec Government, acting through the Quebec Streams Commission, put a storage on the upper St. Maurice and the upper St. Francis and several other rivers?

A.—Yes, I know that.

Q.—That was done in earlier years, was it not?

A.—At least some years ago.

10 Q.—Do you know of any recent storage proposition which has been put in by the Quebec Streams Commission?

A.—I cannot just think of any very recent ones.

Q.—Do you not know that the Quebec Streams Commission and the Quebec Government have abandoned putting in storage?

A.—I don't know that they had abandoned it. I know they allow a private interest to go and do it themselves.

Q.—Have you ever heard of any storage scheme having been carried out by the Province of Quebec, or authorized by the Province of Quebec, during the last seven or eight years, let us say, long prior to this?

20 A.—I am not speaking of seven or eight years, but in the immediate past, my answer will be, no.

Q.—Let us take the period in 1926, we will say, when this plant was commenced. Are you aware of any storage scheme whatever that has been carried out by the Province of Quebec since then?

A.—I cannot say. I don't know. I don't know of any, but that does not say there were not any.

Q.—You would be likely to know if there had been any?

A.—Not necessarily.

30 Q.—You must have had something in mind to answer my learned friend's question yesterday, when you suggested that storage would have been put in on the Gatineau independently of Cross?

A.—Not at all.

Q.—You were trusting to God that something would happen at Gatineau?

A.—I was not trusting to God at all. I know perfectly well if the necessity arises, if the Government can give it, well and good; if they cannot give it, then private interests give it.

40 Q.—You were asked this question:

“ Q.—What was the policy of the Quebec Streams Commission during that period, and the provincial authorities with reference to storage of waters on rivers? ”

Objection was taken to that question and Mr. Scott changed his question:

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“ Q.—During that period had they been building storage dams on rivers in order to assist in hydro-electric development? ”

And your answer was:

10 “ A.—During that period the Quebec Streams Commission were constructing and encouraging the construction of dams on the upper waters of the streams of the province in order to conserve the flow.”

I would like to know from you what dams the Quebec Streams Commission either constructed or encouraged the construction of during that period?

A.—On the head waters of the St. Maurice River there is a dam constructed by the Quebec Government.

Q.—I am talking during that period. That is your answer?

20 A.—That is a general statement which means over a period of years, that had been the policy of the Quebec Government.

Q.—And you were not distinguishing from their past policy as to whether any change had been made?

A.—No, I was not making any attempt to do so. That was just a general statement.

Q.—Then are you in a position to state now that it was the policy of the Quebec Government to undertake further storage schemes?

A.—I am not in a position to say what the policy of the Quebec Government was.

30 Q.—Do you know for a fact that they have undertaken any further storage schemes during a number of years past?

A.—So far as I know, not in the immediate past.

Q.—Consequently you had nothing to warrant you in looking forward to their putting in any storage in the immediate future?

A.—Not any specific.

Q.—If any storage was put in, it would have to be put in by one or another private interest on the river?

40 A.—Or the Government. There is nothing to indicate the Government might or might not change its policy. All I am suggesting is that when necessity for storage gets to a certain point, the storage is provided. I do not know whether though the Government may do something today, they may do a different thing tomorrow.

Q.—Will you explain your answer again, when you say during a period, you surely had reference to some period. What period were you referring to?

A.—That was, as I said, a general statement which applied to the period of years preceding that, during which time the Government spent money.

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Q.—In past years?

A.—Yes.

Q.—And you cannot indicate any storage scheme that has been put in by them in recent years?

A.—Not immediately recently, although there may be such.

Q.—Do you know of any?

A.—The Kenogami reservoir—I don't know of any.

Q.—How long ago was that put in?

A.—I don't remember at all.

10 Q.—Approximately?

A.—I cannot tell you.

Q.—Give us an idea?

A.—I don't know.

Q.—Surely if you follow hydro-electric matters as you say you do, you can give us some idea?

A.—I won't pretend to put a figure on it, it is a matter of record.

Q.—Is it ten years, twenty years, or a matter of five or six years?

A.—I cannot put a figure on it, I don't know.

20 Q.—Surely your statement was intended to imply something, and that was that Cross might confidently hope that the Quebec Government through the Quebec Streams Commission would put in storage. Have you anything to base that on?

A.—I simply study the condition of the art of developing hydro-electric resources of the Province, to the extent at that time that any owner of a water power on a reasonably adequate stream, such as the Gatineau, might confidently look forward to something which would in the end result in conservation of that stream.

Q.—That is a long and very large answer?

30 Q.—It is, and that is just what he would look forward to.

Q.—And that is not what you testified to yesterday?

A.—I have told you that was a general statement, but I cannot be tied down to any particular year.

Q.—So you have not anything more definite in the way of a hope to hand to Mr. Cross?

40 A.—I have only to offer him my opinion that at that time conditions were such that it was evident there was going to be conservation of the Gatineau river, I did not know how. I did not know whether the Government would do that, or whether private interests would do it.

Q.—And if private interests were to do it, you would expect him to have his property valued on the basis of storage put in by them?

A.—I would expect him to have his property valued, taking into consideration the fact that conservation was possible.

Q.—You would naturally value it in its natural conditions, plus the possibility of conservation, plus the possibility of getting the

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plans approved?

A.—I am not sure I understand your question. If Mr. Cross' property located on the Gatineau had been located on a river which obviously was not susceptible to treatment by conservation work, so as to equalize the flow, the value of his site would be less than the value of your rights when located on a river that was obviously susceptible to conservation.

10 Q.—But if you have a property which you are valuing on an unregulated river, and you can only offer him a very general statement by somebody or another, that storage may be put in, you would not value that as an existing fact, would you?

A.—If my owner did not need to sell his property, I would advise him that it was worth a certain amount which included that factor. If he did not have to sell he would not have to realize on it at the moment.

Q.—Then, you would not be fixing value as at the time, you would be fixing something that you might advise him to hope for, for years to come?

20 A.—A part of that is presently valued. The expectation of the profit in the future is a part of the immediate value.

Q.—We are at one on that.

A.—It is just a question of value and expectation and realization.

Q.—How much head would you say there was on the Cross' property in its unregulated condition? I am speaking of his own property alone?

A.—I have only the information submitted by others.

Q.—You heard Mr. MacRostie say that it was 3½ feet?

30 A.—I heard him state that one of the falls

Q.—We do not concede that 3½ feet?

A.—My understanding of Mr. MacRostie's statement was that one of the falls which was on Mr. Cross' property was 3½ to four feet, and that a part of the upper fall also belonged to Mr. Cross. Now, I have only my interpretation of Mr. MacRostie's statement.

Q.—Do you know how much head he had on the east bank?

A.—No, I would only be quoting Mr. MacRostie's figures. I don't know of my own knowledge.

40 Q.—Consequently, you either have not made any valuation of Cross' site alone, or else you have made your valuation on the assumption that he owned the right to develop fourteen feet up to Pagan?

A.—I have made the assumption on the understanding that he could obtain the right to develop fourteen feet up to Pagan.

Q.—What would you give him as owning?

A.—I was not interested in what he owned. I was interested in what he might own.

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Q.—So you made your valuation without determining what he owned or what he might own?

A.—I made my valuation, as I have already told you, on a basis of what he would have when he raised the water fourteen feet.

BY MR. MONTGOMERY, K.C.:

10 Q.—I think we have had evidence of it already (although I do not know testimony is needed upon it) that before Mr. Cross could raise the water 14 feet he would have to acquire the riparian properties, and obtain the approval of the Lieutenant-Governor-in-Council?

A.—He would have to acquire the riparian properties, certainly, and the method of obtaining those might require approval or might not. The approval of the plans of the development would, I presume, have to be obtained.

Q.—Before he could develop at all he would require to have his plans approved, would he not?

20 A.—That is what I said. I take it he had approval for the acquiring of the properties.

Q.—I am speaking about the acquiring, and the approval?

A.—Yes.

Q.—Before we leave the Gatineau. I think the last sale you spoke of was the Canada Cement sale. I assume you have looked over that contract?

A.—Yes, I read it here in Court.

Q.—Was that the first time you saw it?

A.—The first time I saw the real contract—the power contract.

30 Q.—So, you spoke from a somewhat hasty examination you made of it in the box here?

A.—I had reason to suppose I knew what was in it, so it was only necessary for me to verify my previous understanding.

Q.—You have referred to the matter of acquiring a property apart from the method of expropriation—as a matter of negotiation—in which the purchaser and the seller sit down and across the table figure out the price?

A. That is the usual method.

40 Q.—And, where that price is payable in kind, I assume the consideration given for the contract may be equally advantageous to both parties. It may suit the purchaser, and it may be cheaper for him to pay in power rather than in dollars, and it may be advantageous to the vendor as well?

A.—I presume so, having agreed that the consideration was reasonable to both sides. It must have been to the advantage of both sides or they would not have agreed.

Q.—You have observed, in the first place, this consideration

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was not payable in cash?

A.—I did.

Q.—Beyond the formal sum of \$1.00 there was nothing payable in cash?

A.—No cash.

Q.—The whole consideration consisted of a power contract?

A.—It did.

10 Q.—By which the Gatineau Company, which was developing a power and would have power to sell, acquired, from their point of view, a customer?

A.—Among other things they acquired a customer.

Q.—And the vendor, on the other hand, having organized to operate with power, acquired power?

A.—It did.

Q.—So they were in a pretty good position to negotiate a deal, the one having something to sell which I assume it wanted to get rid of for many years, and the other acquiring something it required to buy?

20 A.—That is true.

Q.—Are you aware that the Gatineau Company is selling its surplus power for something like \$6.00 a horsepower for steam purposes?

A.—I do not happen to know that, but it may be true just the same.

Q.—That is really not abnormal in a large development of this kind the full power of which is generally not taken up for a number of years?

30 A.—For a class of power that we designate in the trade as dump power, meaning power that may be taken on when it is available, and can be discontinued when it is not available. It is sold for anything that can be obtained for it—\$6.00, \$7.00, or \$8.00—for use in generating steam.

Q.—Am I correct in saying the price is really \$3.40 a horsepower?

A.—I do not know anything about the price. The price really is no basis. It is just a matter of whatever you can get for it.

Q.—The water would run over the dam and do no one any good otherwise?

40 A.—Yes.

Q.—Granted the purchasing company was in a position where economic development required that it develop more power than it would hope to have a use for at full market price for a number of years to come, that surplus of power was something it could very well afford to play with, was it not?

A.—So long as in playing with it they did not encroach upon their ability to sell at proper prices later on.

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Q.—You are aware they had another development in prospect somewhere up at Pagan Falls?

A.—I knew that, of course.

Q.—You were aware too that under normal conditions a company of that size usually has a surplus of power of at least 3,000 horsepower?

A.—They require to maintain a reasonable margin to take care of contingencies.

10 Q.—What I was trying to get at was this: the parties were there dealing in power, and they were dealing on a fairly favourable basis for reaching an understanding, were they not? The one having power to sell which for a number of years it could only be able to sell at a very low price, and the other requiring power for the operation of its works?

A.—The elements of an agreement certainly were present. No one could dispute that.

Q.—Have you observed that this contract, as distinguished from most industrial contracts, is for firm power which the purchaser is required to take and pay for whether he uses it or not?

20 A.—Yes, with certain cancellation reservations. In a general way I would say yes.

BY MR. SCOTT:

Q.—And that is usual?

BY MR. MONTGOMERY:

30 Q.—My friend suggests that is usual. Is it usual in industrial contracts?

A.—Industrial contracts usually provide for the firm taking of a certain amount of power for a certain length of time.

Q.—Industrial contracts as a rule provide, do they not, for a standby charge plus a meter charge?

A.—Recent contracts—what we call the modern type. But there is some power sold in the Province of Quebec on the other basis than on the meter basis.

40 Q.—I wish you would try to answer my question fairly. We are dealing with recent times, are we not? We all remember the days when electricity was sold on a flat basis of so much a year, but you would not talk about such a thing today as being modern practice?

A.—I have already said contracts of the modern type are usually on a fixed charge plus a meter or schedule basis.

Q.—They were not only required to take the full 3,000 horsepower, whether they used it or not, but they were required to take it at specified periods of fifteen years?

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A.—Yes.

Q.—And at the end of the first fifteen-year period they could make option to take it for a second fifteen-year period, in which case they were bound to take and to pay for the full quantity for a further fifteen years, and so on?

A.—Yes.

Q.—You also observed that delivery of this power was taken at the power house?

A.—Yes.

10 Q.—This price of \$10.00 per horsepower was for delivery at the power house?

A.—It was. At Chelsea, or Farmers.

Q.—At the option of the power company?

A.—Yes.

Q.—That is not usual in the case of an industrial contract, is it?

A.—No. It has been done. It is not usual.

20 Q.—I have no doubt in the wealth of your experience you can find instances, just as you found instances of the \$40.00 a horsepower. What I want to get at, however, is the ordinary practice?

A.—It could not be called ordinary practice.

Q.—In fact, frankly speaking, it is quite unusual, is it not?

A.—I will say yes to that.

Q.—Do you happen to know what the Canada Cement Company were paying for power at the time at that plant?

A.—I do not, no.

Q.—I assume you know they had a plant there which was operating?

A.—I knew there was a plant in operation there.

30 Q.—And that it was operating electrically?

A.—Yes.

Q.—They had to have a power contract of some kind?

A.—I presume they must have had.

Q.—Before giving your figure of their having to pay double the \$10.00 per horsepower, did you make any enquiries as to what the Canada Cement Company were paying for power at that time?

A.—I did not, because I did not consider it was relevant.

40 Q.—So that even if they were paying, for instance, \$10.00, \$12.00 or \$15.00 a horsepower, you would still assess it on the basis of \$20.00?

A.—Precisely; because I am talking about the value of power, not what they themselves might have been able through other circumstances to obtain.

Q.—When you speak of the value of power, it must be the value to someone. Are you taking it upon the basis of value to the vendor, or upon the basis of value to the purchaser?

A.—I am using a figure which, in my opinion, represents what

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the ordinary consumer requiring power in this quantity would require to pay.

Q.—Assuming for the sake of argument that the Cement Company were getting their power at, say, \$12.00 a horsepower before that, you would figure the difference between \$10.00 and \$20.00 a horsepower as being the consideration they were obtaining?

A.—Of course that would depend on how long their contract had to run, whether they could renew it, and for how many years they could expect to get this cheap power. All those things I do not know.

10 Q.—Do you not think it would have been a prudent thing for you to have enquired what they were getting their power for?

A.—No, I do not; because I do not think it has anything to do with it.

Q.—Perhaps you will answer my question now: is the value of the power the value to the purchaser, or is it the value to the vendor—figured from the point of view of consideration?

A.—I am trying to see what your question means.

20 Q.—In other words, you are trying to see what I am leading up to?

A.—Of course I am.

Q.—You could answer the question quite promptly, but you want to see what I am leading to?

A.—No. I am trying to imagine what it is you are asking, but I cannot get it.

30 Q.—Here is a purchaser and here is a vendor, who sit down across a table and agree upon a price for some land and water powers, and they decide that instead of making the consideration money they will make it power. I suppose Mr. Purchaser will look at it from the point of view of what the power is worth to him if he is required to deliver it, and Mr. Vendor will look at it from the point of view of what the power is worth to him?

A.—Yes, but they must agree or they do not agree.

Q.—They will agree on the quantity of power, and the price, but in arriving at it each does so from his own point of view?

A.—That is so.

40 Q.—The Purchaser looks upon it from the point of view of what the power he is going to get is worth to him, and the Vendor looks upon it from the point of view of what it is worth to him when he comes to deliver it?

A.—A normal reasonable price for the power is something they have to agree upon.

Do you mean the vendor of the property, or the vendor of the power?

Q.—The vendor of the property.

A.—The vendor of the property has to come to the conclusion whether the power he gets at the price he has to take it is a better

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deal than he can otherwise make. If it is not as good as he can otherwise make, he is getting nothing.

Q.—Let us take the position of the vendor. I suppose the first thing he would look to see would be to compare the price so fixed to him?

A.—And what he could save on that, and what he would have to pay for it in the future.

Q.—He would look, in the first place, at what his power was costing him?

10 A.—Yes.

Q.—Then he would consider the length of time his contract has to run, and the possibilities of getting it renewed at the same price?

A.—Yes.

Q.—The Canada Cement Company having a contract under which it is paying \$30,000 a year for power, which contract it obtained when there was no competing Power Company, could reasonably look forward to being able to get at least as good terms on renewal when a competing Company had come into the field?

20 A.—I would scarcely say that was true upon the Ottawa area. The Ottawa area was very badly handled by the Power Supply Companies. They butchered the market. Power was sold at Ottawa at prices far lower than proper prices, and far lower than there was any justification for—a condition which could not be expected to continue, and experience indicates it is not continuing.

30 Q.—Having delivered yourself of that oration, perhaps you would just come back to my question, which is that the vendor of the property who is going to be paid in power would unquestionably find out how much his power was costing him, and he would look upon the possibilities of getting the Company to renew his contract, and if there was a considerable surplus of power he would at least rely upon being able to get as good conditions as those he now has?

A.—He would rely upon his judgment to take care of those factors.

Q.—If I understood you correctly, you offered nothing other than your arbitrary assessment of \$470,000 as the value of that contract?

A.—I think I said \$450,000.

Q.—Is it \$10.00 a horsepower, and \$300,000?

40 A.—\$30,000 a year—3,000 h.p. at a differential of \$10.00, which I multiply by 15 for capitalization purposes—which is not quite 7 per cent. I said it was equal to \$450,000.

Q.—If you multiply it by 15 does it represent fairly the present value of the dollar? Supposing cash is being paid, can you give me the capitalization at that rate? It is my impression there is such a thing as the present worth of a dollar.

A.—So there is.

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I have just capitalized it at a figure which would produce an amount of \$30,000.

Q.—Which he was only getting over successive years?

A.—He gets it every year.

Q.—Are you sufficient of a mathematician or economist to tell us what would be the present worth of those payments of \$30,000 a year spread over that long period of time?

A.—I certainly am not; at least, not on the spur of the moment.

10 Q.—You know it would be very much less. The present worth of \$450,000 cash would be very much less than \$30,000 a year paid over a number of years?

A.—That is true. But what you have to consider is that this seller got \$30,000 a year.

Q.—Taking your figures, we will assume he is getting a rate of \$30,000 a year for it. But Mr. Man comes along and says: "I will not give you \$30,000 a year. I propose to give you ready cash now". Have you any idea what that figure would be?

A.—I have no idea.

20 Q.—It would be lower than \$450,000?

A.—It would be lower than \$450,000, of course.

Q.—Before leaving the assessment of the value of that contract. I understood you to say you made no enquiries as to what the Cement Company was getting its power for?

A.—I made no enquiries, and I do not know.

Q.—Now let us leave the Gatineau River, and come to your other power contracts. I think the first one you spoke of was the Ouareau?

A.—I think so.

30 Q.—Which you said had a little less than 4,000 horsepower, and for which \$200,000 was paid?

A.—Yes.

Q.—There were two areas comprised in that sale: Darwin Falls, and Manchester Falls?

A.—Two falls, but they properly go together.

Q.—Will you tell us what is the combined head of those two falls?

A.—About 212 feet.

40 Q.—As contrasted with, shall we say, 3½ to 14 feet in the case of Cross?

A.—I would say 14 feet.

Q.—And, I would say 1½. In any event, that was a concentration complete in itself? This head was concentrated right in those two falls?

A.—Yes, the head was concentrated within a comparatively short distance along the stream bed.

Q.—I notice at the heading of the column from which you have

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taken the figure of 4,000 horsepower that it is given as estimated capacity in horsepower at 80 per cent efficiency, and, in a sub-column, at ordinary minimum as distinguished from an ordinary six months flow?

A.—Yes.

Q.—What is the figure given as the ordinary six months flow?

A.—Roughly 9,400.

Q.—As contrasted with 2,400 for what is known as the column at ordinary minimum flow?

10 A.—Yes.

Q.—In order that we may understand what they are talking about in this book as to figures given at ordinary minimum flow and at ordinary six months flow, both being estimated in horsepower at 80 per cent efficiency, I would ask you to read into the Record the explanatory remarks which appear on page 11 of the "List of Water Powers of the Province of Quebec," which you quoted as your authority yesterday for the 4,000 horsepower statement, and which you said was recognized as an official document regarding water powers in Quebec?

20

A.—(Reading):

"Basis of Estimates—The available power estimates have been calculated on the basis of 24-hour power at 80 per cent efficiency conditions on 'ordinary minimum flow' and 'ordinary six months flow.' The ordinary minimum flow is based upon the averages of the flows for the two lowest periods of seven consecutive days in each year over the period for which records are available. The ordinary six months flow is based upon the continuous power indicated by the flow of the stream for six months of the year. The actual method to determine this flow is to arrange the months of each year according to the day of the lowest flow in each. The lowest of the six high months is taken as the basic month. The average flow of the lowest seven consecutive days in this month determines the ordinary six-month flow for that year. The average of such figures for all years in the period for which records are available is the ordinary six-month flow used in calculating the available power. In short, this method provides an estimate of the amount of twenty-four hour power ordinarily available for six months of the year."

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40

The footnote at the bottom is:

"Estimates of water power are frequently stated as a percentage of the time, the most common being 90 per cent of the time and 50 per cent of the time. The estimates of power in

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this list based upon ordinary minimum flow correspond very closely to the power available 90 per cent of the time, and the estimates based upon ordinary six months flow correspond within reasonable limits to the power available 50 per cent of the time."

Q.—That exhausts that explanation, does it not?

A.—Yes, as far as I know.

10 Q.—The figure you gave us, of a little less than 4,000 horsepower, is the horsepower at ordinary minimum flow, is it not?

A.—It is. In other words, in accordance with the footnote I have just read, it represents the power that would be available about 90 per cent of the time.

Q.—And the ordinary minimum flow is based upon the averages of the flows for the two lowest periods of seven consecutive days in each year over the period for which records are available?

A.—That is correct.

20 Q.—That, of course, is unregulated power? Power on the river without any regulation?

A.—This is unregulated.

Q.—The figures for Darwin and Manchester Falls refer to unregulated power?

A.—Yes, that is unregulated.

Q.—Will you please tell me what power Mr. Cross could develop from his power under correspondingly unregulated flow?

A.—Are you going to supply me with the unregulated flow, or am I to take it from this book, or where am I to get it?

30 Q.—I assume from the fact that you are giving evidence in this case you surely made a sufficient study of the subject to put your powers on a comparative basis.

A.—I did not know whether you wanted to give me some specific figure.

Q.—I am inviting you to use whatever figure you included in your studies as being the amount of power available at ordinary minimum flow, estimated, of course, at 80 per cent efficiency, to put it on the same basis as the 4,000 horsepower you have given us for the Darwin property?

40 A.—In the first place I did not use any unregulated flow on the Gatineau in what you call my studies. I used 10,000 second feet.

Q.—Apart from this vague expectation that you were able to offer Mr. Cross that the Gatineau might some day be regulated either by the Government or by some private organization; before we did any of our work you were surely comparing Mr. Cross' property as it stood with those other properties?

A.—I certainly am not.

Q.—So you are not putting them on the same basis at all?

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A.—I am putting them on a comparable basis, but not on the same basis.

Q.—In other words, you are comparing a draft horse with a thoroughbred, because they are both horses?

A.—No, I am comparing Mr. Cross' property taking into account the fact that regulation was not only possible but probable, and placing a value upon it in view of such regulation possibility.

10 Q.—May I interrupt you? For the purpose of valuing Mr. Cross' power you valued unregulated power as if it were regulated —as if regulation were not only a possibility but was something which had already been realized?

A.—No, I did not. I valued Mr. Cross' property taking into account the advantages it possessed; one of the advantages being that it was on a stream which in my humble opinion would be regulated very shortly.

Q.—Your figure of \$600,000 was made up of 15,000 horsepower at \$40.00 per horsepower, was it not?

A.—Precisely.

20 Q.—That 15,000 horsepower could not be derived from the hopes of regulation, could it?

A.—The 15,000 horsepower was derived from 14 feet of head and 10,000 second feet of flow.

Q.—10,000 second feet of flow was not available before the regulation done by the Gatineau Company, was it?

A.—It was not.

30 Q.—What I am asking you to do now, if you will be good enough to do it, is to put Cross' property on the same basis as this Darwin property, with which you have sought to compare it. You have stated it as being comparable. Put it on the same basis as the other —an unregulated power.

A.—I do not admit it is the same basis.

Q.—Then, will you humor my whim, and tell me what this power would have been rated at in this book, if it had been rated at all as a water power, and put it on the same basis as Darwin?

A.—If you will leave the last part of it out, I will answer you. If you will ask me what it would have been rated at, supposing it had been rated at all, in an unregulated state, I can answer that question.

40 Q.—Then, will you answer it.

A.—I would have to assume the unregulated flow of the Gatineau to correspond at ordinary minimum flow tabulation would be of the order of 3,000 or 4,000 second feet. That is a figure picked out of my memory.

Q.—Instead of 10,000?

A.—Instead of 10,000. Therefore the power, if it were 4,000, would be 4,000 times 14, or 5,600 horsepower.

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Q.—This fall with which you sought to compare it, on the Ouareau, gives a concentration—an amount of head available—at that fall, not several miles up?

A.—It gives the differences in elevation from top to bottom of those two falls.

Q.—Will you tell me the difference in elevation from top to bottom of Cross' fall?

A.—Fourteen feet.

10 Q.—I am speaking of Cross' fall. I am not asking you about five or six miles upstream, which he did not own.

A.—I cannot answer that, because I do not know. I heard Mr. MacRostie speak on the matter, and that is all I know about it.

Q.—So, you are not able to put the Cross property on a comparable basis with the Darwin?

A.—I think I have.

20 Q.—You think you have, in valuing an unregulated water power of some $3\frac{1}{2}$ feet and treating it as 14 feet, and treating your 3,300 c.f.s as 15,000 horsepower? What would 3,300 second feet be translated into horsepower at 80 per cent efficiency, first, under 14 feet, then under its natural head?

Witness: Where do you get the 3,300 feet?

Counsel: Well, between 3,000 and 4,000 feet.

A.—I used 4,000 in my calculation. I just want to stick to the same figures so that you will not get mixed. I said 4,000 feet of flow multiplied by 14 feet was about 5,600 horsepower—that it would be about 5,600 electric horsepower.

Q.—Have you not omitted the factor of 80 per cent efficiency?

30 A.—No, I have not, because the hydraulic horsepower is considerably in excess of the product of the flow and the head.

Q.—Give us the figures.

A.—Without taking the time of the Court to do a lot of arithmetic, it is not far from 80 per cent efficiency.

Q.—But I would like you to give us the figures. With your long experience it will only take you a few moments to do it.

A.—You would have number of cubic feet per second, multiplied by $62\frac{1}{4}$, divided by 550—about 6,400.

40 Q.—Do you know where what would be termed the ordinary minimum flow would be 4,000 feet on the Gatineau, calculated according to the explanation which you have just read into the record?

A.—I do not know it because I have not the assembly of it in my mind which would permit me to determine it.

Q.—You know the Gatineau has at times dropped down to 1,900?

A.—I understood about 2,000 was the absolute minimum.

The calculation is, 4,000 multiplied by $62\frac{1}{2}$, multiplied by 14, multiplied by .8, divided by 550.

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Q.—In that calculation you have assumed Cross had 14 feet of head?

A.—I have.

Q.—That, too, is based upon the hope that he could get it?

A.—It is.

Q.—Of course you appreciate the fact that this 14 feet, or a considerable proportion of it, had to be purchased by the Gatineau Company from other proprietors?

A.—I have heard they did purchase.

10 Q.—And if they paid you for it and paid the other people for it they would be paying twice.

A.—If they did, yes. I cannot say I see them doing it.

Q.—And that is one of the points in contestation between us, and one of the reasons why we are here.

I understand the Ourareau is fed by two lakes, Lake Ouareau and Lake Archambault?

A.—Yes.

20 Q.—I think the next fall you mentioned was the Maskinonge, which I believe you said you had turned down at one time?

A.—Yes.

Q.—That is the St. Ursule fall?

A.—Together with a small fall a short distance above it.

Q.—You gave the power there as being a little less than 3,000 horsepower?

A.—I did.

Q.—You were again using the power at ordinary minimum flow, at 80 per cent efficiency?

A.—Yes, I was.

30 Q.—Can you tell me what the power was or would be at ordinary six months' flow?

A.—For St. Ursule it would be 6,136.

Q.—And the other one?

A.—755.

Q.—That is the Post Fall?

A.—That is the Lauzan Fall. No, I am not correct in that—the line is 1,008.

Q.—So, it would be the sum of 6,136 and 1,008—7,144 horsepower?

40 A.—Yes.

Q.—That river flows from what lake?

A.—Lake Maskinonge.

Q.—That is the lake in which you said you saw some difficulties in connection with storage on account of certain summer cottages on the shores of the lake?

A.—Right.

Q.—That, of course, is only an item of expense in connection

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with the creation of the storage?

A.—I considered it made it practically unworkable.

Q.—Are you familiar with what the conditions were before the Kenogami Storage was installed?

A.—Not in detail.

Q.—Are you aware it practically wiped out whole villages there?

A.—Yes, I have read about it and I have seen some of it.

Q.—And you know something about the conditions on Lake St. John also?

10 A.—Yes. In those cases the relative expense was not so important. In this case the relative expense would be almost prohibitive.

Q.—How many summer cottages were there?

A.—I have no recollection of that.

Q.—It is a number of years since you saw it?

A.—Yes, a number of years.

20 Q.—It is suggested to me that I come back to the Ouareau and ask you whether you are aware of the fact that the Quebec Streams Commission was asked in view of the value it made, to report upon the storage possibilities of the Ouareau?

A.—I have no knowledge as to the report or as to the action they decided upon, if any.

30 Q.—I do not suggest that they decided on any action. I suggest, on the contrary, the Quebec Streams Commission is not talking of storage these days, or has abandoned that policy. It is suggested to me that storage is easily available at Ouareau, and that you would get something more than 9,400 horsepower, or whatever figure you gave us, for the six months' flow—in other words, regulated, that it would give 10,000 horsepower?

A.—Probably. If regulation was as complete as is sometimes done.

Q.—So, automatically, to put Cross and Ouareau on the same basis—that is on the assumption that regulation were made—the price would be \$20.00 instead of \$40.00?

A.—Of that order. It was \$50.00, if you will allow me to correct you—the way I got it.

Q.—It would be \$20.00, instead of \$50.00, then—as 4 is compared to 10?

40 A.—Something like that. Something on that order.

Q.—I forgot to ask you what was the head on the Maskinonge power. Will you please tell me?

A.—About 225 feet. That is the figure I am using.

Q.—That is the head of the fall itself?

A.—I beg your pardon, Mr. Montgomery; I am mistaken. I am using 225 and 40—265 feet—as the total amount available.

Q.—And that is the concentration right at those two falls, irre-

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spective of what might be got from backwater?

A.—There is not much possibility of backwater there. That country is flat. You cannot do much with it.

Q.—In any event, you get a concentration of 265 feet head at those points?

A.—Practically.

Q.—I assume (and you will please tell me whether I am correct) that the cost of developing your 265 feet head at that point would be very considerably less than the cost of developing Cross' power whether it be 1½ feet head or 14 feet head?

A.—Yes, I think it would be, per unit of power.

Q.—And, as you have told us, of course that is quite an important element entering into the cost of the raw power site?

A.—Yes.

Q.—You also spoke of Montreal Cottons. I do not intend to take it up with you at any great length because it was not a transfer of a power site but was a transfer of the right to take certain water.

A.—It was.

Q.—From the point of view of value to the taker (to which I have objected), they could use that water in their plant with practically no additional expense?

Witness: Whom do you mean by "they" ?

Counsel: Beauharnois. Their channel was all put in; their power house was all put in; and the only expense one could think of would be the installation of the units to generate the power?

A.—It would require the installation of additional equipment to take up the water.

Q.—That additional equipment would be the water wheels, the generators, and so on?

A.—And auxiliary equipment.

Q.—You would not compare that with a raw undeveloped power site, for instance?

A.—The Beauharnois Company bought power possibilities. They bought a more refined form of power possibilities than the raw power.

Q.—So much more refined that the two are not really comparable?

A.—There is a measure of comparability. They are not identical.

Q.—You would not have set it up as a basis of comparison if you had not been asked about it? It would not have occurred to you to have said they were in any degree comparable?

A.—There is a definite dissimilarity, although I think the price

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paid for it is a measure to show what water power rights sell for, admitting it is a somewhat more refined right than raw water power.

Q.—Like your distinction, it is more refined.

You were also examined concerning the Métis Power, which was a sale from the Reford family of a power on the Métis River. That is the power indicated under the word "Price" ?

A.—Not the one dealt with. "Reford dam and rapids".

Q.—Are you sure?

A.—The one below. That is my understanding.

10 Q.—Are you referring to the site which was developed by the Lower St. Lawrence Power Company?

A.—Yes.

Q.—I am informed by Mr. Lefebvre, who I think is familiar with the subject, that the power which the St. Lawrence Company have developed is the one mentioned under the heading "Price" ?

A.—Then he knows what I do not know. The wording did not convey that impression to me. I know the power by sight, and so on.

20 Q.—The Reford property, as you will see by the book, is still an undeveloped site, or was at the time this book was issued?

A.—I do not know when this book was issued.

Q.—1928? The St. Lawrence Company have not developed any power since 1928?

A.—Not that I know of.

This was developed somewhere around that time, or a little before that. That would correct my evidence to some extent, if you were going to use a figure of 3,280 instead of 2,386.

Q.—Of course, you know I do not know anything about these things personally. I am only giving you the instructions I have.

30 A.—I do not know it in this book. I know it on the ground.

Q.—By the book the power that has been developed is listed under the name "Price" ?

A.—Yes, I see that.

Mr. Scott: That is not what was put in in evidence yesterday.

BY MR. MONTGOMERY:

40 Q.—I am informed by Mr. Lefebvre it is the one known as "Price" ?

A.—How could the Reford Company have sold a property owned by Price?

Q.—That is simply the name of the power. It is described as the Chute du Grande Métis. There is a town called Price. It is not a matter of Price Brothers. I am informed that is the power which was developed by the Lower St. Lawrence Company. In any event you do not know personally whether the Deed Exhibit P-52 covers

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what is listed in this Water Powers Book under the name of " Price ", or under " Reford Dam and Rapids below ", or whether it includes both?

A.—I do not know which, or both, it applies to.

Q.—Perhaps you might give us the head in both of those powers " Price " ?

A.—The Price has a head of 120 feet, an ordinary minimum flow of 3,820, six months the same thing, and an installed horsepower of 3,500.

10 Q.—And the Reford?

A.—The Reford Dam and Rapids below has a head of 75 feet, ordinary minimum flow of 2,386 feet, and six months' flow of 2,386, and no installation.

Q.—Are you aware that the Métis was a salmon river belonging to the Refords, or was a salmon river in which the Refords had the fishing rights?

A.—No, I have no knowledge of that.

20 Q.—I do not suppose the installation of a power plant would benefit the salmon fishing, would it?

A.—I cannot pose as an authority on salmon fishing, but I should not think it would do any good.

Q.—You will notice in the Deed they exclude the fishing rights, which I suppose they would retain for what they were worth. Translating the Deed, I find:

30 " The said property comprises all the rights, titles and possession of the party of the first part of every nature, including the falls known as the Chute du Grande Métis, the right to water power in the river itself and the bed of the river, but excluding the fishing rights on this part of the River Métis contained in the limits of the property hereinabove described."

A.—That is correct.

Q.—In addition to the water powers on the Métis River I see considerable areas of land passed as well.

A.—Yes, there are some. I do not know exactly the quantity.

40 Q.—If you have examined the Deed at all you will have seen it is apparently a pretty considerable stretch of land. Unfortunately the area is not given, but you will see by the length of the lines and so on that quite a considerable extent of property went with it?

A.—Apparently.

Q.—You made no enquiries to ascertain how much of the price paid was attributable to the land that went with it?

A.—No, I did not.

Mr. St. Laurent: For the sake of the Record I may say I have

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been looking at a report made to the Amqui Electric Company by the Walter J. Francis Company, from which it would appear that the property comprised the lands, power rights and falls at Grande Métis for the development of about 120 feet head.

BY MR. MONTGOMERY (Continuing):

10 Q.—From the information Mr. St. Laurent has been kind enough to put into the Record, that apparently is the site at Price, as distinguished from the Reford dam?

A.—That appears to be correct.

Q.—And, irrespective of the amount to be attributed to land that would bring your figure to be attributed to horsepower down considerably, would it not?

A.—Somewhere around \$30.00 or \$35.00. \$125,000, divided by a little less than 4.

Q.—\$85,000, as a matter of fact.

A.—My mistake. \$22.00 to \$23.00.

20 Q.—Per horsepower?

A.—Yes.

Q.—At that site there is actually a sheer drop of 120 feet, is there not?

A.—Substantially.

Q.—Which, of course, would lend itself to a very much cheaper development than the Cross properties on whatever basis you take them as regards head?

A.—I would not say that necessarily follows. It is possible.

Q.—You know the Cross properties?

30 A.—Yes.

Q.—And there is nothing to make them particularly cheap to develop on that low head?

A.—Not unusually, no.

Q.—So, unless there is something at Métis to vary considerably the ordinary rule, that sheer drop of 120 feet on the Métis River would be very considerably cheaper to develop per horsepower than would be the development of Cross' property whether you take it at 3½ feet or 14 feet?

40 A.—It would probably be cheaper, certainly, by reason of the higher head.

Q.—And that, of course, would have a bearing upon the value of the raw power?

A.—Yes.

Q.—You also spoke of the Lièvre River power—Gatineau and Maclaren. In the first place I would like to give you an opportunity of correcting yourself as to the Gatineau Company which sold that power being a subsidiary of the Gatineau Power Company, Limited.

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As a matter of fact, do you know anything about that?

A.—I really do not know anything about it.

Q.—The Gatineau Company was a subsidiary of the old Rior-
dans?

A.—That was what I always understood. Of course I do not
know.

Q.—You mentioned the power there as being of the order of
3,300 horsepower?

10 A.—That was based upon the information put in evidence by
Mr. MacRostie.

Q.—You had no personal knowledge of it?

A.—I have seen it.

Q.—Perhaps you will recall Mr. MacRostie's cross-examination
on the 3,300 horsepower. Do you remember him saying that he had
only taken in the power in the east channel, I think it was?

A.—I think that is correct.

Q.—And that he had only taken in the power down a certain
distance—down to the railway bridge, I think?

A.—Yes.

20 Q.—And that he had not taken in the power below that?

A.—I am instructed there was no power below that.

Q.—But, you have no knowledge of the fact?

A.—I have no knowledge. My figuring is all based upon that
head of 30 feet.

Q.—So, by the amount by which that head or that power was
increased your price per horsepower would be correspondingly de-
creased?

A.—Precisely.

Re-examination

30

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

Q.—In a general way how would you compare the non-regulated
flow in the Ouareau River with the non-regulated flow in the Gati-
neau River? Is the Ouareau a smaller river?

A.—The Ouareau River is a smaller river, and I would say its
fluctuations would be relatively wider.

Q.—Is it a much smaller river than the Gatineau?

40 A.—Very much smaller.

Q.—Were the Darwin Falls and the Manchester Falls, which
were sold to the present Defendant, suitable for inclusion in a larger
scheme of development on the Ouareau River?

A.—They were not.

Q.—Have they ever been developed?

A.—Not so far as I know. I am sure they have not.

Q.—Referring to the sale by Lefebvre to the Shawinigan Water

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& Power Company on the Maskinongé River; were those two falls suitable for inclusion in a larger scheme of development on the Maskinongé River?

A.—No.

Q.—They would have to be dealt with by themselves?

A.—Precisely. With such other small pieces as may be acquired in the immediate neighborhood; but they are the large items.

Q.—On the Maskinongé River was there possible any such development as has taken place at Chelsea?

10 A.—Nothing in any way comparable. Nothing anywhere near it.

Q.—Does the same remark apply as regards the Ouareau River?

A.—Yes.

Q.—How would you compare the flow on the Maskinongé River with the flow on the Gatineau River—I mean, non-regulated?

A.—It is even worse than the Ouareau River, because the Maskinongé varies very widely.

Q.—Is it smaller, or larger, than the Gatineau?

A.—Very much smaller.

20 Q.—Is it not a fact that at certain seasons of the year it runs dry?

A.—Practically.

Q.—Do you happen to know the price at which the Gatineau Power Company, the present Defendant, sold a large block of power to the Ontario Hydro-Electric Commission either at Chelsea or at Farmers?

A.—I only know what has appeared in the public press regarding it. \$15.00 at the Ontario border.

30 Q.—Can you give His Lordship any idea of how much they sold?

A.—That figure is something I would not like to be authority for. Several hundred thousand horsepower.

Mr. Montgomery: Not several hundred thousand—two hundred thousand.

Witness: Well, that is several. "Several" is more than one, and two is more than one.

40 BY MR. SCOTT (continuing):

Q.—Either a few hundred thousand horsepower or several hundred thousand horsepower, at \$15.00?

A.—So I understand. From the point of development, as I understand it.

Q.—At Chelsea, Farmers, and Paugan?

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A.—Yes.

Q.—And this contract extends for a term of years?

A.—I do not recall the term of years, but it is some considerable time.

Q.—Thirty or forty years?

A.—I would not like to say definitely, because I do not remember.

Q.—Has the Metis River a greater or a lesser flow in second feet, non-regulated, than the Gatineau?

10 A.—Very much less.

Q.—How many miles is the Metis River below the City of Quebec?

A.—About 100, or more.

Q.—About 170 miles, as a matter of fact?

A.—I did not think it was quite as much as that. It is not far from Rimouski.

Re-cross-
examination

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

20

Q.—Speaking of the distance of the Metis River below Quebec: Do you know anything about the relative prices the Lower St. Lawrence Company gets for its power as compared with the \$15.00 to which you have just testified as being the price from the Gatineau Company to the Ontario Hydro-Electric Commission?

A.—If you mean do I know their schedule of prices, my answer is I do not.

30 Q.—As a matter of fact their rates down there are very much higher, are they not?

A.—They are certainly higher than \$15.00.

Q.—Water power is quite scarce down on the south shore of the St. Lawrence, is it not?

A.—Yes, there are not very many available water powers. Of course, there is not a great demand for power down there.

Q.—Whatever the demand may be, are you not aware of the fact that the Lower St. Lawrence Company gets quite good prices for its power?

40 A.—I do not really know what they get. I knew what they were talking about getting when they put the organization together.

Q.—Do you remember what those prices were?

A.—No, I do not remember now. I had a hand in it. I can say they are getting prices of the same order as Montreal, in a general way.

Q.—Are you sure they are not getting prices considerably higher than Montreal?

A.—I do not know.

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Q.—As a matter of fact, a water power such as the Metis Power was rather a rare bird down there?

A.—As I have said, there are not very many of them.

Q.—Consequently, like a pearl of great choice, it may have had a corresponding value?

A.—Providing it had no flaws in it.

Q.—In connection with the fluctuations in flow of the Ouareau and the Maskinonge, concerning which my friend has questioned you in re-examination, you have taken care of all this in the lowest
10 minimum flow, in the figures you have already given, which, as you recall, represent the two lowest flows?

A.—The figures I have quoted represent the amount of power available for approximately 90 per cent of the time following the note in the book. I said approximately.

Q.—If that be the case, and those ordinary minimum flows are based upon the average flows for the two lowest periods of seven consecutive days in each year, then those particular rivers cannot be very flashy, because you would not get 90 per cent of the time represented by that?

20 A.—There is some flash that you would get for 100 per cent of the time, therefore you could not say the river was not flashy because of that. Those rivers have a large difference between absolute low and absolute high.

Q.—You get an absolute low, which is an ordinary minimum?

A.—Not quite. That is not the absolute low.

Q.—I had not quite finished my question. The figures are rather based upon the average flows for the two lowest periods of seven consecutive days of each year over the period for which records are
30 available; so if the river is flashy, or goes down to a low basis very often, you get it reflected right in the figures you have?

A.—The figure that has been quoted is something above the lowest figure to which the river ever goes.

Q.—You were asked as to whether those schemes were suitable for inclusion in a large development—I am now speaking of Ouareau and Maskinonge. As a matter of fact, they are absolutely complete developments in themselves?

A.—Exactly. There is no opportunity to incorporate them in anything else.

40 Q.—They are complete schemes in themselves, which do not require getting other properties to tie in with them?

A.—That is correct.

(Counsel for defendant admits having received payment of the costs taxed as being payable on the proceedings before the Quebec Public Service Commission and referred to in Paragraph 35 of Plaintiff's Declaration.)

(And further deponent saith not.)

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DEPOSITION OF FREEMAN T. CROSS, A WITNESS
EXAMINED ON BEHALF OF THE PLAINTIFF.

On this twenty-fourth day of September, in the year of our Lord one thousand nine hundred and thirty-one, personally came and appeared

10

FREEMAN T. CROSS,

of the Village of Farm Point, in the Province of Quebec, lumberman, aged 53 years, a witness produced and examined on behalf of the plaintiff, who, being duly sworn, deposes as follows:

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

- 20 Q.—You say you are a lumberman?
A.—Yes.
Q.—How long have you been in the lumber business at Farm Point?
A.—Since 1902.
Q.—You are the plaintiff in this action?
A.—Yes.
Q.—When did you commence to develop power at Meach Creek?
A.—In 1902.
Q.—When did you commence to use the water power there for conversion into electricity?
30 A.—In 1912.
Q.—How long did you continue to do that?
A.—Until a little better than a year ago.
Q.—Just about a year ago?
A.—Just about a year ago.
Q.—Did you personally know Mrs. Thomas Moore, whose maiden name was Bridget Smith?
A.—Yes.
Q.—Whom did she marry after the death of her first husband?
What is her name now?
40 A.—Burns.
Q.—Mrs. Burns?
A.—Yes.
Q.—Is that the same Mrs. Burns, formerly Mrs. Thomas Moore, whose maiden name was Bridget Smith, who sold you the property at Cascades?
A.—Yes.
Q.—How long have you known her?

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A.—Practically all my life. She was born at the Cascades.

Q.—Will you look at Plaintiff's Exhibit P-9 and tell me where is situated the piece of property forming part of lot C of the Third Range of the Township of Wakefield in the County of Wright? I mean where is it situated with respect to the Gatineau River and the Pêche Rapids?

A.—On the south part of the Pêche Rapids, on the west side.

10 Q.—Prior to making this Deed, had you any understanding with Mr. Selwyn about this?

(Mr. Ker, K.C., of counsel for defendant, objects to any evidence which may be at variance with a properly executed notarial and registered document, and inasmuch as verbal evidence cannot be made of an earlier purchase.)

(The question is withdrawn.)

20 Q.—Will you file, as Plaintiff's Exhibit P-53, a registered copy of a document in your favor, made before Notary Labelle on April 6th, 1926, with respect to certain land forming part of lot 2-C in the Third Range of the Township of Wakefield?

(Mr. Montgomery, K.C., of counsel for defendant, objects to the production of the document as not being alleged.)

(The objection is reserved by the Court.)

30 A.—Yes.
Q.—Is the Mr. Selywn mentioned in this document the same Mr. Selwyn who signed the Deed of Sale of May, 1927?

A.—Yes, the same Mr. Selwyn.

Q.—Will you take communication of the Deed of Deposit which was filed under reserve of objection as Plaintiff's Exhibit P-38, and will you say if you know personally each of the supposed signatories of the document deposited?

A.—Yes.

40 Q.—In whose presence did they sign that document in your book?

(Mr. Ker, K.C., of counsel for defendant, objects to the question as illegal.)

(The objection is reserved by the Court.)

A.—The majority of them. Mr. Richardson was present.

Q.—Were you present?

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- A.—Yes.
- Q.—Did you see each one of them write his name?
- A.—Yes, each one.
- Q.—When did you first become interested in the acquisition of power sites on the Gatineau River?
- A.—In 1915.
- Q.—With what power site did you first deal?
- A.—The Paugan.
- 10 Q.—How long were you dealing with that?
- A.—In fact, I am dealing with it yet.
- Q.—How long were you actively connected with it?
- A.—About two years from the first until I sold the power at the Paugan.
- Q.—To whom did you sell it?
- A.—The Hull Electric.
- Q.—How many years ago?
- A.—The first agreement was in 1917. September 7th, 1917, I think.
- 20 Q.—Had you any connection with it after that?
- A.—Not after that sale.
- Q.—Had you anything further to do in connection with that sale?
- A.—Yes, I have some lots up around there yet.
- Q.—What did you do after making that sale to the Hull Electric Company?
- A.—I bought the Cascades Power after I made the sale.
- Q.—You say you made a sale, or brought about a sale, of the Paugan to the Hull Electric Company in 1917?
- 30 A.—Yes.
- Q.—Was there delivered to the Hull Electric Company at that time all it was entitled to get, or did you have to secure some further rights for them before the whole amount would be paid?
- A.—No, I completed all my rights.
- Q.—Were they complete in 1917?
- A.—No, it was years after.
- Q.—How many years did you have to work at it before you got it complete?
- A.—I worked at it about nine or ten years—about ten years.
- 40 Q.—After bringing about this sale in 1917, for a long period of years you had to busy yourself about getting other things before the payment could be made complete?
- A.—That is correct.
- Q.—What knowledge, if any, had you of the possibility or probability of there being regulation on the Gatineau?
- A.—Naturally, when the Paugan was sold—a big development like that—someone would undertake to develop; and the local stor-

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age would be there, as well as the storage up north of it.

Q.—With respect to the Farm Point property, what was at Meach Creek? Were there churches there?

A.—Yes, two churches.

Q.—How many families?

A.—About 40 or 50 families, in the summertime.

Q.—Was there a post office?

A.—Yes.

10 Q.—How were those who resided there supplied with water?
A.—I supplied about 29 or 30 in the summer months.

Q.—Where was that water taken from?

A.—From the penstock of the power house.

Q.—Did the rising of the water at Chelsea have any effect on that distribution system?

A.—In 1927 it went out of order.

Q.—What put it out of order?

20 A.—The seepage of the ground there, and the ice going up and down lifted the pipes where they were coming up near the surface. Sometimes going out to a house they might be only a foot or so under the ground, and some of them were on top of the ground along the highway.

Q.—Am I to understand you as saying it became broken up in 1927?

A.—Yes, and it was impossible to repair it except by moving it. It ran right through the mill yard.

Q.—Was it below, or above, the flooded level?

A.—Much below the flooded level.

Q.—Was it repaired?

30 A.—No, it was nearly impossible to repair it. It would be cheaper to put in a new system.

Q.—So it was abandoned after the spring of 1927?

A.—Yes.

Q.—How many cottages were affected by the flooding?

Witness: Of my own cottages?

Counsel: Yes.

40 A.—About seven or eight.

Q.—What was the value of those cottages?

A.—In the neighborhood of a couple of thousand dollars each.

Q.—They were just frame constructions?

A.—Yes, just frame constructions.

Q.—Was this water distribution system completely abandoned, or was it repaired for your own use?

A.—It was not repaired. I put in an electric system from the

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Gatineau River, for my own use and for the hotel.

Q.—After 1927?

A.—Yes.

Q.—For whose account was the hotel being operated?

A.—Each year there was a new tenant in it.

Q.—To whom did it belong?

A.—It belonged to me.

Q.—And you used to rent it to a tenant?

A.—Yes.

10

BY MR. MONTGOMERY:

Q.—They never came back a second year?

A.—Oh, yes; there was one party ten years in that hotel.

Cross-examination

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

20 Q.—In what year did you purchase this first property at the
Cascades?

A.—1915.

Q.—1916, I think it was. Am I correct?

A.—1915 or 1916.

Q.—You purchased it from Dame Bridget Smith, Mrs. Burns?

A.—Yes.

Q.—What was your object in purchasing it?

A.—The Deed speaks for itself. To build a dam.

Q.—I did not know the Deed mentioned anything about a dam?

30 A.—I got the Notary to put that in: the bed of the river, and
everything, in the Deed.

Q.—I know the Deed mentions the bed of the river, and the
water powers, but I did not know it mentioned a dam. Was there an
old dam there at that time?

A.—There was, down below.

Q.—On your property?

A.—No; on the Canada Cement property. There was an old
sawmill and grist mill, and a woollen mill there for years.

40 Q.—Speaking exclusively of the Cascades property as we know
it in this case—the little triangular piece of land on the east side and
the little piece of land between the railway and the river on the west
side: how much did you pay for all you purchased from Mrs. Burns—
whatever the Deed covered, how much did you pay for it?

A.—Somewhere in the neighbourhood of \$3,000.00.

Q.—I would like the exact figure. I see the price you paid in
1916 for the whole property, including water and other rights, was
\$2,890.00, of which you paid \$800.00 on account and the balance was

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to be paid within one year, with interest at six per cent?

A.—Yes.

Q.—Was the balance paid in the year?

A.—No.

Q.—When was it paid?

A.—Four or five years later. Offhand I could not say just when.

Q.—You paid off the balance, and got the property clear?

A.—Yes.

10 Q.—As far as I have seen by the Certificates of Search I have not been able to find any radiation of the price. In any event, what did that property include, on both sides of the river? The property is described as lot 21-B in the Fifteenth Range. That is on the east side of the river?

A.—Yes.

Q.—That is the triangular piece. Look at Exhibit P-1. The piece 21-B is this triangular piece on the east side of the river?

A.—When I purchased I bought this piece around.

Q.—Is that the lot 21-B?

A.—Yes.

20 Q.—The next piece you purchased consisted of parts of lots 20-C, 20-D and 21-C, on the west side of the river, between the Gatineau River and the road, save and except the parts of those lots which had already been sold by the persons from whom you bought? The way it appears in the Deed is lots 20-C, 20-D and 21-C, between the road and the river, with the exception of the portions of those lots which your auteur had already sold.

A.—I could bound it much better by the plan.

Q.—Is that what your Deed purported to give you?

30 A.—My surveyor looked into the Deed. I did not go by the Deed; I went by the boundaries walked by Mrs. Burns and myself.

Q.—I have just quoted to you from the Deed. Is that what you got from Mrs. Burns at the time or is it not?

Mr. St. Laurent: That is not a subject of verbal testimony. The Deed is produced, and speaks for itself.

BY MR. KER (continuing):

40 Q.—In any event one of the lots you got by your Deed consisted of portions of lot 20-C, and the other consisted of portions of lot 20-D. Tell me just what portions of lots 20-C and 20-D you are now in possession of?

A.—I can point it out on the map; but for lot numbers, and where they are, I cannot say.

Q.—At the present time do you claim any ownership in either lots 20-C or 20-D?

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A.—No, I claim nothing down there. I wish I did claim this portion down here by the Deed.

Q.—You claim no ownership now in either lot 20-C or 20-D?

A.—No, I did not buy anything down past the range line between lots 20 and 21.

Q.—You do not claim anything past that?

A.—No.

10 Q.—How long did your Deed remain on registration to the effect that you claimed those two lots before you did anything about it?

A.—The first I noticed of it it was marked in the general plan with my name, and I went to Mrs. Burns and asked her how it had come, and I do not think she knew herself.

Q.—In any event, you did not wake up to the fact that all you owned on this side of the river was a piece of lot 21-C until about ten or twelve years after you bought the property?

A.—It was an error that Mr. Bertrand or someone made in the Deed. I did not buy anything past this range line. It was there with my name to it, but I did not buy it.

20 Q.—Up to January of this year, 1931, when litigation was still pending between you and this Company, you had no pretensions whatever to lot 21-D, did you? In any event, it is not shown in your Deed?

A.—My surveyor would have to answer that. He went over the ground. I cannot follow the Deed.

Q.—In January of this year you went to Mrs. Burns and made another arrangement respecting getting another piece of property from her?

30 A.—Changing the property I did not own by the boundary I bought from Mrs. Burns.

Q.—And she said that instead of your getting lot 20-D from her you had really got 21-D. Is not what you and she said between you by a written agreement?

Mr. St. Laurent: He said that by error it contained mention of 20-D, it having been the intention to purchase and convey lot 21-D.

BY MR. KER (continuing):

40 Q.—And this was on January 5th, 1931, as appears by Exhibit P-3?

A.—Yes.

Q.—So, it was only in 1931, after you had been the owner for fifteen years of what you presumed to be a power property, that you discovered it was not that property at all?

A.—There was an error in the Deed.

Q.—Did you go to see Mrs. Burns and ask her to make this, or

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did she tell you she had made a mistake fifteen years ago?

A.—I told her there was property that was in my name that I did not buy from her.

Q.—How old is she?

A.—About fifty-six or fifty-seven.

Q.—Not more than that?

A.—She may be sixty.

Q.—Did she remember the transaction quite well?

A.—Oh, yes, quite well.

10 Q.—She said she meant to sell you 21-D? Did you make any investigation to discover whether she was the owner of lot 21-D?

A.—Yes.

Q.—Did you know whether she actually was the owner when she sold it to you under this Deed of 1931?

A.—No, I did not.

Q.—Do you know it today?

A.—Not any more than the documents speak for themselves.

20 Q.—You would leave it to the Registry Office documents to say whether on January 5th last Mrs. Burns had or had not any right to give you lot 21-D?

A.—I leave it to those who looked up the titles.

Q.—Lot 21-C is stated to be bounded easterly by the Gatineau River, northly by the fence placed by the railway. Where do you surmise that may be? It is on the up side of the river?

A.—It goes up the railroad as far as Baker's property.

30 Q.—But the whole property on the west side of the river which you purchased from Mrs. Burns is stated to be bounded on the east by the Gatineau River, on the north by the fence placed by the Railway. Where is that fence?

A.—There is a fence along the railroad. It goes out and follows the highway.

Q.—And it is up here (indicating) where it continues? That must be the northern boundary?

A.—Yes.

Q.—Can you mark it on the plan Exhibit P-1?

A.—It takes into the road.

Q.—About where?

A.—Down on the railroad.

40 Q.—I am speaking of the north boundary. You do not appear to know where the north boundary of your property is. I am speaking of the upstream boundary of your property, and Exhibit P-1 is the plan you produce showing your own property.

A.—I could not say for sure where the railroad fence is. The road and the railroad run parallel up there.

I understood Mrs. Burns, and we walked the entire property up on the main highway.

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Plaintiff's
Evidence
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Cross-examination
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(continued)

BY MR. KER, K.C.:

Q.—At the adjournment yesterday we were discussing the history of your title to what is known in this case as the Cascades property, and I think you stated you had bought that property sixteen years ago under the Deed produced as Exhibit P-3, and that that Deed purported to convey to you lots on the west side of the river—part of lots 21-C, 20-C and 20-D of the Fifteenth Range?

A.—Yes.

10 Q.—And that you continued to carry on, as it were, under that Deed until the present year, 1931, when you were in litigation with this Company and the Company denied your titles and the effect thereof?

A.—My lawyers looked into the situation.

Q.—But, you are not answering my question. Did you or did you not continue with uncorrected titles until within a year of the present date?

20 A.—I understood from my lawyers the Deed was not correct—that there was an error in the Deed.

Q.—And I am asking you when you learned that, and when did you make the correction. I understand you to say it was within the last year?

A.—When it was looked into.

Q.—That was after the litigation between the parties was in progress?

A.—Yes.

Q.—So that perhaps the Company may be excused for denying your title or the effects thereof in those proceedings?

30 Mr. St. Laurent: I think the conclusions to be drawn from the facts are conclusions to be drawn by the Court, not by the witness. The question of whether or not it justified the Company is a matter for the Court to decide.

BY MR. KER (continuing):

40 Q.—In the month of January, 1931, you apparently abandoned your claims under your Deed to lots 20-C and 20-D, when Mrs. Byrnes and yourself, between you, made a correction to the effect that it was lot 21-D that was yours, instead of lot 20-D. Is that right? Am I correct in saying that in the month of January, 1931, Mrs. Byrnes and you decided it was lot 21-D, and not lot 20-D, which you owned?

A.—We did not decide. The error was discovered.

Q.—Which had lain dormant for nearly sixteen years?

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BY THE COURT:

Q.—You corrected one lot for another, but did you ever occupy the other lot?

A.—Yes. I can explain it by the map.

BY MR. ST. LAURENT:

Q.—Did you occupy those lots down there?

10 A.—The Notary put in my Deed two little portions of land down on lot 20 that I did not buy by my Deed. Then the same Notary came up and corrected the error that he had made in the Deed with the same parties.

BY THE COURT:

Q.—One lot was replaced by another?

20 A.—No. She gave me all her rights in lot 21-C—her entire rights to the river—what she owned in the bed of the river on lot 21-C.

BY MR. ST. LAURENT:

Q.—And in the correction you replaced one number by another number?

A.—Yes: there was a mistake in the numbering. That was where the error was made.

30 BY MR. KER:

Q.—The correction speaks for itself, and it is of record, is it not?

A.—Yes.

Q.—When you and Mrs. Byrnes made this correction in January, 1931, I presume both you and she must have been convinced she actually did own the new lot which she gave you for the old one?

A.—She did not give me any new lot that I know of.

Q.—She conveyed lot 21-D to you, or ceded lot 21-D to you instead of lot 20-D, did she not?

40 A.—She ceded those lots down here—lot 20, which I claim I did not own. . . .

Q.—(Interrupting): Should have been lot 21-D?

A.—I am not a Notary, of course.

Q.—But, you are a witness here, and a very intelligent witness I think.

A.—The Deed speaks for itself. Whatever is in the Deed speaks for itself. My lawyers looked into the titles thoroughly.

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Q.—When you got lot 21-D, which you got in January.

Mr. St. Laurent: I think I should enter an objection to this, because the witness has not admitted he got lot 21-D in January. He has admitted there was a correction made in the number in January.

Witness: I never got any more land from Mrs. Byrnes more than the first Deed called for. I got more under the first Deed than
10 I bought from Mrs. Byrnes, but there was never anything taken off, or put on, but 21-C that I bought.

BY MR. KER (continuing):

Q.—In any event, the modification between you and Mrs. Byrnes is here and the matter is quite simple.

A.—It is not so simple. My lawyers will explain it.

Q.—You say “By error in the Deed of 1916, which Deed con-
20 tained mention of lot 20-D, it having been the intention of the parties to convey lot 21-D. . . .” Could anything be clearer than that?

His Lordship: The witness admits that.

BY MR. KER (continuing):

Q.—I asked you whether at the time this correction was made either you or Mrs. Byrnes had any doubt of the fact that she really
30 owned lot 21-D—either at the time you made this correction or at the time you made the original Deed?

A.—The Deed speaks of her entire rights in the river in lot 21-C.

Q.—Do you say you knew nothing about the title to lot 21-D? If you do, I have nothing further to ask you on that point.

However, you made no searches yourself of the titles on lot 21-D?

A.—No.

Q.—When you bought by your original Deed, the main portion
40 of the land was on lot 21-C on the west side? That was the large part of the land which you bought, on the west side?

A.—Yes.

Q.—And your Deed stated it was those parts of lot 21-C between the road and the river that had not already been sold off, or save and excepting those pieces which had been sold?

A.—Her entire rights.

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Mr. St. Laurent: I object to the form of the question, in view of the fact that the Deed speaks for itself and contains a clause expressly conveying all the vendor's rights in the bed of the river at that place.

BY MR. KER (continuing):

10 Q.—Do you know what were the portions that had been sold off?

A.—No, I do not.

Q.—You have not any idea what had been sold off before?

A.—No.

Q.—The boundaries of the property that you bought were stated to be the Gatineau River on the east. That, I think, is right?

20 Mr. St. Laurent: I object to the form of the question, in view of the fact that it does not correctly represent what the Deed conveys. The boundaries of part of the property are stated there, but there is the additional clause which is not stated to be bounded on the east by the banks of the river. A part of the riparian property was sold, and the boundaries to the east were given; but there was sold in addition all the vendor's rights in the bed of the river. It is not correct to say the boundary of everything sold was such and so.

BY MR. KER (continuing):

30 Q.—What was the northern boundary of the land on the west side?

A.—It is mentioned in the Deed.

Q.—As the fence of the C.P.R. That was the fence where the road and the railway ran together?

A.—Down the highway. I bought from Mrs. Burns from the lot line 21 everything she had on the west side of the highway—her entire rights on the west side of the Gatineau Highway, following the road on the east side of the Gatineau Highway.

Q.—Where was your northern boundary up at that end?

40 A.—Running parallel with the railroad high board fence, 12 feet high, continuing out on to the Gatineau Highway.

Q.—Was it about at the point where the road and the railway met?

A.—About.

Q.—Then you say it is bounded on the east by the Gatineau River?

A.—That fence should have been in it. I do not know whether that is the northwest boundary.

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Q.—But you say “ East by the Gatineau River ” ?

A.—Yes.

Q.—And east also by the Gatineau Road?

A.—From the Gatineau Highway east at the north end, taking in all the C.P.R. fence and the bed of the river.

Q.—But it cannot be bounded on the east by the Gatineau River and on the east by the Gatineau Road, can it?

A.—Everything falling on the highway road, up to the range line, right across.

10 Q.—That would be the western boundary of your property—the Gatineau Road, would it not?

A.—The Gatineau Road.

Q.—It is referred to as being the eastern boundary. Did you have two eastern boundaries, one being the Gatineau River and the other being the Gatineau Road? They are both set out here—“ easterly by the Gatineau Road ” and “ easterly by the Gatineau River.” I think that is wrong, and I just want to make sure it is a mistake. I do not want this Exhibit to go in with those boundaries absolutely

20 wrongly described, because clearly they are wrong.

BY THE COURT:

Q.—Is the land between the road and the river yours?

A.—Yes.

Q.—Have you anything on the western side of the road?

A.—No, nothing at all on the west side of the highway.

BY MR. KER (continuing):

30 Q.—So it is clear the highway is your western boundary?

A.—Yes.

Q.—Your southern boundary, according to your Deed, is the line of Baker's property—southerly by the line of Charles E. Baker?

A.—It takes a dodge in there.

Q.—Show me the Baker property on your plan Exhibit P-1.

A.—Here it is (witness indicating).

Q.—His name seems to be on it?

A.—Yes.

40 Q.—Your piece of land is said to be bounded southerly by the line of Charles E. Baker?

A.—Yes.

Q.—According to this Deed you do not go beyond the line of Charles E. Baker?

A.—I go right down to the range line.

Q.—How do you justify that by the Deed?

A.—I think you will find it by the measurements.

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Q.—Your southerly line is said to be the line of Charles E. Baker?

A.—I bought what there was down to the range line.

Q.—Will you mark with an " X " and the letters " B.K." the property of Charles E. Baker on the plan Exhibit P-1?

(Witness does as requested.)

10 Q.—Was that the property you referred to on the west side of the river?

A.—Yes.

Q.—What is the length of that up and down the river?

A.—I have no idea.

Q.—As a matter of fact, when you purchased it in 1916 you purchased it as a piece of real estate, or more or less as a possibility?

A.—As a water power.

Q.—Before you bought it did you make any investigation whether it was a water power or not?

20 A.—I saw the white water right across the river, and I bought it for a water power.

Q.—Because you saw rapids in the river you came to the conclusion it was a water power?

A.—Yes.

Q.—You had not made any soundings, or had not taken any technical advice as to its possibilities?

A.—No.

Q.—When you bought it in 1916 you did not hasten to utilize it as a water power?

30 A.—No.

Q.—In fact, up to the time it was flooded, you made no use of it as a water power?

A.—No.

Q.—In the eleven years that followed you had done nothing?

A.—Not any more than with any other raw water power I might have bought.

Q.—It was only after the Company Defendant had filed its plans you began to get an engineer to look at it from the point of view of its possibilities as a water power?

40 A.—After they flooded me and took away my power.

Q.—I think Mr. MacRostie said it was before the flooding.

A.—He took the levels before the water came up.

Q.—Do you know when the plans of this development of the Gatineau Company were filed in the Registry Office?

A.—Not exactly.

Q.—You would not be inclined to question my statement if I told you it was on March 24th, 1926, or thereabouts. In any event, it

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is of record.

Before the plans were filed had you any information or knowledge of what was happening up there in the way of possible development? You did not have to wait until the Company made the formal deposit of its plans to know they were doing something up there?

A.—I am afraid I do not understand you?

Q.—When did you first know the Gatineau Power Company was going to do anything on the river at Chelsea?

A.—A year before that.

10 Q.—You knew all about it in 1925?

A.—I knew they were surveying.

Q.—And it was only about 1925 you began to busy yourself in connection with your waterpower?

A.—No. I bought it because I was going ahead with that development when I sold the Paugan Falls. I was not waiting for another company to come into Chelsea. I bought it ten years before they ever came there.

Q.—That is, you bought the property?

20 A.—Yes.

Q.—But I am speaking of your development, or projected development, or researches. You made no researches before the Gatineau Company actually showed its hand?

A.—I had no call for it.

Q.—Did you know this larger scheme at Chelsea was likely to submerge you?

A.—If they went to the foot of the Paugan Falls I knew they would submerge me.

30 Q.—But you thought it would be a good thing to take options on land and look into the question of the development of your own power, if you had any, at that time?

A.—Yes.

His Lordship: I understand he was in the position of his vendor, as far as any rights to that land and on the river were concerned?

Mr. Ker: I think so, your Lordship. What rather puzzles me is just what his vendor had. The Deeds are very inaccurately drawn.

40 There was a fire in the Registry Office at Hull in 1900 and all the documents were destroyed. Following this a law was passed that persons whose Deeds had been destroyed might register them within two years, and I think later it was extended for another year. Your Lordship will find in the record a great number of entries of re-registration of Deeds about 1902. There is a certain amount of confusion as to who were the real proprietors and what they really owned before 1900, and as Mr. Cross' auteurs go away back before 1900 it is

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somewhat confusing. What I was trying to find out exactly was what he was entitled to under the Deeds he filed.

I do not think the Company wants to take issue with him on the titles as to what he may have, but there is the question of the lines which may make a difference in the Company's case.

His Lordship: Did the witness say he was proprietor of the stretch of land between the Gatineau Highway and the C.P.R. track?

10 Mr. St. Laurent: And he has what is between the track and the river as well. Therefore, the question arises as to how the lines run.

BY MR. KER (continuing):

Q.—Your purchase price of the Cascades, in 1916, was \$2,890.00?

A.—Yes, somewhere thereabouts.

Q.—There was nothing done on it between that time and the time the Company flooded it?

20 A.—No.

Q.—And now you estimate it to be worth \$600,000?

A.—Yes.

Q.—Either Mrs. Byrnes must have made a very bad deal, or you made a very good deal in these circumstances. Do you think Mrs. Byrnes got less for her property than it was worth?

A.—As a waterpower.

Q.—In any event, it was your opinion that it was a waterpower?

A.—Yes, I bought it for that.

30 Q.—Do you know what is the difference in elevation within the lines of your own property that you bought from Mrs. Byrnes, right across the river? Between the north and the south parts of your land? In other words, do you know what head there would be on your own property?

A.—No, but I figured I had a power site there, and I could go up as high as I wanted to pay for. It would be economic to buy the land above it. When I bought the property, that was my intention.

Q.—So, you did not buy it so much for what was on it as you did for what the people above you had?

A.—For the pondage above.

40 Q.—You mean, for the head? In other words, you did not buy the property for the head that was on it?

A.—No; the head that could be put on my property.

Q.—You thought the head belonging to the people above you was the valuable part of that property?

A.—I was not bothering about the people above me. I was below low water mark.

Q.—You did not anticipate there was sufficient head on that

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property itself to make a commercial development?

A.—Yes.

Q.—Without utilizing the property of anyone else?

A.—Yes.

Q.—What size development did you expect to make on your own property?

A.—I did not go into that at all when I bought the property.

Q.—You merely saw a little white water, and you came to the conclusion there was a water power there?

10 A.—Yes.

Q.—And you thought it was worth \$2,890.00, and you bought it with the land in addition for that?

A.—Yes.

Q.—And some buildings too?

A.—Yes, there was a building on it.

Q.—You have since sold some of that land?

A.—One small lot.

Q.—One piece?

20 A.—Yes, one piece.

Q.—How much did you get for it?

A.—\$1,000.00; with the building. There was a building on it.

Q.—So the net cost to you of what you had left, together with your water power, was \$1,890.00?

A.—Yes.

Q.—I understand the C.P.R. has offered you \$500.00 or thereabouts, in expropriation proceedings, for the land for a station around there?

A.—I could not say what the offer was.

30 Q.—How many acres of land did you buy? I am speaking of land covered with water?

A.—I do not know.

Q.—How many acres are on the little triangular piece over on the east?

A.—I do not know.

Q.—You have made no personal study of what your rights in the river bed might be? You have made no estimate of the area of river controlled by your riparian land?

A.—Not personally, no.

40 Q.—The next property you own is up the river, at Farm Point—three or four miles up?

A.—About a mile.

Q.—Above the Cascades?

A.—Yes.

Q.—That is on the west side of the river?

A.—Yes.

Q.—Meach Creek goes into the Gatineau River, and about the

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entrance of Meach Creek and on the slope running up from Meach Creek you have the Farm Point properties?

A.—Yes.

Q.—Your power property, or what you called your small power property, at Meach Creek is on that Farm Point group?

A.—Yes.

Q.—And that little power house is fed from a dam on the upper level—the high ground above Meach Creek?

A.—Higher up.

10 Q.—I think you started to operate that as a power in 1912?

A.—The power house.

Q.—You owned the property before that?

A.—Yes; since 1904.

Q.—Or 1902?

A.—1902—I think you are right.

Q.—You commenced development at Meach Creek in 1902?

A.—Yes.

Q.—And you went into the power plant in 1912?

A.—Yes.

20 Q.—What did you do in 1902? What were you doing there in the way of an industry in 1902?

A.—Lumber.

Q.—Were you utilizing the power that was running down from the mountain to operate the sawmill?

A.—In 1903 I built a wooden dam, and in 1908 I built a cement dam.

Q.—In 1908 you began to take your penstocks down to your power house to generate power?

A.—Yes.

30 Q.—And you began to establish your distribution system in Wakefield and elsewhere?

A.—Yes.

Q.—When did you stop operating that power plant?

A.—About a year ago.

Q.—In 1930?

A.—Yes.

Q.—It operated continuously from 1912 to 1930, eighteen years?

A.—Yes.

40 Q.—Did you ever renew any of the machinery?

A.—Yes.

Q.—Was the original dam there from 1912?

A.—I renewed the dam.

Q.—What did you do?

A.—I put cement on the top. It was crumbling down a little. I did that in 1923 or 1924.

Q.—What prompted you to give up the operation of that power

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plant in 1930?

A.—I could not carry on.

Q.—Why not?

A.—On account of the flooding.

Q.—Is it your absolute considered statement that you could not carry on in 1930 on account of the flooding?

A.—Yes: the backing up of the water in the tailrace.

Q.—Was the water any higher in 1930 than it had been since 1927? Was there any more ill effect to you in 1930?

10 A.—It affected it the day it came in on the property.

Q.—And, from the day they came in, in 1927, it affected you exactly the same as it did in 1930?

A.—Yes: it got so I could not carry on any more.

Q.—How were you able to carry on for the three years?

A.—Under the conditions.

Q.—What conditions?

A.—Very poor conditions. I had not enough power to serve my customers.

20 Q.—Did the Public Service Commission ever examine your plant?

A.—Yes.

Q.—And they condemned it?

A.—Yes.

Q.—On account of lack of water in your own creek?

A.—They condemned it for the lack of power.

Q.—Because there was not enough water on your own creek to run your power plant?

A.—Not for that reason.

30 Q.—As a matter of fact, this summer have there not been days and days when you could walk out into your pond, straight in front of the lower part of your dam, dry shod?

A.—The dam was pulled out, to take out the detritus of the creek in this dry summer, when we were done using it for the year. That was the reason the dam was completely let out.

Q.—But, you had no water this year?

A.—There was very little water. There is, however, lots up in the lakes. There are two lakes above, with two feet in one and one foot in the other.

40 Q.—You say it was due to the flooding of the water up into the tailrace?

A.—That was the big thing. It submerged my draft-tube entirely.

Q.—It did not interfere with the intake of the water into your powerhouse?

A.—No.

Q.—It really cut off about 10 per cent of your head?

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- A.—Yes.
- Q.—And you operated for three years after that condition began?
- A.—As long as I could possibly operate.
- Q.—Your sawmill is not seriously affected, is it?
- A.—No.
- Q.—There is no particular damage to it?
- A.—Not to the sawmill itself, no.
- Q.—In fact you rebuilt your sawmill after it was burned down
- 10 a few years ago?
- A.—I had to.
- Q.—And that was after the water was raised?
- A.—Yes.
- Q.—I understood you to say your water supply system originated in your penstock?
- A.—Yes.
- Q.—And, I think you said you were supplying about 25 or 30 summer people?
- 20 A.—Somewhere around 30 customers.
- Q.—In the summertime?
- A.—Yes.
- Q.—Was your system one which could operate in the winter?
- A.—Yes.
- Q.—Were any of your pipes over the ground?
- A.—Some of them were overground, but not the ones we operated in the wintertime.
- Q.—The ones you operated in winter were not affected by this flooding?
- 30 A.—Oh, yes, badly affected.
- Q.—How?
- A.—The water going up and down breaks my pipes where they come out in places.
- Q.—In just what places do your pipes come out so that the ice can break them?
- A.—Following down the C.P.R. track. The ground is boggy, and the weight of the ice breaks them. It never did that before 1927.
- Q.—Were those pipes serving anyone?
- A.—Yes.
- 40 Q.—Whom?
- A.—About six or seven families in the wintertime.
- Q.—On your own property?
- A.—Yes.
- Q.—So this system which was damaged was really a little private water supply system you had for your own property?
- A.—In the winter months.
- Q.—I suppose you had to have those pipes below frost line in

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order to be able to keep on operating in the winter?

A.—Yes.

Q.—How could the raising of the water affect them then?

A.—The level of the river was down about 10 feet—somewhere in the neighborhood of 310 or 311.

Q.—What kind of pipe was it: iron, or lead, or wood?

A.—Iron.

Q.—How long had it been laid?

A.—Since about 1915 or 1916.

10 Q.—Did you not take it up at the time you built the power house in 1912?

A.—No, it was later I did it.

Q.—It had been in operation about fifteen years?

A.—Yes.

Q.—And those pipes were supplying people living on your own land?

A.—Yes, in the wintertime.

20 Q.—This little colony of forty or fifty families you spoke of at Farm Point were not all supplied by your water system?

A.—No.

Q.—Nor the churches?

A.—No.

Q.—Nor the post office?

A.—The post office had a connection.

Q.—They had your water?

A.—Yes.

Q.—The post office was not affected in any way by this flooding?

A.—They have no water.

30 Q.—They have no water from you?

A.—No.

Q.—And they never had?

A.—Yes, the post office had water from me.

Q.—What acreage of land—and I am not now speaking of power houses or anything of the kind—do you estimate was flooded at Meach Creek?

A.—About six or seven acres.

Q.—Six or seven acres altogether?

A.—Yes: flooded. .

40 Q.—And how many buildings are affected by that flooding?

A.—About six or seven.

Q.—Are any of those six or seven buildings occupied now?

A.—Some of them.

Q.—How many?

A.—There is a family living upstairs in one of them. They have an outlet through a back window. They opened a door where the window was.

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In two of the others, the water comes in occasionally.
319 the water comes in on the ground floor.

Q.—Three of them are occupied.

A.—Yes.

Q.—Have the other three been occupied at any time since the flooding?

A.—There has not been anyone in two of them since the flooding.

10 Q.—Two of the six have not been occupied since the flooding?

A.—Yes.

Q.—Was that because there was no one to occupy them or because it was impossible to occupy them owing to the flooding?

A.—I have not taken any rent from those at all. They only just go in.

Q.—Could you or could you not have occupied the two houses you speak of?

A.—No.

20 Q.—So you have six acres of land, and five or six cottages of this kind, three of which are at present occupied and two of which have not been fit for occupation since the flooding?

A.—Yes.

Q.—Did you build those cottages yourself?

A.—Yes.

Q.—When?

A.—1920, I think. Between 1918 and 1920.

Q.—They were all built about the same time?

A.—Yes, those that were flooded were all built about the same time.

30 Q.—What did they cost you?

A.—I kept no track of the cost.

Q.—How many rooms are there in them?

A.—I could not even tell you that.

Q.—They are wooden structures?

A.—They are all wood, yes.

Q.—And they were in close proximity to your saw mill?

A.—Yes, quite close.

BY THE COURT:

40

Q.—What kind of foundations did they have?

A.—They were put up on stones and posts.

Q.—No stone foundations?

A.—No.

BY MR. KER (continuing):

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Q.—There are no cellars to them, I take it?

A.—Oh, yes, most of them have cellars.

Q.—You rent your hotel to tenants each year?

A.—Yes.

Q.—You have another property on the Pêche?

A.—Yes.

Q.—On the west side of the river, too.

A.—Yes.

Q.—From whom did you buy that?

10 A.—Selwyn.

Q.—What is the extent or area of that land?

A.—It is in the Deed.

Q.—Without reference to the Deed, I believe it is about an acre?

A.—About that.

Q.—The first option, or first agreement, Exhibit P-53, was made on April 6th, 1926?

A.—Yes.

20 Q.—That was some time after the plans of the Company were filed in the Registry Office?

A.—About that time.

Q.—You allege in this agreement that “Freeman T. Cross has a notion and intends to develop the water power to the extent of elevation 325”?

Mr. St. Laurent: This is a unilateral declaration by Selwyn.

BY MR. KER (continuing):

30 Q.—This agreement was made in view of your notion to develop the river up to elevation 325?

A.—Yes.

Q.—Had you really any idea you could develop the river at that time?

A.—I did not look into it.

This is up to 325.

40 Q.—It is also stated “Freeman Cross is the owner of the La Pêche Rapids in the Gatineau River”. Had you any ownership whatever in the Pêche Rapids at the time that agreement was made? At the time you signed that declaration had you any ownership whatever to one foot of land in the Pêche Rapids?

A.—Not before the declaration, no.

Q.—Then, why was that put in? You do not know?

A.—No.

Q.—After this agreement was signed, in 1927, after the water was up on the property and had submerged the Pêche Rapids, you

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took a Deed of this land where you did not have one before. Is that right?

A.—Yes.

Q.—So all you own or have any pretension to in the Pêche Rapids is what you got after the water had risen upon it and submerged it, apart from this agreement which was made in view of your declaration that you were the owner of the Pêche Rapids?

A.—Apart from that.

10 Mr. St. Laurent: I have just been informed that this error in the description, to which my learned friend called attention: "east-erly" instead of "westerly" for the Gatineau Road, was corrected by a Deed of Rectification in 1930. We will have a copy of this Deed for production. When Mr. Cross' solicitors discovered the error there was a Deed of Rectification made replacing the word "east-erly" by the word "westerly". Mr. Cross' solicitors discovered the error when the titles were examined. We will have this Deed of Rectification, and we will ask leave to produce it when we get it.

20 Mr. Ker: Some time in 1930 the boundary was rectified, and later, in 1931, another declaration was registered.

Mr. St. Laurent: We rectified the error.

Re-examination

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

30 Q.—There was something I did not understand in one of your answers. You spoke about not taking any rent for those cottages affected by the flooding. To what cottages were you referring?

A.—There are about six.

Q.—I think you said the second storey of one of them was occupied?

A.—Yes. The people moved in. They cut a window on the second floor to make a door out of it. They put a stairway from the hill and went in to live on the second storey.

Q.—Is that one of the houses for which you have been taking no rent?

40 A.—That is one of them.

Q.—You said some of the others were occupied. Have they been leased, or are they just being occupied on tolerance?

A.—They just moved in. At times the water comes in on the floor, but some of these people are ready to go anywhere and live. They have to get some place to stay.

Q.—And there are two of them into which no one has gone?

A.—No, they are completely gone.

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Q.—When you purchased the Cascades property did you know anything about the numbers the property should have? Did you know anything about the cadastral numbers, or was the matter of putting in the cadastral numbers left to the Notary?

A.—It was left to the Notary.

Q.—When you bought from Mrs. Byrnes did you know what the cadastral numbers were?

A.—I do not understand what you mean.

10 Q.—You told us that when you bought the Cascades property from Mrs. Byrnes you went on it and walked around it with Mrs. Byrnes?

A.—Yes.

Q.—Did you know what were the proper numbers for that property?

A.—No.

Q.—Did you give them to the Notary, or did the Notary find them out from the Deeds?

A.—I gave everything, but he put the lot numbers.

20 Q.—Did you know what the lot numbers were?

A.—No, nothing at all. I did not know what lot, or range, or anything of the kind. I left that entirely in the hands of the Notary. I told the Notary to get everything in that river in regard to water power. That was all I was interested in. I told him to get it so that I would have no trouble. I had had trouble enough with the Paugan Falls, and I wanted no trouble with the riparian rights to the river as a water power.

I intended to build a dam, and the Notary even put that in my Deed.

30 Q.—You left it to the Notary to find out what the lot numbers were?

A.—Yes.

Q.—And in 1930 or 1931 your lawyers told you there was a mistake in one of the lot numbers?

A.—Yes.

Q.—And it was after they told you you went and got the Deed of Correction?

A.—Yes. The same Notary corrected it.

40 Q.—Had you ever taken possession of the Canada Cement property?

A.—No.

Q.—Or of any part of it?

A.—No.

Q.—Do you now know what the lot numbers are, or do you leave that to the lawyers and the engineers?

A.—I do not know the numbers. I could not go by the lot numbers. I would know the lots on the map.

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Q.—What did you go by when you bought it?

A.—I walked up the railroad, and across by the Baker property, up on to the highway, and continued by the Gatineau Highway easterly, right from the range line. Everything easterly of the Gatineau Highway after it passed Baker's cottage.

Q.—When you speak of the range line, what range do you mean?

A.—The range line between 20 and 21.

Q.—You say you walked from the range line right up to where the railway and the highway come together?

10 A.—Yes.

Q.—And you did not know what the numbers were?

A.—No.

Q.—Between 1927 and 1930 were you giving satisfaction to the customers whom you were supplying with electric light or were they complaining?

A.—Very little complaints.

Q.—I am speaking of between 1927 and 1930.

20 A.—There were complaints. That was the reason of the shutting down of the power house.

Q.—The power house could not supply sufficient power for the number of customers you had?

A.—No.

Re-cross-
examination

BY MR. KER:

Q.—Had you ever had any complaints from customers previous to the time the water was raised?

A.—Nothing worth while.

30 Q.—Just what do you mean by that?

A.—There were no complaints of any kind.

Q.—In other words, the complaints began when the Gatineau Company flooded?

A.—That was when they really started in good shape.

Q.—You were examined under oath before the Public Service Commission when the question of the expropriation of Meach Creek came up, and in your deposition given at that time I find the following:

“ Q.—Your lighting load is all the year round?

40 A.—Yes. My biggest difficulty in my electric light plant is that I have not got enough power to supply my customers. The lights are quite dim, and there are a lot of complaints about it. I am not having power enough.”

Is that correct?

A.—I had none too much power.

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Q.—So you were having complaints long before the water was raised?

A.—As I stated, there were a few complaints came in.

Q.—I observe by Exhibit P-6 that on March 17th, 1930, a lady named Miss Julia Roberta Neil undertook to make declarations in connection with the titles to your property. Who is Julia Roberta Neil—Mrs. Robert McGregor, I think—have you ever heard of her?

A.—Yes.

Q.—Who is she?

10

A.—She was a Reid.

Q.—She was not a Moore, then?

A.—I do not think so, no.

Q.—She appears to have taken it upon herself to declare that the will of a certain person made in 1882 did not really mean what it said, although she only filed the declaration in 1930.

A.—My lawyers looked into that. I do not know anything at all about that declaration.

Q.—However, you do know this lady?

20

A.—Yes, I do.

Q.—Did you ask her to make those declarations?

A.—Under the instructions of my lawyer.

Q.—She did not volunteer the information to you?

A.—No.

Q.—You went and asked her to give it?

A.—Yes.

Q.—Did you pay her anything for that?

A.—I could not tell you whether I did or not.

Q.—Did you pay her, or did you not?

30

A.—I do not think I did.

Q.—Surely you must know. People do not make declarations like that every day. Did you or did you not pay her?

A.—For that, no.

Q.—Was anything paid to her on your behalf for making these declarations?

A.—No.

Q.—Did you pay Mrs. Byrnes anything?

A.—No.

Q.—Are you sure of that?

40

A.—Yes.

Q.—Did anyone pay anything to Mrs. Byrnes on your behalf?

A.—Not under my instructions.

(And further deponent saith not.)

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And on this thirteenth day of November, in the year of our Lord one thousand nine hundred and thirty-one, personally came and re-appeared

JAMES M. ROBERTSON,

a witness recalled for further cross-examination:

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

10

Q.—My attention is drawn to the fact that you were asked in your cross-examination to get some information about one or two sites. I see the first was Hemmings Falls. Have you found any sales in connection with that transaction?

A.—As I stated, at the time of my examination, Hemmings Falls and Drummondville Sites of the Southern Canada Power Company are held by leases from the Provincial Government. They are not owned outright by the company.

20

Q.—When was the last transaction in connection with those?

A.—Well, all five sites owned by the Southern Power Company were arranged about 1912 or 1913 at the time the company was formed.

Q.—That is the Southern Canada Power?

A.—Yes.

Q.—Did they take them over at the time from predecessor companies?

30

A.—Partly. The matter is a little confused. There was a re-arrangement made apparently at the time the Southern Canada Power was formed, in order to take the whole five sites in, and place them at the disposition of the Southern Canada Power Company.

Q.—And have you particulars of that re-arrangement?

A.—Not in minute detail. I got the figures which we pay, the Southern Canada Power Company pays as a rental.

Q.—I really was not interested in the Quebec Government rentals. I was interested in the sales and transactions, whether they be leases or whether they be free titles?

A.—They are simple leases.

40

Q.—I was wondering as to the transactions of those leases, not the royalties which we have learned for earlier days were lower; for instance, what the present company paid the predecessor company for its rights which it had, whether they be leases or fee simple ownership?

A.—I do not think there is any answer to that question. I do not think that was the way it was done. The parent company who owned some rights was incorporated in the Southern Canada Power Com-

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pany as one of the three companies, out of which it was originally formed, and those assets were put in as its contribution. I could not speak particularly about that, because I have not the information.

Q.—If you have not the information you cannot give it to us, then. Does the same thing apply to Drummondville?

A.—They are all alike. They are all in the same category.

Q.—You cannot tell us, for instance, how much stock was new stock issued for the transfer of those rights?

10 A.—No, I cannot.

Q.—I suppose the old company took its payment in stock of the new company?

A.—So far as I recall, that is the way it was done.

Q.—But you have not information as to the particular value of that stock?

A.—No. I was one of the people who were directly in the deal, but I do not remember the details after this long period of time.

Q.—About when did you say that was?

20 A.—About 1913 the company was formed.

Q.—The Southern Canada Power Company?

A.—Yes.

Q.—Was there any other power plant you were asked to give information about?

A.—I think not. To the best of my recollection, that is all.

Re-examination

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

30 Q.—In your cross-examination there was some implied criticism of your segregation of \$750,000, I think, for developed properties, and \$4,000,000 for the value of the water powers in the Hull Electric deal. Have you been able to ascertain any figures, corroborative or otherwise, of the correctness of your four million and three-quarters?

Mr. Montgomery: I object to this question as reopening the evidence-in-chief. We closed our case. It is not a subject on which Mr. Robertson was recalled by me.

40

Mr. St. Laurent: But Mr. Robertson had not completed his evidence. In the cross-examination your Lordship will remember that Mr. Robertson referred to a certain transaction that went through at a price of four million and three-quarters, that \$750,000 was the value of the Hull Electric plant and the four millions the value of the power site. There was some implied criticism as to the accuracy of that distribution.

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Mr. Montgomery: Mr. Robertson's cross-examination on that point was closed, and my learned friend closed his re-examination, and we are closing our case. If my learned friend wants to re-open the case to go into that figure again with Mr. Robertson, that may necessitate some different course of action on the part of the defence. We made our case as it was presented.

10 What my learned friend is now doing does not arise out of any of my examination of Mr. Robertson, whose examination is closed, subject to his getting information as regards those particular figures which even I had forgotten about, and on which he certainly has not been asked anything.

20 Now my learned friend wants to re-open his case in chief to make further evidence from Mr. Robertson on the subject of this Paugan matter on which he was examined, and cross-examined. It will be in your Lordship's hands to allow or to disallow it. If Mr. Robertson is re-examined on this aspect of the Paugan site, in order to re-inform his evidence on that, it may require rebuttal on our part. It may require re-opening the case to meet the evidence which my learned friend seems to think Mr. Robertson is prepared to give. I see he is armed here with a lot of red-sealed documents, etc. What they are I do not know, but this is no part of the evidence of Mr. Robertson, left opened. Mr. Robertson testified to an exhibit, subject to his producing figures in regard to Hemmings Falls and Drummondville, and he now declares he has not got the information, and thus closes Mr. Robertson's examination.

30 Mr. St. Laurent: He gave his evidence-in-chief and when he was cross-examined there was some implied criticism as to the accuracy of this distribution. The properties in question will be a matter of re-examination for Mr. Robertson to say if there are any authentic figures which bear or do not bear out his proposed apportionment.

40 Mr. Montgomery: But what my learned friend is attempting is not re-examination of anything that was left open in Mr. Robertson's case. It was at the most with reference to some figures in regard to Hemmings Falls and Drummondville, and he is now wishing to re-examine Mr. Robertson on something on which he did re-examine him some little time ago—I have forgotten how long ago, and after he had closed his case, and after we have declared our case closed.

Of course, I do not know at all what Mr. Robertson is going to say, but I merely draw attention to the fact that my learned friend has not even asked to re-open his case. To do that my learned friend should first proceed by applying to your Lordship for permission to re-open his case in chief. I have not asked Mr. Robertson anything at all about Paugan Falls this morning.

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Mr. St. Laurent: I do not think this witness' evidence was declared closed.

10 Mr. Montgomery: Oh, yes, the record shows Mr. Robertson's evidence is closed, and apparently everybody had forgotten about the question even. There is no reference at the end of Mr. Robertson's deposition as to the subject or anything else. It just states "and further deponent saith not". If my learned friend had not reminded us of this Hemmings Falls and Drummondville matter, there would have been no occasion to put Mr. Robertson back in the box. It was at my learned friend's suggestion that he was put back in the box. Mr. Robertson's evidence was closed at page 389 of the plaintiff's evidence. Apparently, even at that time I had forgotten about Drummondville and Hemmings Falls, I attached so little importance to it. I did not think of recalling him about that.

Mr. St. Laurent: There was no express reservation at the time Mr. Robertson left the witness box.

20 Mr. Montgomery: Even Hemmings Falls and Drummondville had been forgotten, and I did not even ask him to come back. His appearance in the box is at your suggestion, Mr. St. Laurent.

Mr. St. Laurent: It was because of this matter that was left open as to Hemmings Falls and Drummondville.

Mr. Montgomery: If you had told me that Mr. Robertson had not the information I would not have had to recall him.

30 Mr. St. Laurent: He did have the information we thought you were asking him for. He had the terms they were paying for these Falls.

Mr. Montgomery: But it is the transfer from one company to the other we want.

40 (The procès-verbal showing that the enquête was declared closed, the plaintiff does not make any application to re-open the enquête).

(And further deponent saith not.)