

# In the Privy Council

No. of 1938

## ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

BETWEEN:

NORTHERN ONTARIO POWER COMPANY LIMITED,  
(Plaintiff) APPELLANT

AND

LA ROCHE MINES LIMITED (No Personal Liability) and F. L. HEARD, Liquidator of La Roche Mines, Limited,  
(Defendants) RESPONDENTS.

AND BETWEEN:

LA ROCHE MINES LIMITED (No Personal Liability) and F. L. HEARD, Liquidator of La Roche Mines, Limited,  
(Defendants) APPELLANTS,

AND

NORTHERN ONTARIO POWER COMPANY LIMITED,  
(Plaintiff) RESPONDENT.

# RECORD OF PROCEEDINGS

BLAKE & REDDEN,  
17 Victoria Street,  
London, S.W. 1.

*For the Appellant and for the Respondent (by Cross-Appeal) Northern Ontario Power Company Limited.*

CHAS. RUSSELL & CO.,  
37 Norfolk Street,  
London, W.C. 2.

*For the Respondents and for the Appellants (by Cross-Appeal) La Roche Mines Limited (No Personal Liability) and F. L. Heard, Liquidator of La Roche Mines Limited.*

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No.                      of 1938

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BETWEEN :

NORTHERN ONTARIO POWER COMPANY LIMITED,  
(*Plaintiff*) APPELLANT

AND

LA ROCHE MINES LIMITED (No Personal Liability) and F. L.  
HEARD, Liquidator of La Roche Mines, Limited,  
(*Defendants*) RESPONDENTS.

AND BETWEEN :

LA ROCHE MINES LIMITED (No Personal Liability) and F. L.  
HEARD, Liquidator of La Roche Mines, Limited,  
(*Defendants*) APPELLANTS,

AND

NORTHERN ONTARIO POWER COMPANY LIMITED,  
(*Plaintiff*) RESPONDENT.

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CHAS. RUSSELL & CO.,  
37 Norfolk Street,  
London, W.C. 2.

*For the Respondents and for the Appellants (by Cross-  
Appeal) La Roche Mines Limited (No Personal Lia-  
bility) and F. L. Heard, Liquidator of La Roche Mines  
Limited.*

# In the Privy Council

No. of 1938

## ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

BETWEEN :

NORTHERN ONTARIO POWER COMPANY LIMITED,  
(*Plaintiff*) APPELLANT

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LA ROCHE MINES LIMITED (No Personal Liability) and F. L.  
HEARD, Liquidator of La Roche Mines, Limited,  
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HEARD, Liquidator of La Roche Mines, Limited,  
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AND

NORTHERN ONTARIO POWER COMPANY LIMITED,  
(*Plaintiff*) RESPONDENT.

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# RECORD OF PROCEEDINGS

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## No. 1

## Statement of Claim

IN THE SUPREME COURT OF ONTARIO

BETWEEN

NORTHERN ONTARIO POWER COMPANY LIMITED

*Plaintiff,*

AND

LA ROCHE MINES LIMITED (No Personal Liability) and F. L.  
HEARD, Liquidator of La Roche Mines Limited*Defendants.*

10

(Writ issued the 18th day of January, 1936).

1. The Plaintiff is an incorporated Company engaged in the business of the production, transmission and sale of electric power and energy, and having its Head Office at New Liskeard in the District of Temiskaming.

2. The Defendant La Roche Mines Limited is a Mining Company, incorporated under the Ontario Companies Act and having its Head Office at the City of Toronto. The Defendant F. L. Heard, is the Liquidator of the Defendant Company.

20 3. On or about the 30th day of December, 1931, the Defendant Company entered into an agreement in writing with the Plaintiff for the supply by the Plaintiff to the said Defendant of electric power and energy at the mining properties of the said Defendant, situated in the Township of Deloro on terms set out in the said contract to which the Plaintiff will at the trial hereof ask leave to refer, and in consideration thereof the said Defendant agreed to pay to the Plaintiff according to the prices and rates set out in the said agreement.

30 4. It was expressly provided in the said agreement that the agreement should extend for the mining life of the properties then or thereafter operated, owned or controlled by the said Defendant in the Porcupine District within which its said properties in the Township of Deloro were located, and it was further expressly provided in and by the said agreement that during the continuance of the said agreement no system of electricity other than that furnished by the Plaintiff should be used in the said premises, provided the Plaintiff was able and ready to supply same, except with the written consent of the Plaintiff, and it was an implied term of the said agreement that the said Defendant should not during the mining life of the properties then operated, owned or controlled by it in the Porcupine District, dispose of the said properties, or in any way by its own act put it out of its power to perform the said agreement on its part.

40 5. In pursuance of the said agreement the Plaintiff incurred large expense in providing additional production capacity and transmission lines for

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of Ontario.*

—  
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of Claim,  
4th March,  
1936.

*In the  
Supreme Court  
of Ontario.*

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No. 1  
Statement  
of Claim,  
4th March,  
1936.

—continued

the purpose of supplying said electrical power and energy to the Defendant Company under the terms of the said agreement and duly supplied power and energy under the said agreement to the Defendant Company as the same was required by the said Defendant Company, until the happening of the events set forth in the next following paragraph hereof and the Plaintiff has been at all times prepared and ready and willing to supply the Defendant Company with electric power and energy at the said mining properties under the terms of the said agreement.

6. In or about the month of October, 1934, during the mining life of the properties owned, operated and controlled by the Defendant Company at the time of the making of the said agreement, in the Porcupine District to which the Plaintiff supplied electric power and energy under the said agreement, the Defendant Company sold and disposed of all the said mining properties and parted with the possession thereof and thereupon notified the Plaintiff that it would not accept delivery of nor pay for any further electric power or energy under the aforesaid agreement with the Plaintiff. 10

7. In or about the month of November, 1935, the Defendant Company went into voluntary liquidation under the provisions of the Ontario Companies Act under and in pursuance of a resolution for the winding up of the said Defendant Company duly passed by it, and the Defendant F. L. Heard was thereupon appointed Liquidator of the said Defendant Company. 20

8. On or about the 15th day of November, 1935, the Defendant F. L. Heard, as such Liquidator as aforesaid, published a notice calling upon all persons having any claims against the Defendant Company to send particulars thereof to the said Liquidator on or before December 19th, 1935, and that after that date the assets of the Defendant Company would be distributed having regard only to claims of which the said Liquidator would then have notice.

9. In pursuance of the said notice the Plaintiff duly notified the Defendant Liquidator of its claim under the said agreement between the Plaintiff and the Defendant Company dated the 30th day of December, 1931, and on or about the 27th day of December, 1935, the Defendant Liquidator notified the Plaintiff that its said claim was contested in whole and requiring the Plaintiff to bring an action to establish the said claim within thirty days from the receipt of such notice and that in default thereof the claim of the Plaintiff to rank as a creditor should be forever barred. 30

10. By reason of the acts of the Defendant Company in selling and disposing of and parting with the possession of its said mining properties and in going into voluntary liquidation and in refusing to further carry out the terms of its said agreement with the Plaintiff, the Plaintiff has suffered loss and damage, and has been deprived of the profits that it was entitled to and would have received under the said contract. 40

#### THE PLAINTIFF THEREFORE CLAIMS:

(a) A declaration that the Plaintiff is entitled to damages from the De-

fendant Company for breach of the contract between the Plaintiff and the said Company, and that the Plaintiff is entitled to rank as a creditor of the Defendant Company in respect of its said claim.

- (b) Judgment fixing the amount of the claim of the Plaintiff at the sum of \$524,163.24 or at such other sum as upon the evidence may seem just and fair; or in the alternative for directions for the ascertaining of the proper amount of the said claim of the Plaintiff.

(c) Costs of this action.

(d) Such further and other relief as may seem meet.

10 The Plaintiff proposes that this action be tried at the Town of Haileybury.

DELIVERED this 4th day of March, 1936, by Messrs. Fasken, Robertson, Aitchison, Pickup & Calvin, 36 Toronto Street, Toronto, Agents for Joseph A. Legris, K.C., of the Town of Haileybury, in the District of Temiskaming, Solicitor for the Plaintiff.

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## No. 2

### Amended Statement of Defence

1. The Defendants, La Roche Mines Limited and F. L. Heard, Liquidator of LaRoche Mines Limited hereinafter referred to respectively as the  
20 Company and Liquidator, admit the allegations as set out in paragraphs 1, 2, 3, 7 and 8 of the Plaintiff's Statement of Claim, and deny all other allegations in the said Statement of Claim contained except as they are hereinafter admitted.

2. The Defendant Company being unable to finance a proper mining program on the mining properties then owned by it in the Township of Deloro, abandoned all work on said properties on or about the 28th day of May, 1932, and on or about the 12th day of October, 1934, sold its properties.

30 3. At a shareholders' meeting of La Roche Mines Limited held on the 13th day of November, 1935, and especially called for that purpose a resolution was passed after due consideration and decision that it was in the interests of the Company to do so, requiring the Company to be wound up under the voluntary winding up provisions of The Ontario Companies Act and appointing F. L. Heard of the City of Toronto, Liquidator.

4. The Defendant Company paid the Plaintiff for all electric power and energy supplied to it down to the date of the aforementioned voluntary winding up proceedings.

5. As a result of the sale of the Company's mining properties as aforesaid, the Defendant Company ceased to operate, own or control any mining

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of Claim,  
4th March,  
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Statement  
of Defence,  
18th May,  
1936.

*In the  
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—  
No. 2  
Amended  
Statement  
of Defence,  
18th May,  
1936.

—continued

properties or other properties in the Township of Deloro or in the District of Porcupine and thereby the agreement made between the Plaintiff and the Defendant Company had, by its term, ceased to be operative or binding on the parties thereto.

6. The Defendants deny that it was an implied term of said Agreement that the Defendant Company should not, during the mining life of the properties then operated, owned or controlled by it in the Porcupine District, dispose of the said properties or in any way by its own act put it out of its power to perform the said Agreement on its part as alleged in paragraph 4 of the Statement of Claim and in reply to such allegation alleges that the said Agreement by its terms specifically excluded any representation, promise or agreement unless the same were incorporated in the agreement in writing before the execution thereof by the parties except those made in writing and signed by an Executive Officer of both parties. 10

7. While alleging that the agreement between the parties has been properly terminated under the terms of the said Agreement, the Defendants in the alternative allege that any claim against the Defendants as alleged in the Statement of Claim is not a legal claim provable in the voluntary winding up proceedings of the Company and in particular The Ontario Companies Act, being Chapter 218 of the Revised Statutes of Ontario, 1927, and in particular part XIV thereof, and Sections 25 to 27 inclusive of the Assignments and Preferences Act, being Chapter 162 of the Revised Statutes of Ontario, 1927, by way of defence thereto. 20

8. In the further alternative the Defendants deny that the Plaintiff has suffered the sum of \$524,163.24 damages or any damages and puts the Plaintiff to the strictest proof thereof.

9. The Defendants further allege that the Plaintiff has since the sale by the Defendant Company of its mining properties supplied and continued to supply power on terms similar to those provided in the said agreement, and has been paid therefor by the company now owning and operating said mining properties, and as a result has suffered no damages or loss of profits whatsoever. 30

10. The Defendants, while denying that there is any liability on either Defendant, allege that by reason of the voluntary winding up proceedings, the claim of the Plaintiff against the Company stands to be determined in the winding up proceedings as against the Liquidator and not otherwise.

11. The Defendants further allege that the Plaintiff is a Public Utility Company and that the rates or tolls prescribed in the said Agreement are unauthorized and excessive.

12. The Defendants further allege that the said Agreement made between the Plaintiff and the Defendant Company is, by reason of its being in restraint of trade and by reason of its lack of mutuality, void. 40

12 (a) The Defendants further allege that the Statement of Claim does

not disclose any cause of action against them by reason of the failure of the Plaintiff to conform to the provisions of the Public Utilities Act being Chapter 249 of the Revised Statutes of Ontario, 1927, and in particular Part 5 thereof, and Part 13 of The Ontario Companies Act being Chapter 218 of the Revised Statutes of Ontario, 1927, and in particular Sections 180, 183 and 189 thereof and the Defendants plead the provisions of the said Acts by way of defence herein.

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Amended  
Statement  
of Defence,  
18th May,  
1936.

13. The Defendants submit that this action be dismissed with costs.

—continued

10 DELIVERED this 18th day of May, A.D. 1936, by Day, Ferguson,  
Wilson & Kelly, 1116 Federal Bldg., Toronto (2), Solicitors for the Defendants herein.

**No. 3**

**Demand for Particulars**

No. 3  
Demand for  
Particulars,  
30th March,  
1936.

TAKE NOTICE that the Plaintiff demands particulars under the following paragraphs of the Statement of Defence delivered in this action, that is to say:

*Under Paragraph 4:*

20 Particulars of all payments made by the Defendant Company to the Plaintiff for all electrical power and energy supplied to it as therein mentioned.

*Under Paragraph 7:*

The terms of the said agreement referred to in paragraph 7 which authorizes the proper termination between the parties.

*Under Paragraph 9:*

The name of the Company now owning and operating the said mining properties and the alleged similar terms to which power has been supplied to it and particulars of the alleged similar terms between the Plaintiff and the said Company.

*Under Paragraph 11:*

30 The statutory provisions and regulations under which the rates and tolls prescribed in the said agreement are unauthorized and excessive.

*Under Paragraph 12:*

In what manner and by virtue of what statutory provisions or legislation the agreement made between the Plaintiff and the Defendant Company is in restraint of trade. Also particulars of the alleged lack of mutuality mentioned in the said paragraph.

40 AND TAKE NOTICE that in default of delivery of said particulars within three days or such further time as the Defendant may require for such purpose, a motion will be made on behalf of the Plaintiff for an order in the terms of this demand.

Dated at Haileybury this 30th day of March, 1936.



—continued

Fasken, Robertson, Aitchison, Pickup & Calvin, 36 Toronto Street, Toronto, Ontario, Agent for Joseph A. Legris, K.C., Solicitor for the Plaintiff.  
To the above-named Defendant, and to Messrs. Day, Ferguson, Wilson & Kelly, 1116 Federal Building, Toronto, Ontario, Solicitors for the Defendants.

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#### No. 4 Particulars of Statement of Defence

(1) In answer to the Demand of the Plaintiff for particulars under certain paragraphs of the Statement of Defence, the following are the particulars:

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(2) Under Paragraph 4.—The Defendant Company paid all the bills of the Plaintiff that ever were rendered to it, and paid for all the power and energy supplied until the 31st of October, 1934, when the Defendant Company ceased to be the owner of the property. Thereafter there was no power supplied to the Defendant Company, but same was supplied to the purchaser of the lands, and has been paid for by said purchaser Delnite Mines Limited. The dates of and amounts of the payments are all matters within the knowledge of the Plaintiff and disclosed by its books.

(3) Under Paragraph 7.—For the terms of the agreement referred to in paragraph number 7, the Defendants refer to the agreement made between La Roche Mines Limited and the Plaintiff, set out in paragraph number 3 of the Statement of Claim.

20

(4) Under Paragraph 9.—Delnite Mines Limited (No Personal Liability) is the name of the Company now owning and operating the said mining property. The terms on which power has been supplied to it and taken by it, are so far as the Defendants know, the same terms as were set out in the said contract of 30th December, 1931.

(5) By way of particulars of Paragraph number 11, the Defendants allege that the Plaintiff is a Public Utility Company engaged in the distribution of electric power in the northern part of the Province of Ontario, and at the time of the agreement between it and the Defendant Company was the only distributor of electric power in the Township of Deloro, where the mining property then owned by the Defendant Company was situate, and for many years had a monopoly in fact of the distribution of electric power and service in said locality. Electric power is and then was essential to the practical and profitable operation of mining properties in said district, including the mine then owned by the Defendant Company. For the purpose of operating such Public Utility, the Plaintiff was granted certain water powers belonging to the Province and obtained rights of crossing public lands and other rights in the nature of franchise. It was the duty of the Plaintiff to furnish electric power at fair and reasonable rates, and on fair and reasonable terms and conditions, to all consumers applying for the same, but in violation of its said duty, refused

30

40

to furnish electric power to the Defendant Company on any terms and at any other rates other than those subscribed in said agreement. The rates subscribed are and were unauthorized and excessive, and the agreement is oppressive and unconscionable. But the Defendant Company was coerced and compelled by the Plaintiff to execute said agreement, and did execute same, and paid such excessive rates and complied with the other oppressive conditions of the agreement so long as it operated its mines, in order to obtain the electric power essential to the operation of its properties.

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—  
No. 4  
Particulars  
of Defence,  
3rd April,  
1936.

—continued

6 (a) As to the allegation in paragraph 12, that the agreement was void  
10 by reason of being in restraint of trade and of lack of mutuality, the Defendant  
Company says that the universal policy in practice of the Plaintiff, was to  
refuse to furnish electric power to any Mining Company unless the prospec-  
tive customer would first execute a contract for the life of the mine, and in  
pursuance of this policy and practice, refused to furnish power to the La  
Roche Mines unless the Defendant Company would obligate itself to take  
such power for the life of the mining properties, and on the dictated terms and  
conditions. The Defendants allege that the purpose of this practice and  
policy was to wrongfully misuse an existing monopoly in fact in order to  
20 create a perpetual monopoly and forever prevent and eliminate any compe-  
tition, and that this was in restraint of trade contrary to public policy.

(b) The Defendants further allege that the clause in said contract, as  
set out in paragraph 4 of the Statement of Claim, was in effect a restraint on  
the right of the Defendant Company to alienate or dispose of its property,  
aimed to prevent the Defendant Company from selling its property to any  
other mining company operating other properties in respect of which such  
other Companies might have contracts for electrical power with Companies or  
persons other than the Plaintiff, and an attempt to restrain alienation of said  
land either by imposing on the purchaser a liability which might be per-  
petual, or by imposing on the Defendant Company, with which the contract  
30 was made, a liability unlimited as to time or amount, in case of sale, and that  
by reason of such perpetual clog on change of title of real estate, said con-  
tract was void, and in any event that in equity and good conscience the Plain-  
tiff is not entitled to make any claim for damages.

(c) The Defendants allege that the only value of the mining property  
which the Defendant Company owned was and will be its possible value as a  
mine. The Defendants alleged that the contract alleged by the Plaintiff, by  
which during the mining life of the property, or of any other properties then  
or thereafter owned by the Defendant Company in the Porcupine District, no  
system of electricity other than that furnished by the Plaintiff should be used  
40 on any of said properties, without any exceptions, although the Plaintiff did not  
agree to furnish always such power as might be needed, and although the con-  
tract stipulated that the electric power should be furnished to and used only  
by the Defendant Company, and although for natural reasons the Plaintiff  
Company could not guarantee that it would or could remain in existence dur-  
ing the entire life of the contract, or that it could furnish electric power for  
said period, and which contract was as above alleged obtained by taking ad-

*In the  
Supreme Court  
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No. 4  
Particulars  
of Statement  
of Defence,  
3rd April,  
1936.

vantage of the necessities of the Defendant Company, was unfair and unjust, and was one which in equity the Court would not enforce, and that therefore no damages arising from breach of said part of the contract, if the Plaintiff has suffered any damages which the Defendants deny, are recoverable.

DELIVERED this 3rd day of March, A.D., 1936, by Day, Ferguson, Wilson & Kelly, Solicitors for the Defendants.

—continued

No. 5  
Joinder of  
Issue,  
17th September,  
1936.

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### No. 5

#### Joinder of Issue

The Plaintiff joins issue upon the Defendants' Amended Statement of Defence. 10

DELIVERED this 17th day of September, 1936, by Messrs. Fasken, Robertson, Aitchison, Pickup & Calvin, 36 Toronto Street, Toronto, Ontario, Agents for Joseph A. Legris, K.C., Solicitor for the Plaintiff.

No. 6  
Opening  
Proceedings  
at Trial,  
15th October,  
1936.

---

### No. 6

#### Opening Proceedings at Trial

Before The Honourable Mr. Justice Greene at Haileybury, Ontario, October 15 and 16, 1936.

R. S. ROBERTSON, K.C., and  
J. A. LEGRIS, K.C.  
R. F. WILSON

*Counsel for the Plaintiff.*  
*Counsel for Defendants.*

20

THURSDAY, OCTOBER 15, 1936, AT 4.50 P.M.:

HIS LORDSHIP: Northern Ontario Power Company Limited vs. La Roche Mines Limited and F. L. Heard.

MR. ROBERTSON: I am for the plaintiff and Mr. Legris is with me, my Lord.

MR. WILSON: And I appear for the defendants, my Lord.

MR. ROBERTSON: Has your Lordship read the Record?

HIS LORDSHIP: I know nothing about it.

MR. ROBERTSON: The action, my Lord, arises out of a contract entered into between the Northern Ontario Power Company Limited and La Roche Mines Limited on the 30th day of December, 1931, for the supply by the Power Company to the Mining Company at a named location—at a place near Timmins. The contract, entered into by the parties, provided, and the Company did agree that no other electric power except that supplied under this contract by the Company would be used in the operations upon this property, and the contract is made for the life of the mine. Both parties are bound by this— 30

MR. WILSON: It says "mining life".

MR. ROBERTSON: Yes, mining life. The Mining Company started operations and power was delivered for a short time, and then they suspended operations, and on one or two occasions afterwards power was delivered—

HIS LORDSHIP: The mine suspended operations?

MR. ROBERTSON: Yes, my Lord; the mine stopped operating and there were two subsequent periods in which the Mining Company asked the Power Company to deliver power while some exploratory work was being done. In 1934 the Mining Company sold this property, the consideration being shares in a company which was eventually named the Delnite Company. The La Roche mines owned a large number of shares and then the La Roche Mines went and operated the property, and—

HIS LORDSHIP: La Roche Mines?

MR. ROBERTSON: Delnite, I should say, my Lord. About that time the La Roche Mines notified the Power Company they had sold their property and were not responsible for any more power, and the Power Company didn't quite acquiesce in that and continued to bill the power to the La Roche Mines and somebody other than La Roche Mines paid the bills. That went on, my Lord, for a period of a few months and then La Roche Mines went into voluntary liquidation, and we say it was for the purpose of getting rid of our contract. Notice was published and the creditors sent in their claims, and we sent in our claim and it was disputed; and we got leave to bring this action.

MR. WILSON: There was no question of leave. You had the right to bring action if—

MR. ROBERTSON: We got an Order permitting us to sue, anyway. As I see the case, My Lord, it will be a matter of documents and not very much evidence so far as I am at present advised. The action must be, of course, in damages on account of their being in liquidation.

MR. WILSON: And at this time, my Lord, we should mention the agreement as to the question of damages.

MR. ROBERTSON: Yes, my Lord; it has been agreed between counsel that we will not ask your Lordship to fix the quantum of damages. I think that is a proper matter for a reference.

MR. WILSON: I want to make my position clear. I am agreeing that if, by your Lordship's judgment, you find in favour of the plaintiff that the question of damages is to be referred to such officer as your Lordship sees fit, but at the same time I am not in any way admitting that by that agreement the plaintiff does not have to establish here a prima facie case of damages.

HIS LORDSHIP: Yes, I understand that.

MR. ROBERTSON: I will begin, my Lord, by putting in the contract. I put in as Exhibit 1 the contract, which can conveniently be called the power contract, bearing date December 30, 1931, between the Northern Ontario Power Company, Limited, called The Company and La Roche Mines, Limited, called The Consumer.

EXHIBIT 1: Contract, dated December 30, 1931; between Northern Ontario Power Company, Limited; and La Roche Mines, Limited.

MR. ROBERTSON: I will call your Lordship's attention to some of the

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terms of the contract which will be important in this action. The contract is in printed form. Clause 1:

“Subject to the following general conditions, and the schedule of prices contained herein, Northern Ontario Power Company, Limited, hereinafter called ‘The Company’ is hereby authorized and requested by the undersigned, hereinafter called ‘The Consumer’ to connect its electric system with the wiring of the Consumer at a point on the boundaries of the latter’s property convenient to Company’s lines and to cause electric current to be there delivered during the period noted or any renewal or continuation thereof as provided and at the rate specified, with current, it is hereby agreed, shall be used by the Consumer only and only for the purposes thereafter specified.” 10

Then, My Lord, a lot of these clauses are not important. Clause 1 is the agreement by the Consumer that he will pay the Company for power delivered, and to pay the taxes, dues and fees and so on; and that the accounts shall be subject to a discount for prompt payment. Then the Agreement goes on to say that the Consumer is to provide all lines and electrical equipment, except meters, on the property for connecting same with the point of delivery, and maintain the same, at all times, to the exoneration of the Company in efficient condition with proper protective devices—and so on. May I just say, in connection with the terms of this Agreement, that a number of them, while they do not really effect this claim, it is perhaps well to know that they are here for the purpose of showing this is a contract not to be dealt with by ordinary assignment—that they are a continuing obligation connected with the property—and one of the terms is that they shall maintain the equipment in a proper condition. 20

Then, my Lord, at the foot of the page, the second clause in paragraph 2: “The Consumer agrees to grant and convey to the Power Company the necessary right or easement over the surface of the Consumer’s property to enable the Company to construct, maintain and operate its transmission line or lines and apparatus to enable it to supply power to the Consumer and other Consumers taking power from the Company during the period of this agreement, or subsequent thereto, with the right of the Company, its servants and agents, to enter upon the Consumer’s property for the purpose of erecting, maintaining and repairing such transmission lines and apparatus.” 30

Then there is the provision for the removal of the line or lines under certain conditions. At the top of page 2:

“When necessary to place transforming apparatus upon the Consumer’s premises, the latter will provide the necessary plot of land for same. The Company shall have the right to supply service to other consumers from such transformer house. 40

“The Consumer agrees that the operation of its electrical apparatus shall be carried on in a manner which will not introduce any disturbing element into the electrical system of the Company. The Company reserves the right to discontinue on ten days’ notice at any time the supply of elec-

trical energy hereunder, if, and so long as, the method of the Consumer in operating its motors, conductors, transforming machinery or translating devices is so abnormal or unusual as to cause such objectionable disturbance or displacements on the Company's electrical system as to interfere with its reasonably successful operation."

Then follows a short clause with regard to how the Consumer shall endeavor to use the power contracted for.

10 Then, my Lord, clause 3 is a clause which deals with the matter of installing meters. Clause 4 is as to changes in the location of connections and meters, and it provides that this shall be done at the expense of the Consumer. Clause 5 provides that meters, transformers, apparatus and other appliances of the Company in the property, and used exclusively for the Consumer's service, shall be in the sole care and at the risk of the Consumer, and if destroyed or damaged, other than by ordinary wear and tear, the Consumer shall pay to the Company the value of such meters or appliances, or the cost or replacing the same.

Clause 6, my Lord, is an important one:

20 "The Consumer agrees not to make any major change in or 10% addition to installation without having first given the Company reasonable notice of such additions. During the continuance of this contract, no system of electricity other than that furnished by the Company shall be used in said premises, providing Company is able and ready to supply same, except with the written consent of the Company, and, if at any time, during the term of this contract, the Consumer requires additional service in or about the premises over and above the amount herein provided for, it is hereby agreed that the Consumer shall take such additional service from the Company providing Company is able and ready to supply same."

That is an important clause, my Lord.

Then clause 7:

30 "The Consumer is strictly forbidden to interfere with meters or other appliances of the Company. In case of defective service, notice of the fact should be sent to the Company's office immediately."

"8. The Company does not guarantee a constant supply of electricity, and will not be liable for any damages to the Consumer in consequence of its failure to supply electricity at any time or times nor be considered in default. This clause shall not be interpreted as giving the Company any right to arbitrarily interrupt or cease supplying service under this contract."

Then clause 9, my Lord:

40 "The right is expressly reserved to the Company to supply current for City or Municipal lighting, traction or purposes affecting the general public before the Consumer."

"10. The Company shall, in the supply of electric current, make use of, or when necessary furnish to the Consumer, only recognized standard transformers, meters, wires and other appliances, and shall incur no liability for damage to persons or property caused in any manner whatsoever by high tension electric current, or because of its wires being con-

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nected to the Consumer's property, whether through failure of any of the said appliances or otherwise."

I should have called your Lordship's attention to the second paragraph of clause 8. Perhaps I had better read the paragraph:

"In case the Company shall be prevented from supplying, or the Consumer from taking, the power herein contracted for, by reason of Acts of God, King's enemies, fires, strikes or other acts beyond their respective control, all payments for power shall cease, and the Company shall be excused from furnishing power during such prevention, and the Consumer shall be excused from taking it, and both parties shall use all diligence to restore the service." 10

Then clause 11:

"The Company reserves the right to discontinue its current on thirty days' notice in writing, or to cancel this contract, at its option, in case the Consumer is in arrears in payment of any of the Company's accounts or fails to take service according to the provisions of the contract, or in case the Consumer violates any condition of this contract whatsoever or becomes insolvent, and in case of the Company violating any such condition, the Consumer shall have the right to cancel the contract."

That is the only provision, my Lord, for cancellation by either party. 20

HIS LORDSHIP: Just wait a minute until I read clause 11 again.

MR. ROBERTSON: Yes, my Lord. I point out that there has been no allegation of any violation by the Company of those conditions.

HIS LORDSHIP: Very well.

MR. ROBERTSON: Clause 12:

"The Company cannot deliver power or energy, unless the Consumer will receive the same, and at any time the Consumer does not take the power or energy he is obligated to take hereunder, the readiness of the Company to deliver the said power or energy as evidenced by maintenance of normal voltage and frequency at the point of delivery shall constitute a valid tender of the same." 30

"13. The benefits and obligations of this contract shall inure to and be binding upon the successors, survivors and executors or administrators, as the case may be, of the original parties hereto respectively for the full period of this contract, but this contract shall not be assignable by the Consumer except with the written consent of the Company, but such consent shall not unreasonably be withheld."

"14. No representation, promise or agreement shall be binding upon either party unless the same shall be incorporated in this contract in writing before the same is signed and accepted except those made in writing by an executive officer of either party." 40

On page 4 there are special conditions, my Lord:

Location of Consumer's property—Township of Delora.

Point of Delivery—at outside wall of Consumer's Transformer House.

Connection line: The Consumer agrees to execute the Company's standard agreement attached hereto, covering the provision and payment for the necessary transmission line between the point of delivery metioned below

and the Company's transmission line. At Consumer's Transformer House located on Mining Claim H.R. 1001 in the Township of Delora.

Nature of supply: 12,000 volts, 3 phase, 25 cycles, subject to commercial fluctuations of voltage and cycles usually obtaining in service to a mining load. Under ordinary conditions the voltage shall not fluctuate more than ten per cent up or down from normal, nor frequency more than five per cent up or down from normal.

10 Period of contract: This agreement when executed shall extend for the mining life of the properties now or hereafter operated or owned or controlled by the Consumer in the Porcupine district.

Amount of power covered by this installation: The Consumer's initial installation will be approximately 500 H.P., for which the Company agrees to supply service; and the Consumer agrees to pay for at least a minimum quantity of 50 H.P. for the first year of this agreement. Further power will be supplied in accordance with clause 6. Clause 6, my Lord, is the one that provides that:

20 "During the continuance of this contract, no system of electricity other than that furnished by the Company shall be used in said premises, providing Company is able and ready to supply same, except with the written consent of the Company, and, if at any time, during the term of this contract, the Consumer requires additional service in or about the premises over and above the amount herein provided for, it is hereby agreed that the Consumer shall take such additional service from the Company providing Company is able and ready to supply same."

Then, my Lord, the contract is limited to 20,000 horsepower. The hours of service are not important, and the measurement are not important to this case.

HIS LORDSHIP: Does that mean that the Consumer cannot demand more than 20,000 horsepower?

30 MR. ROBERTSON: I take it that we are within our contract if we supply 20,000 horsepower. Your Lordship will have noted in those special conditions there is reference to a Transmission Line Agreement. I will put that in as Exhibit 2.

EXHIBIT 2. Transmission Line Agreement between La Roche Mines Limited, and Northern Ontario Power Company, Limited, dated December 30, 1931.

40 MR. ROBERTSON: This is an Agreement between the same parties, and is dated December 30, 1931, I don't think I need to bother your Lordship with the terms of this. The general scheme was that the Customer would, at his own expense, erect a power transmission line of the same type as the Company's standard construction, and to be erected at points marked along the right-of-way and connecting with the Company's general transmission line.

HIS LORDSHIP: Is there a sketch attached to this, Mr. Robertson?

MR. ROBERTSON: There is not one in mine, my Lord. There are perhaps a few things I should call your Lordship's attention to.

On page 2, paragraph 2:

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“Before the Company shall be obligated to supply power to the Customer, the Customer will without expense to the Company, cause to be conveyed to the Company as its own absolute property, a right-of-way clear of all encumbrances for the Power Transmission line to be erected as aforesaid, such right-of-way to be one hundred feet wide, and to be for the purpose of erecting and maintaining and operating an electric power transmission line and to continue for all such time as the Company shall desire to use the same for the purpose of its business, the instrument granting such right-of-way to be on the Company’s usual form and duly registered against the lands affected thereby.”

“3: Upon completion of the erection of the said power transmission line before the Company can be required to supply power over the same, it shall be permitted by its officers, servants, employees and/or agents to inspect the said line (including poles, wiring, crossarms and insulators) and the said right-of-way, and the Customer will, at its own expence, make such changes or alterations to the said lines, poles, wiring, crossarms and insulators and right-of-way as may be required by the Company to bring the line and right-of-way to the type of Company’s standard construction and to make all of the same to the satisfaction of the Company.”

“4. Upon completion as aforesaid of the said transmission line and after the construction thereof has been approved by the Company the Customer will forthwith furnish to the Company a sworn statement showing in detail (accompanied by proper vouchers) all the expenditures made by the Customer for work and material done and supplied in constructing and erecting the said transmission line excluding however, all overhead charges, office charges, and charges for Superintendence, and excluding the cost (if any) of such right-of-way.”

Then it provides, my Lord, that the Company is to rebate the Customer ten percent of all monies received for power from the Customer, and that is in the way of repayment to the Customer for the amount expended by the Customer in erecting the line. This is a system worked out by the Department, and the Customer receives back from the Company the amount the Customer expended in building its line, and then the contract goes on to say that the line then becomes the property of the Power Company.

Then clause 8:

“The Company shall have at all times the right to use the said transmission line for the purpose of its other business, providing such use does not unreasonably interfere with the supply of power to the Customer pursuant to this Agreement and the Power Contract.”

and then follows certain provisions as regards the delivery of power over the transmission line to other corporations and the divisions of the cost.

“9. Upon payment by the Company to the Customer of all rebates required to be made by the Company to the Customer pursuant to clause 5 hereof, less all sums received by the Customer pursuant to clause 8 hereof, the said transmission line and all poles, crossarms, wires, insulators, hardware and other equipment in connection therewith shall become and be the absolute property of the Company and the Customer agrees to then

forthwith convey the same or cause the same to be conveyed to the Company free of all encumbrances.”

I think I need not trouble your Lordship with more than that. Well, perhaps I had better read clause 13:

10 “13. If before the Company shall have rebated to the Customer all the monies under this agreement required to be so rebated, this agreement or said power contract shall be terminated or the supply of power by the Company to the Customer be discontinued in accordance with the terms of said power contract, the Company shall in addition to its rights under clause 11, hereof and in addition to its property rights under clause 10 hereof, be at liberty to continue to use the said transmission line for the purpose of its business and shall also be entitled to sell and dispose of the same and/or any of the poles, crossbars, wires, insulators, hardware and other equipment in connection therewith, either by public auction or by private sale and in such manner, upon such terms and at such prices as the Company shall see fit. Out of the proceeds derived from such sale or sales the Company shall be entitled to reimburse itself for all costs and expenses properly incurred by it in preparing for, making and carrying out such sales and salvaging and dismantling the said transmission line and  
20 the poles, crossarms, wires, insulators, hardware and other equipment in connection therewith, the balance of such proceeds shall be retained by the Company until the amount so retained equals the amounts rebated by the Company to the Customer under said clause 5 together with the contributions received by the Customer pursuant to clause 8 hereof, and the balance of such proceeds, if any, shall be paid by the Company to the Customer.”

HIS LORDSHIP: Was there enough business done to pay for the transmission line by rebates?

30 MR. ROBERTSON: As a matter of fact no rebates ever went into force here. My instructions are that nothing was done in that regard, my Lord.

HIS LORDSHIP: Very well.

MR. ROBERTSON: Then I may put in two or three letters, my Lord, exchanging views between the parties. I will put all the letters in as one Exhibit. A letter of May 9, 1933, from the Mining Company to the Power Company:

(*Reads Exhibit 3, Record, p. 104.*)

Then a letter of the Mining Company to the Power Company, August 15, 1934:

(*Reads Exhibit 3a, Record, p. 108.*)

Then the reply to that letter, dated August 16, 1934:

40 (*Reads Exhibit 3b, Record, p. 109.*)

Then a letter from the Mining Company to the Power Company on November 30, 1934:

(*Reads Exhibit 3c, Record, p. 110.*)

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HIS LORDSHIP: That is the voluntary liquidation?

MR. ROBERTSON: Yes, my Lord. That is admitted in the defence. Then, a letter of December 4, 1934, from the Power Company to the Mining Company:

(*Reads Exhibit 3d, Record, p. 111.*)

MR. ROBERTSON: Then has my friend the letter of the 11th of October, 1935, from the President of the La Roche Mines to the Directors of that Company?

MR. WILSON: From the President to the Directors? I think you have a copy, Mr. Robertson. I will consent to it going in. However, here is a copy from the possession of the Company. 10

MR. ROBERTSON: Then, from Mr. Day, as President of the La Roche Mines to the Directors of that Company, dated the 11th of October, 1935. This was written shortly before the voluntary liquidation:

(*Reads Exhibit 3e, Record, p. 121.*)

HIS LORDSHIP: That was from Mr. Day as President of the La Roche Mines?

MR. ROBERTSON: Yes, my Lord. Those six letters will be Exhibit 3.

EXHIBIT 3: Six letters, marked Exhibit 3, 3a, 3b, 3c, 3d, and 3e.

MR. ROBERTSON: May I have a copy of the resolution for the winding up of the Company? 20

MR. WILSON: Yes. (Produced)

MR. ROBERTSON: My friend hands me the notice given by the Liquidator, to this effect:

"Notice is hereby given that at a Special General Meeting of the shareholders of LA ROCHE MINES LIMITED (No Personal Liability) held 13th November, 1935, the following resolutions were passed:

"That this meeting of Shareholders of La Roche Mines Limited requires the Corporation to be wound up' and that the Company go into voluntary liquidation and be wound up and that F. L. Heard be appointed Liquidator." 30

1116 Federal Building, Toronto.

14th November, 1935.

"F. L. HEARD, Liquidator."

MR. ROBERTSON: That is not exactly what I asked for, but it will give the same information. Then attached to that and along with it is a letter from the Assistant Provincial Secretary to Messrs. Day, Ferguson and Company acknowledging the notice of resolution of voluntary winding up, and stating that such notice is filed. Also it is noted that Mr. F. L. Heard has been appointed Liquidator for the purpose of winding up the affairs of the Company, and he says: 40

"I should be pleased to receive his Final Return under section 229 (2) of The Companies Act as soon as possible, together with the prescribed filing fee of \$2.00.

"When the winding up has been completed, the original Letters Patent of the Company should be returned to this office."  
 Along with that is the Notice, as given by Mrs. Heard, to the Creditors:

NOTICE TO CREDITORS

IN THE MATTER OF LA ROCHE MINES LIMITED (No Personal Liability) In Liquidation.

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"NOTICE is hereby given that pursuant to resolution of shareholders, the above Company was put into liquidation 13th November, 1935, and the undersigned appointed Liquidator.

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10 "All persons having any claims against said Company are required to send particulars thereof to the undersigned Liquidator at the address below, on or before December 19th, 1935, after which date the assets of the said Company will be distributed, having regard only to claims of which the Liquidator shall then have notice.

"Dated at Toronto, November 15th, 1935.

"F. L. HEARD, Liquidator,  
 1116 Federal Bldg., Toronto.

"Day, Ferguson, Wilson & Kelly, Solicitors for the Liquidator,  
 "85 Richmond Street West, Toronto."

20 MR. ROBERTSON: Then written in ink at the bottom of this Notice is a notation that the above Notice was published in *The Northern Miner*, issues of November 21, 28, and December 5 and 12, 1935.

MR. WILSON: And here is the Notice from the *Ontario Gazette*. I think it might very well be attached to the other documents.

MR. ROBERTSON: I think that is a separate thing altogether. I don't wish to put it in. These other documents will be Exhibit 4, my Lord.

EXHIBIT 4: Notice of Liquidation, Notice to Creditors re La Roche Mines Limited, and letter from Assistant Provincial Secretary to Messrs. Day, Ferguson and Company, dated November 16, 1935.

30 MR. ROBERTSON: I would like to have Mr. Harrison's Declaration from my friend. (Produced). I will file this Declaration as Exhibit 5, my Lord.

EXHIBIT 5: Declaration of Bailey V. Harrison.

MR. ROBERTSON: Then there is just one thing more, my Lord, and that is the Order giving leave to take these proceedings; an Order of Mr. Justice McEvoy of the 17th of January, 1936:

*(Reads Exhibit 7, Record, p. 161.)*

MR. ROBERTSON: Then there is another document which I think should be in ahead of the last one, my Lord, and that is a Notice of Contestation. I will read only one paragraph of this:

40 "Within thirty days after the receipt of this notice or such further time as the Judge may allow, you may bring an action against the Liqui-

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dator to establish your claim and a copy of the Writ in the action shall thereupon be served on the Liquidator; in default of such action being brought and the Writ of Summons served within the time above limited, your claim to rank as a creditor of La Roche Mines Limited (No Personal Liability) shall be forever barred.'

MR. ROBERTSON: This Notice will be Exhibit 6, and the Order of Mr. Justice McEvoy will be Exhibit 7, my Lord.

EXHIBIT 6: Notice of Contestation.

EXHIBIT 7: Order of The Honourable Mr. Justice McEvoy, dated January 17, 1936.

10

HIS LORDSHIP: I think this would be a good time to adjourn now, Mr. Robertson .

MR. ROBERTSON: Very well, my Lord.

HIS LORDSHIP: We will adjourn now until ten o'clock tomorrow morning.

(5.40 p.m. adjourned until 10.00 a.m., Friday, October 16, 1936.)

Plaintiff's  
Evidence.  
No. 7  
Mrs. Florence  
Lillian Heard,  
Examination.

Upon resuming on Friday, October 16, 1936, at 10.00 a.m.:

MRS. FLORENCE LILLIAN HEARD, Sworn.

EXAMINED BY MR. ROBERTSON:

Q. Mrs. Heard you are the Defendant Liquidator of La Roche Mines Limited? A. Yes, sir.

Q. And I understand that you are one of the staff of the defendants' solicitors? A. Yes, I am Mr. Day's secretary.

Q. You are a stenographer or secretary? A. Secretary to Mr. Day.

Q. I think you have some Agreements there which I would like you to produce. Have you the Agreement of the 18th of June, 1934, between La Roche Mines Limited and the Sylvanite Company? A. Yes, sir. (Produced).

MR. ROBERTSON: This is an Agreement, my Lord, between La Roche Mines Limited, H. Emerson Martin, Sylvanite Gold Mines Limited and James E. Day of the Fourth Part. The first recital is that:

30

"Whereas La Roche represents that it is the owner free of encumbrance of patented Mining Claims Numbers H.R. 1001 and H.R. 1002 in the Township of Deloro, in the District of Cochrane, Ontario, on which it has buildings, plant and equipment, and on which a shaft has been sunk to a depth of One Hundred and twenty-five feet (125') and considerable underground development work has been done" and Martin represents that "He is the owner free of encumbrance of patented Mining Claim Number H.R. 944 in the said Township of Deloro, lying to the North of and adjoining the said Mining Claims of La Roche;

"AND WHEREAS La Roche being desirous of financing the 40

further development of its properties has negotiated with Sylvanite, as result of which it has been decided to make this agreement;

10 "1. La Roche hereby grants to Sylvanite the right to enter on and have exclusive possession and control of its property until October 31st, 1934, and to carry on mining and exploration operations thereon during such period, and Sylvanite covenants that it will expend on or in connection with said mining property at least Fifteen Thousand Dollars (\$15,000) in mining, prospecting, exploring or developing the said property or for buildings, equipment or plant therefor (including Workmen's Compensation assessments and travelling expenses and reasonable office and supervision charges), during such period ending October 31, 1934.

"2. La Roche further agrees that Sylvanite may, at any time after the execution of this agreement, and prior to October 31st, 1934, make application for the formation of a mining company with an Ontario charter, and with an authorized capitalization of three million (3,000,000) shares of the par value of One Dollar (\$1.00) each . . . and I hardly need read the balance of clause 2."

In clause 3:

20 "La Roche agrees, subject to the approval of its shareholders to sell, such new Company if requested to do so by Sylvanite, its properties, including all plant and equipment, for eight hundred and forty thousand (840,000) shares of the Capital stock of the new Company, each to be fully paid up and non-assessable, and subject to restriction on voting rights as is hereinafter provided. Said shares, subject to such restriction, to be issued either to La Roche or to its shareholders, as La Roche may direct, and La Roche hereby authorizes Sylvanite, on its behalf, and as its agent, to make an offer to such new Company to sell such properties, equipment, etc., to it for such number of shares."

30 Then in clause 4, my Lord, La Roche agrees that so long as the said option is in force Sylvanite shall have the right to control the election of directors and to vote as proxy for the owners of same under certain conditions, and so on.

Then La Roche agrees to call a meeting of its shareholders for the purpose of authorizing the sale, and if such authorization is refused then this agreement is to be null and void.

40 Then it is provided that Sylvanite may take an option from the new Company to purchase all or any part of one million, two hundred and sixty thousand (1,260,000) shares of its capital stock for Three Hundred and Fifty-nine Thousand, Two Hundred Dollars (\$359,200.) It is also agreed that La Roche is to have two Directors in the new Company. The other provisions, my Lord, are working provisions as to the carrying out of that. I will put this in as Exhibit 8, my Lord.

EXHIBIT 8: Agreement, dated June 18, 1934, between La Roche Mines Limited, H. Emerson Martin, Sylvanite Gold Mines Limited and James E. Day.

MR. ROBERTSON: Q. Then you have the Agreement of the 12th of October, 1934? A. Yes, sir. (Produced).

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MR. ROBERTSON: This is an Agreement of the 12th of October, 1934, between La Roche Mines Limited, H. Emerson Martin, Erie Canadian Mines Limited and James E. Day. Your Lordship will see by the recital that Sylvanite had assigned its rights under the other Agreement to Erie Canadian Mines Limited. This just carries the transaction a little further. It recites the former Agreement made in June, and then in August Sylvanite assigned its rights to Erie Canadian, and the shareholders of La Roche had a meeting in June which authorized its Directors to make any alteration in such terms, which they might consider advisable. The new Company is to acquire the properties of La Roche and Martin. Your Lordship will remember that \$15,- 10  
000.00 was to be expended by Sylvanite in mining, prospecting, exploring or developing the La Roche property. Under the Agreement with La Roche, Martin, Erie Canadian and Day it is agreed that anything not expended of the Fifteen Thousand Dollars would be paid by Erie Canadian to the New Company. The Agreement of June 18, 1934, is to be revised to that extent. That is all the Agreement does, my Lord. That will be Exhibit 9.

EXHIBIT 9: Agreement, dated October 12, 1934, between La Roche Mines Limited, H. Emerson Martin, Erie Canadian Mines Limited, and James E. Day.

MR. ROBERTSON: Q. May I have the Agreement of October 31, 1934? 20  
A. Yes, sir. (Produced).

MR. ROBERTSON: This is just a copy but I think it will be satisfactory.

Q. I understand the original of this document, Mrs. Heard, was executed? A. Yes, the original was executed.

MR. ROBERTSON: This is an Agreement, dated October 31, 1934, between Delnite Mines Limited, of the First Part; La Roche Mines Limited, of the Second Part; Erie Canadian Mines Limited, of the Third Part; James E. Day, of the Fourth Part; and H. Emerson Martin, of the Fifth Part. It recites first the Agreement of June 18, 1934, and then it recites the assignment by Sylvanite to Erie Canadian, and then it recites some later modifications of 30  
the Agreement by the document of October 12, 1934; and that Delnite has been incorporated. Clause 1 of this Agreement is as follows, my Lord:

"1. La Roche agrees to sell, assign, transfer and set over unto Delnite and Delnite agrees to purchase from La Roche free from encumbrance the said mining claims H.R. 1001 and H.R. 1002 together with all buildings, machinery, equipment, tools, implements and utensils, broken ore and rock and chattels on the said lands for the consideration hereinafter stated.

"2. In consideration of the transfer to it of said property Delnite agrees: 40

"(a) To allot and issue to La Roche or its nominees Eight Hundred and Forty Thousand (840,000) shares of the capital stock of Delnite to be issued as fully paid and non-assessable shares, but subject to the restrictions on voting rights as hereinafter and in the said agreement of June 18th, 1934, provided.

"(b) To allot and issue to Erie Canadian shares of its capital stock

as fully paid and non-assessable shares at the rate of twenty-eight and one-half cents (.281/2c) per share to a total amount equivalent to the amount expended by Sylvanite and/or Erie Canadian up to and including October 31st, 1934, on or in connection with said property of La Roche under the said agreement dated June 18th, 1934.

10       “(3) Pursuant to the terms of the agreement dated October 12th, 1934, Delnite agrees to sell to Erie Canadian and Erie Canadian agrees to subscribe for and purchase from Delnite shares of the par value of One Dollar each of the capital stock of Delnite at the price of Twenty-eight and one-half cents (.281/2c) per share to an aggregate amount equivalent to the difference between Fifteen Thousand Dollars (\$15,000) and the amount expended as aforesaid on or in connection with the La Roche property by Sylvanite and/or Erie Canadian up to and including October 31st, 1934, the said shares to be paid for on or before the 31st day of October, 1934, and certificates for said shares to be issued to Erie Canadian forthwith.”

20       Then it is provided, my Lord, that in order to ensure the control of Delnite by Erie Canadian, so long as the option agreement between Delnite and Erie Canadian is in force, La Roche, Martin and Day agree that Delnite may take the necessary procedure for converting ten of the shares of the authorized capital stock of Delnite into preference shares.

Then it is agreed that Martin and Day consent to and approve of all the terms and conditions set out in the agreement. La Roche covenants with Delnite that it will upon demand make, do, execute or deliver or cause to be made, done, executed or delivered such acts, deeds, conveyances and assurances as may be necessary for the more perfectly assuring the above mentioned property unto Delnite and for carrying out the provisions of the agreement of June 18th, 1934, and of this agreement. This will be Exhibit 10, my Lord.

30       EXHIBIT 10: Agreement, dated October 31, 1934, between Delnite Mines Limited, La Roche Mines Limited, Erie Canadian Mines Limited, James E. Day, and H. Emerson Martin.

MR. ROBERTSON: Q. This transaction was duly carried out. A. Yes, sir.

Q. And the 840,000 shares of the Delnite Company were duly issued? A. 40,000 shares were duly issued. I think the other 800,000 is being held to the credit of La Roche to be issued as instructed.

Q. It may become convenient to issue those shares to shareholders as directed? A. Yes, sir.

40       Q. You, in your liquidation proceedings, might reach that stage. They are held to the credit of La Roche? A. Yes, sir.

MR. ROBERTSON: I think that is all.

CROSS-EXAMINED BY MR. WILSON:

Q. The papers, agreement and other documents relating to La Roche came into your hands as Liquidator? A. Yes, sir.

MR. WILSON: I ask my friend to produce a letter of July 18, 1934; be-

*In the  
Supreme Court  
of Ontario.*

—  
Plaintiff's  
Evidence.

No. 7  
Mrs. Florence  
Lillian Heard,  
Examination.

—continued

Plaintiff's  
Evidence.  
No. 7  
Mrs. Florence  
Lillian Heard,  
Cross-  
Examination.



*In the  
Supreme Court  
of Ontario.*

—  
Plaintiff's  
Evidence.  
No. 7  
Mrs. Florence  
Lillian Heard,  
Cross-  
Examination.

—continued

ing a letter from La Roche to the Northern Ontario Power Company (Produced). I will be referring to a number of letters, my Lord, and I suggest they all go in as one Exhibit.

HIS LORDSHIP: Very well.

MR. WILSON: This letter is dated July 18, 1934, from La Roche Mines to Northern Ontario Power Company:

(*Reads Exhibit 11, Record, p. 104.*)

Then, my Lord, the reply to that letter, a letter dated July 21, 1934, from the Northern Quebec Power Company, Limited—and I think that is a mistake because it is on the stationery of the Northern Ontario Power Company. It is as follows: 10

(*Reads Exhibit 11a, Record, p. 105.*)

MR. WILSON: If my friend will produce our letter of July 23, 1934. (Produced). This is a letter dated July 23, 1934, from James E. Day to the Northern Ontario Power Company, Limited; headed Re La Roche Mines Limited:

(*Reads Exhibit 11b, Record, p. 105.*)

MR. WILSON: I want to read the next letter of July 30, 1934, from the Northern Ontario Power Company Limited to Messrs. Day, Ferguson, Wilson and Kelly: 20

(*Reads Exhibit 11c, Record, p. 106.*)

MR. WILSON: Will my friend produce the answer to that letter, which is a letter of July 31, 1934, (Produced). I am producing a letter, dated July 31, 1934, from Messrs. Day, Ferguson, Wilson and Kelly to the Northern Ontario Power Company, Limited.

(*Reads Exhibit 11d, Record, p. 107.*)

MR. WILSON: I read as the next letter a letter of August 2, 1934, from the Northern Ontario Power Company, Limited, to Messrs. Day, Ferguson, Wilson and Kelly:

(*Reads Exhibit 11c, Record, p. 108.*) 30

MR. WILSON: The next four letters which I proposed reading, my Lord, are part of Exhibit 3, and so I do not think it will be necessary for me to read them again, and—

HIS LORDSHIP: No, not if they are already in.

MR. WILSON: The next letter I refer to is the letter of December 5, 1934, from La Roche Mines Limited to the Northern Ontario Power Company Limited:

(*Reads Exhibit 11e, Record, p. 112.*)

MR. WILSON: The letter referred to, my Lord, is part of Exhibit 3. The next letter is a letter of December 6, 1934, being a letter from the Northern Ontario Power Company, Limited, to La Roche Mines, Limited: 40

(*Reads Exhibit 11f, Record, p. 112.*)

MR. WILSON: If my friend will produce the letter of December 12, 1934. (Produced) This is a letter of December 12, 1934, from La Roche Mines Limited to the Northern Ontario Power Company:

(*Reads Exhibit 11g, Record, p. 113.*)

MR. WILSON: Then the reply, dated December 14, 1934; from the Northern Ontario Power Company Limited to Messrs. La Roche Mines, Limited:

(*Reads Exhibit 11h, Record, p. 114.*)

MR. WILSON: Then if my friend will produce the letter of December 17, 1934, from La Roche Mines Limited to the Northern Ontario Power Company.

MR. ROBERTSON: Yes, we have it. (Produced)

MR. WILSON: Letter of December 17, 1934, from La Roche Mines to Northern Ontario Power Company:

(*Reads Exhibit 11i, Record, p. 115.*)

The reply to that letter, my Lord, is dated December 22, 1934, from the Northern Ontario Power Company Limited to Messrs. La Roche Mines, Limited:

(*Reads Exhibit 11j, Record, p. 116.*)

MR. WILSON: Then will my friend produce the letter of December 26th? (Produced). This is a letter from La Roche Mines Limited to Northern Ontario Power Company, Limited:

(*Reads Exhibit 11k, Record, p. 117.*)

MR. WILSON: Will my friend produce our letter of March 23, 1935? (Produced). This is a letter, my Lord, dated March 23, 1935, from La Roche Mines Limited to Northern Ontario Power Company:

(*Reads Exhibit 11l, Record, p. 117.*)

The reply to that letter is dated March 27, 1935, from the Northern Ontario Power Company, Limited, to Messrs. La Roche Mines, Limited:

(*Reads Exhibit 11m, Record, p. 118.*)

MR. WILSON: If my friend will give me our letter of March 29th? (Produced). Letter of March 29, 1935, from La Roche Mines Limited to Northern Ontario Power Company Limited:

(*Reads Exhibit 11n, Record, p. 119.*)

The reply to that letter is dated April 3rd, 1935. Letter from Northern Ontario Power Company, Limited, to Messrs. La Roche Mines, Limited:

(*Reads Exhibit 11o, Record, p. 120.*)

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of Ontario.

Plaintiff's  
Evidence.  
No. 7  
Mrs. Florence  
Lillian Heard,  
Cross-  
Examination.

—continued

*In the  
Supreme Court  
of Ontario.*

—  
Plaintiff's  
Evidence.  
No. 7

Mrs. Florence  
Lillian Heard,  
Cross-  
Examination.

MR. WILSON: If my friend will let me have the letter of the 19th of November, 1935. (Produced). This is a letter from Messrs. Day, Ferguson, Wilson and Kelly to the Northern Ontario Power Company:

(*Reads Exhibit 11p, Record, p. 122.*)

MR. WILSON: Then, my Lord, a letter of December 16, 1935, from the Northern Ontario Power Company Limited, to Mrs. F. L. Heard, Liquidator, La Roche Mines Limited, Toronto:

(*Reads Exhibit 11q, Record, p. 123.*)

MR. WILSON: The claim has already been filed by my friend, Mr. Robertson, as Exhibit 5. 10

MR. WILSON: Will my friend produce the letter from the Liquidator, dated December 19, 1935? (Produced) This is a letter from the Liquidator, dated December 19, 1935, to Northern Ontario Power Company, Limited:

(*Reads Exhibit 11r, Record, p. 124.*)

MR. WILSON: Then, my Lord, a letter of December 26, 1935, from the Northern Ontario Power Company, Limited to Messrs. La Roche Mines Limited in Liquidation:

(*Reads Exhibit 11s, Record, p. 125.*)

MR. WILSON: If my friend will produce the letter of December 30th—

MR. ROBERTSON: I think your next letter was written without prejudice, 20 and I suppose that covers all the rest of the correspondence.

MR. WILSON: There are three more letters I think are necessary to complete the record, and I think they should go in.

HIS LORDSHIP: You are not suggesting that this correspondence already in is covered by the 'without prejudice', Mr. Robertson?

MR. ROBERTSON: Oh, no; my Lord; it is the balance of the correspondence.

MR WILSON: Then I am not going to urge that those letters go in. I just wanted to complete the correspondence. However I don't think anything turns on them. If my friend objects I won't press it. 30

MR. ROBERTSON: I don't think there is anything to be gained by putting them in.

MR. WILSON: Very well. I will put in all the letters as Exhibit 11, my Lord.

EXHIBIT 11: File of correspondence between La Roche Mines, Limited, and the Northern Ontario Power Company, Limited. (19 letters).

MR. WILSON: Q. Did these documents come into your possession as liquidator of this Company? A. Yes, sir.

MR. WILSON: I am producing a financial statement dated July 13, 1934, of La Roche Mines Limited, prepared by Edward Morgan and Company. It 40 is a document of the Company in the possession of the Liquidator and is material evidence in this case because the good faith of the Company is go-

ing to come in question here, and the financial position of the Company is going to be of vital importance here. I will put that in as Exhibit 12.

MR. ROBERTSON: I object to that.

HIS LORDSHIP: I don't know what it is. I will take a look at it for a second. Without Mr. Robertson's consent I don't know how you can file it without proving it.

MR. WILSON: I am tendering it. If your Lordship rules it can go in then—

HIS LORDSHIP: Oh, surely it must be proved.

10 MR. WILSON: It may not be proof of the contents but it is a document which I think can be adduced for what it is worth by this Liquidator.

MR. ROBERTSON: If it is not evidence it is not worth anything.

HIS LORDSHIP: I am very reluctant to shut anything out, but at the same time I don't see how it can go in. What other purpose could it have other than to prove the information contained in it?

MR. WILSON: If my friend wants to take that position then possibly before the end of the case I can produce other evidence on this point.

HIS LORDSHIP: Very well.

20 MR. WILSON: Q. In your capacity as Liquidator just exactly what steps have you taken in the administration of this Company's affairs? A. Well, the resolution calling for liquidation was filed with the Provincial Secretary. It was advertised in the Ontario Gazette and the Notice to Creditors was advertised in the Northern Miner on four different occasions.

Q. And have the creditors filed claims with you?

A. There were two claims, one by the Trusts and Guarantee Company and one by the Northern Ontario Power Company.

Q. Is this the only claim that is being contested by you as Liquidator?

A. Yes, sir.

MR. WILSON: That is all.

30 RE-EXAMINED BY MR. ROBERTSON:

Q. Any other claims are paid? A. Yes, sir.

MR. ROBERTSON: That is all.

—(Witness retires)

MR. WILSON: My friend spoke to me yesterday about some conveyance in connection with Delnite and—

MR. ROBERTSON: The agreements are in. I don't think that is necessary now.

MR. WILSON: All right.

JOHN WILLIAM FAITHFUL, Sworn.

40 EXAMINED BY MR. ROBERTSON:

Q. Mr. Faithful, I believe you are an employee of the Northern Ontario Power Company? A. Yes, sir.

Q. Just in what capacity are you employed?

A. My official title is Local Plant Superintendent. I have charge of

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Supreme Court  
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—  
Plaintiff's  
Evidence.  
No. 7  
Mrs. Florence  
Lillian Heard,  
Cross-  
Examination.

—continued

Plaintiff's  
Evidence.  
No. 7  
Mrs. Florence  
Lillian Heard,  
Re-  
Examination.

Plaintiff's  
Evidence.  
No. 8  
John William  
Faithful,  
Examination.

*In the  
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—  
Plaintiff's  
Evidence.  
No. 8  
John William  
Faithful,  
Examination.

—continued

the plant on the Mattagami River, the one supplying all the power to the various mines in the District of Porcupine.

Q. There are a number of power developments on the Mattagami River by your Company? A. Yes, sir.

Q. The Township of Deloro, I believe, is just south of the Timmins district? A. Yes, sir.

Q. You know this property that had formerly been La Roche and was afterwards the Delnite—this mining property? A. Yes.

Q. Have you been frequently on this property? A. Yes, sir.

Q. About how far is it south of the Town of Timmins? A. Approx- 10  
imately two and a half miles.

Q. Is this a mining country there? A. Yes.

Q. After the contract was made with or by La Roche did La Roche do work on the property for which they were using your power? A. Yes, sir.

Q. What sort of work? A.- Sinking a shaft.

Q. They continued for a few months did they not? A. Yes, sir.

Q. And they took power, which I understand was paid for? A. Yes, sir.

Q. You have a transmission line across the country from the Mattagami River over into this mining district? A. Yes sir.

Q. About how far is it from this La Roche property? A. To the line? 20

Q. Yes? A. To the main line would be approximately three-quarters of a mile.

Q. After this power contract was made with La Roche was a connecting line made between your main transmission line and this property? A. Yes, sir.

Q. And that work, I understand, was paid for by the Mining Company? A. I don't know. I know we built it.

Q. That line connecting the property with your main line—it connected where on the Company's property? A. At their transformer house.

Q. That was where they took their power and you measured it? A. Yes, 30  
sir.

Q. And I believe you had occasion to visit at this property and examine the meters? Yes, sir.

Q. The meters were there? A. Yes.

Q. When they stopped working there for a time I suppose the power was stopped being taken by them for a time? A. Yes, sir.

Q. But the lines still remained there? A. Yes.

Q. I suppose there was a switch around somewhere? A. From the main line; 'open-up' switches on the main line.

Q. That was done on whose instructions? A. Mr. George Gray, I 40  
presume, after the power was put on the first time.

Q. Who is he? A. He was in charge for the La Roche Mines.

Q. The Company would tell you to do that? A. Yes, sir.

Q. They would tell you they were not going to use the power for a while and didn't want a live wire into the property? Yes, sir.

Q. The next time it was used was when? A. Can't exactly say the date.

Q. Was that the time Noranda took it? A. Yes, but I am not clear of the date.

HIS LORDSHIP: Q. Who told you to open the switch? A. Mr. Gray.

Q. What is his name. A. George Gray.

MR. ROBERTSON: Q. I see a letter, part of Exhibit 3, a letter of March, or rather May 9th, 1933: "This will be your authority to turn on electric power at the La Roche Mines for the Noranda Mines Limited to make an examination of the La Roche mine workings. The Noranda Mines Limited will pay for power used." That letter is signed "La Roche Mines Limited, J. E. McMahon". What about that? A. I got my instructions to make that line

alive to the mine from the head office.

Q. Power was taken for some period? A. Yes.

Q. The next correspondence with reference to the supplying of power is August 15th, 1934, a letter from La Roche Mines Limited to the Northern Ontario Power Company. This will give you the date. There was a contract made with Sylvanite, and the letter says "They tell us now that you need an order from us to turn on the power. Will you kindly see that whatever is necessary to be done to have the power turned on is done. While Sylvanite is guaranteeing payment of the bills, the contract is with us, and the work is being done for us, so the bills will be rendered to us." The power was turned on again? A. Yes, turned on again.

Q. Has it been on ever since? A. Yes, sir.

Q. Have you anything to do with the making of contracts? A. No, sir.

Q. That is not within your jurisdiction? A. No, sir; that is none of my business.

Q. Will you tell us whether or not power has been available for this contract since the time it was made? A. Yes, sir; all the time.

Q. The character of the power that was to be delivered is referred to in the contract. It is to be 12,000 volts, 3 phase, 25 cycles. This is the description of the power available? A. Yes, sir; all the time.

MR. ROBERTSON: That is all.

CROSS-EXAMINED BY MR. WILSON:

Q. You say that you examine the meters of the various properties to which your Company is supplying power in that district? A. Yes, sir.

MR. ROBERTSON: Excuse me a moment. I forgot to ask something.

EXAMINATION CONTINUED BY MR. ROBERTSON:

Q. Mr. Faithful, I forgot to ask you something, and I am sorry. You have been on the property recently? A. Yes, I was there about three weeks or a month ago.

Q. You have been there a number of times this year? A. Yes, I am there at least twice a month.

Q. Is there work going on on the property? A. At the present time, yes.

Q. Of what character? A. As far as I can see from the surface they are sinking a shaft.

*In the  
Supreme Court  
of Ontario.*

—  
Plaintiff's  
Evidence.  
No 8

John William  
Faithful,  
Examination.

—continued

Plaintiff's  
Evidence.  
No. 8

John William  
Faithful,  
Cross-  
Examination.

Plaintiff's  
Evidence.  
No. 8

John William  
Faithful,  
Examination.

—continued

In the  
Supreme Court  
of Ontario.

Plaintiff's  
Evidence.  
No. 8  
John William  
Faithful  
Examination.

—continued

Q. Much work done? A. Yes, they must be down quite a depth according to the rock that is on the rock dump.

Q. A lot of excavation? A. Yes, sir.

Q. The electric current being supplied by your Company, is it being used on the property? A. Yes.

Q. For what purpose? A. It is taken into a motor and that motor drives a compressor, and for lights, and underground work.

Q. The compressor is for drilling? A. Yes, sir.

Q. Is there any hoist there? A. There is an air hoist, and the air goes from that compressor to the hoist.

Q. And apparently all this comes from the power you supply? A. Yes, absolutely.

Q. Then as to the electrical apparatus that is there, the electrical apparatus in the transformer house? A. The original equipment as installed is still there.

Q. And in use? A. Yes, sir.

Q. That is what was installed by the La Roche people. A. Yes, sir.

Q. It is still in use? A. Yes, sir.

MR. ROBERTSON: That is all, thank you.

CROSS-EXAMINATION CONTINUED BY MR. WILSON:

Plaintiff's  
Evidence.  
No. 8  
John William  
Faithful,  
Cross-  
Examination.

—continued

Q. Do you examine the meters on the property served by your Company in that district? A. Yes, sir.

Q. And you have, from time to time, examined the meters of the La Roche Company? A. Yes, sir.

Q. You say that the transmission line, your transmission line, is three-quarters of a mile from the Company's property? A. From the point of delivery on their property.

Q. The transmission line to the property was built by the La Roche Company? A. We built it, but who paid for it I don't know. Our line gang built it, but who paid for it I don't know.

Q. Do you know what power the La Roche Company in 1932, following the execution of the contract? A. They took—well at first they were not ready to take what we call power, and they asked us to supply them with lights only, but after that they were to take approximately 200 to 250 horse-power.

Q. That was for the month of January, 1932? A. Can't say. I have not the figures with me.

Q. Have you any records with you?

MR. ROBERTSON: I was going to ask Mr. Harrison about them.

MR. WILSON: Very well.

Q. For how many months in 1932 did the La Roche Company take that power. A. I have not those figures.

MR. ROBERTSON: Mr. Harrison will have that.

MR. WILSON: Q. Is it not a fact that the Power Company supply to that property today is much more than was supplied in 1932? A. No, they are using the same apparatus.

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Q. They are using the same apparatus? A. Yes.

Q. You don't know the figures? A. Approximately the same. The mine doesn't use exactly 200 horsepower a month—no mine does. They vary from twenty to thirty horsepower.

Q. Do you say that 20,000 horsepower is being kept available for the purpose of this contract? A. We have 20,000 horsepower available on those lines.

Q. You think that is available today. A. Yes.

10 Q. Since 1933 is not your phase-load fixed by reason of the contract made with the Hydro? A. I know nothing of contracts with the Hydro.

Q. How do you make the statement you have available 20,000 horsepower to supply this contract? Shortly, what is the basis for that statement? A. We have the power at the various plants we are connected with; interconnected with.

Q. As well as the connection with the Hydro? A. I don't know anything about the Hydro at all.

Q. By reason of the interconnections there is available 20,000 horsepower? A. Yes, sir.

20 Q. Your average load has increased in each year since 1931? A. The load in the Timmins District has increased a certain amount.

Q. Has it not increased every year? A. Yes, sir.

Q. And that increase is still continuing? A. Slightly, but not to any great amount.

Q. You say that Noranda operated in 1933 that property. On whose instructions did you turn the power on then? A. On instructions from our head office in New Liskeard.

Q. In whose name? A. Under the name of La Roche Mines.

30 Q. This letter from Mr. McMahon; did that ever come to your attention? A. I have no correspondence whatever. I take my orders from the head office.

MR. WILSON: That is all, thank you.

RE-EXAMINED BY MR. ROBERTSON:

Q. Do you know what the capacity of the electrical installation is at this La Roche mine? A. Approximately 225,000 horsepower.

Q. That is all they could take? A. Yes, that is about all they have got there.

MR. ROBERTSON: Thank you.

—(Witness retires).

BAILEY VanNORMAN HARRISON, Sworn.

40 EXAMINED BY MR. ROBERTSON:

Q. Mr. Harrison, you are the General Manager of the Northern Ontario Power Company, Limited? A. Yes, sir.

*In the  
Supreme Court  
of Ontario.*

—  
Plaintiff's  
Evidence.  
No. 8  
John William  
Faithful,  
Cross-  
Examination.  
—continued

Plaintiff's  
Evidence.  
No. 8  
John William  
Faithful,  
Re-  
Examination.

Plaintiff's  
Evidence.  
No. 9  
Bailey  
Van Norman  
Harrison,  
Examination.



In the  
Supreme Court  
of Ontario.

—  
Plaintiff's  
Evidence.  
No. 9  
Bailey  
Van Norman  
Harrison,  
Examination.

—continued

Q. You have been in that position for a number of years? A. Yes, sir.

Q. Your connection with the Company dates back to when? A. About twenty-five years.

Q. You have to do, as General Manager, with this power contract in question here? A. Yes, sir.

Q. Let me ask you this, has your Company entered into any power contract with the Delnite Company or any other company than the La Roche Company with respect to the supplying of power to this property? A. No, sir.

Q. Has any other contract for the supplying of power to this property been available to you? A. Available to us?

Q. Yes? A. (Not answered).

Q. Did anybody offer to make a contract with you or has La Roche made any other contract available? A. No, sir.

Q. Or anybody else? A. No, sir.

Q. At the time this contract in question was entered into was there any other power development or transmitting company in business in that district? A. Not in that district.

Q. There has been a change since? A. Yes.

Q. I understand the Hydro Electric Power Commission of Ontario has now extended a line from near Abitibi into what we call the Porcupine mining district? A. Yes, sir.

Q. Do you know when that was done, approximately, because we don't need to know the exact date. A. I think in 1933.

Q. In 1933? A. Yes, sir.

Q. Have they since then been selling power or supplying power for mining properties in that district? A. Yes, sir.

Q. They have a line right at Timmins? A. Yes, sir.

Q. This Township of Deloro; is that an organized township? A. It is an unorganized township.

Q. Perhaps I might put in this plan for the convenience of knowing the location of the property. This is a map of the Porcupine Gold Area. The Township of Deloro is at the lower left hand corner of the map? A. Yes, sir.

Q. The La Roche property, mining claims H.R. 1001 and 1002, and shown in pink, is on the left hand side of the map? A. Yes, sir.

Q. And that is the property? A. Yes.

Q. Your main power transmission line, where is that as indicated on the map? A. Right here. (Witness indicates on map).

Q. Running from the letter "N" in the word Ogden, written on the left hand margin, running in a northeasterly direction with the legend Northern Canada Power Limited transmission line? A. Yes, that is correct.

Q. Then running southeasterly from that line, commencing near the letter "C" in "Canada" of the Company's name, is that the power line connecting your main line with La Roche? A. Yes, that is the approximate location.

Q. That gives us an idea of where the property is? A. Yes, sir.

Q. And somewhat to the north of the La Roche property and in the

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Township of Tisdale we have the Hollinger and the Consolidated Gold Mines and other various mining properties? A. Yes, sir.

Q. And the McIntyre property a little to the north? A. Yes, sir.

Q. The Dome property to the east? A. Yes.

Q. Those are all very large mines and have been operating for twenty-five years or so? A. Yes.

Q. And still very valuable mining property? A. Yes, sir.

Q. Other mining operations carried on above them? A. Yes, sir.

MR. ROBERTSON: I will put this map in as an Exhibit, my Lord.

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10 EXHIBIT 13: Map of Porcupine Gold Area.

Q. This transmission line we have referred to, your Company's transmission line coming in from the southwest and running northeasterly, has been there for years? A. Yes, sir.

Q. A good many? A. Yes.

Q. It comes from the Mattagami River which is located just to the west? A. Yes, sir.

Q. And skirts the west side of the Town of Timmins? A. Yes, sir.

Q. Then the connecting power line running down to the La Roche Mines from your main transmission line, Mr. Faithful says it was your Company's gang that actually did the work? A. Yes, sir.

Q. But who paid for it? A. La Roche paid for it.

Q. There is a provision in one of the Agreements I put in with reference to conveying the right-of-way on which the transmission line was built to your Company? A. Yes, sir.

Q. Was that done? A. That right-of-way was never conveyed to our Company.

Q. The line was made and you supplied the power? A. Yes.

Q. What do you say as to whether your Company has had available for the La Roche Company the power called for by the power contract since the contract was made. A. We have more than sufficient power to fill the contract available at any time.

Q. And has that been so since the time of the contract; have you always had that available? A. Yes, sir; we have always had that available.

Q. Now to continue the supply of power under that contract, after you had commenced to supply the power shortly after the contract was made, or about the time the contract, made to start with, was there any further capital expenditure—any further capital expended on the part of your Company called for by the contract?

A. There would be no additional line cost. There might be additional generating equipment to be installed, If they took up the 20,000 horsepower we might have to make some changes, but the power is actually available.

Q. For purposes of anything required up to the present time has any additional capital expenditure been necessary? A. No, sir.

Q. The rates that were to be paid under this contract in question here, how do they compare with the ordinary power rates of the Company. A. We only have one rate to the mines.

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Q. The same rate as the others? A. Yes, the same rate as Hollinger or any other mine. It is on the amount of power they take.

Q. Is your operation in supplying power to the various companies profitable to your Company? A. Quite profitable.

Q. Then what do you say as to whether the supplying of power under this contract, according to your terms, would or would not be profitable to your Company? A. Yes, it would be.

Q. Your Company pays dividends? A. Yes, sir.

Q. Substantial dividends? A. Yes, sir.

Q. And has done so for many years? A. Yes.

Q. Then with reference to some figures which I told Mr. Wilson I would get from you. Can you tell us for how long the La Roche Mines Company took power immediately after the making of the power contract? A. La Roche commenced taking power on January 17th.

Q. Of what year? A. 1932.

Q. The contract is dated December 30, 1931? A. Yes, sir. They continued to take power until May 31, 1932.

Q. In that period what was the total amount of their power bills—for that period? A. The first month—

Q. Can you give us the total? A. I can total it up for you.

Q. What is the total? A. They paid us during that period a total of \$2,662.14.

Q. Two Thousand Six Hundred and Sixty-Two Dollars and fourteen cents? A. Yes, sir.

Q. Can you tell us the highest amount of horsepower during that period? A. 201.7 horsepower.

Q. And when was that? A. March, 1932.

Q. The lowest was in May? A. Yes, 112.6.

Q. Of course January was a broken month and would be much smaller? A. Yes, sir.

Q. Then the next period in which power was taken is the time when Noranda was doing some work there? A. Yes, sir.

Q. When was that? A. May and June, 1933.

Q. The amount paid for that? A. \$1,036.72—or rather \$1,036.27.

Q. I see there was 180.6 horsepower in May and 132.71 horsepower in June. A. Yes, sir.

Q. Then the next period of supplying power commenced in October of 1934? A. Yes, that is correct.

Q. And if my memory serves me right the letter asking that the power be turned on at that time was the letter of August 15th? A. Yes, sir.

Q. That was a letter written by La Roche Mines, and they say: "We have made a contract with Sylvanite Gold Mines Limited giving them an option on our property, and in the meantime allowing Sylvanite to carry on work on the property for us, but at Sylvanite's expense. They tell us now that you need an order from us to turn on the power. Will you kindly see that whatever is necessary to be done to have the power turned on is done." Then you answered on the 16th that you authorized the delivery of power when ready to receive same? A. Yes, sir.

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Q. But it was not taken until October? A. Yes, in October.

Q. It was in pursuance of this? A. Yes, sir.

Q. Then power has been supplied to the property constantly since? A. Yes, sir.

Q. I see the figures you have in front of you only carry the matter from October 30, 1934, to January of 1936. In that period what was the total amount at which the power was billed? A. The total amount paid for power from October of 1934 to January, 1936, was \$12,106.17.

Q. The horsepower delivered in that time, what was the highest? A. 10 Their highest demand was 225.2.

Q. The lowest was what? A. 136.73.

Q. You continued, we are told, supplying power to the property, and you are supplying it now? A. Yes.

Q. You have not the figures there, I see; but has the amount substantially increased or running about the same? A. Running about the same.

Q. Little variations from month to month. A. Yes, sir.

Q. But within the maximum and minimum you have given us? A. Yes, around about 200 horsepower.

Q. Then as to the billing of that horsepower by your Company, to 20 whom do you bill it? A. To the La Roche Mines in care of the Delnite.

Q. Are your bills paid? A. Yes, sir.

Q. Paid by whom? A. Delnite.

Q. You get a cheque from Delnite? A. Yes, sir.

Q. You keep on sending the bills to La Roche and Delnite keeps on paying the money? A. Yes.

Q. And you take the money no matter where it comes from? A. Yes, sir.

MR. ROBERTSON: I think that is all.

CROSS-EXAMINED BY MR. WILSON:

30 Q. Are the Letters Patent of the Company here? A. Not the original.

Q. Have you a copy? A. (Produced).

Q. You are producing a copy of the Letters Patent of the Northern Ontario Power Company, Limited, dated December 20, 1928? A. Yes, sir.

MR. WILSON: I will put that in as Exhibit 14.

EXHIBIT 14: Copy of Letters Patent, Northern Ontario Power Company, Limited.

Q. Issued by the Province of Ontario? A. Yes, sir.

Q. The Letters Patent purport to be issued under Part 13 of the Ontario Companies Act, do they not? A. I don't know.

40 MR. WILSON: There is no question about that?

MR. ROBERTSON: It speaks for itself.

MR. WILSON: Q. Your Company's transmission line crosses the highways I suppose? A. Yes, sir.

Q. This is a public utility Company?

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MR. ROBERTSON: No, no, the witness should not be asked to interpret the Statute.

HIS LORDSHIP: I don't think the witness can answer that in a technical sense.

MR. WILSON: He is the General Manager of a very substantial corporation and would know something about it.

Q. Has your Company ever had its by-laws as regards the control and management of its undertaking, its dealings with the public, the collection of tolls, charges, rates or levies for the public service given by the Company, and for the use, protection and care of its property while being used, enjoyed or otherwise subject to public use—have these by-laws ever been approved by the Lieutenant-Governor in Council? 10

MR. ROBERTSON: Ask him if they have by-laws?

MR. WILSON: Q. Have you such by-laws. A. Yes, sir.

Q. Have they ever been approved by the Lieutenant-Governor in Council in this Province? A. I don't know that. I would have to find out from Montreal.

Q. Have you any certificate of approval from the Lieutenant-Governor in Council of any such by-laws? A. I don't know.

Q. Well, the record of your Company, the file of your Company in the Provincial Secretary's office doesn't indicate any approval— 20

MR. ROBERTSON: Oh, no, no.

HIS LORDSHIP: Surely he can make a statement of that kind with reference to his question, but I need not take it as being true. Perhaps you can frame the question a little bit different, Mr. Wilson.

MR. WILSON: I want to avoid bringing someone from the Provincial Secretary's Department, my Lord.

HIS LORDSHIP: Frame your question differently.

MR. WILSON: Q. I am informed that no document of approval appears in the records of your Company in the hands of the Provincial Secretary. Do you know whether or not that is so? A. No. 30

Q. You have no record of any document, to your knowledge, approving these by-laws? A. I don't know whether we have a record or not.

Q. In whose possession would such a record be if there was such a record? A. The Secretary of the Company, who is in Montreal.

Q. Have you personally ever heard of such approval. A. I have never heard one way or the other.

Q. Your Company was incorporated to amalgamate two companies in December of 1928? A. Yes.

Q. Your Company, when incorporated in 1928, took over two existing companies which had amalgamated? A. Yes, sir. 40

Q. What were the names of those companies? A. Are you referring to the Canada Northern Power Corporation at the present time, or—

Q. This lawsuit involves the Northern Ontario Power Company, Limited? A. You are referring to the amalgamation of the Northern Canada Light and Power Company and the British Canadian Power Company?

MR. WILSON: I suppose the Letters Patent will speak on that point.

MR. ROBERTSON: Do they state the companies?

MR. WILSON: Yes.

Q. And they were two going concerns? A. Yes.

Q. They were power companies that had pioneered the power business in Northern Ontario? A. Yes, sir.

Q. So when your Company started in business it was not to pioneer the north country, but to carry on the work of the predecessor companies? A. I would not say that. The Northern Ontario Light and Power Company was changed to the Northern Ontario Power Company, Limited, and it took over  
10 the British Canadian Company.

Q. From the time your Company first started business there was a complete organization available, and your transmission lines had all been built, and you were serving many customers throughout the north Country? A. Yes, as far north as Kirkland Lake.

Q. Have you a sketch which would show his Lordship the nature of your transmission lines, and the scope of your lines, and the district you serve in the north country?

MR. ROBERTSON: Pardon me a moment. All that these Letters Patent do is to amalgamate the Northern Ontario Light and Power Company, Limited,  
20 which was incorporated in 1911, and the Northern Canada Power Company, Limited, incorporated in 1919. It is not in the sense of a new company. It is the amalgamation into one company of—

HIS LORDSHIP: It is apparent that it was an amalgamation of two companies that were in existence when this new company came into being.

MR. ROBERTSON: I submit, with all due respect that this was just a new name given to two existing companies. There is no new company, my Lord.

HIS LORDSHIP: I don't think there is any harm done. I think Mr. Wilson is trying to give me a general picture.

MR. ROBERTSON: If there is any significance being attached to the state-  
30 ment that the Company was not pioneering—and it might have some effect also on the passing of the by-laws, and I submit—

HIS LORDSHIP: Oh, surely, this document must speak for itself.

MR. WILSON: Q. Now, shortly, will you state the extent of the operations at the time your Company was incorporated in 1928? A. We were carrying on our power development on the Montreal River and we had a transmission plant out there, and around the Boston Creek area, At that time we had a line from the Quinze plant that came up through there. (Indicates on plan). Later on we put a line through—

Q. First of all let us get the picture as in 1928? A. I think I will have  
40 to get some dates. I don't remember the exact dates of the construction of these lines, you know.

Q. For instance, in 1928 what power developments were you operating? Where were your generating plants at that time? A. Matabitchouan, Fountain Falls, Ragged Chutes, Indian Chutes, Wawaitin, Sandy Falls, Lower Sturgeon, and a plant at the Quinze at Quebec.

Q. Since that time there has been some extensions; what were they? A. Mainly in Quebec.

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Q. Part of the Ontario system or the Quebec system? A. Quebec system.

Q. They are not plaintiffs in this action? A. No, sir.

MR. WILSON: I will put this plan in, my Lord.

### EXHIBIT 15: Plan

Q. What extension has there been to the plaintiff's system? A. A development at the Upper Notch on the Montreal River.

Q. What area was this system serving at the time of the incorporation of the Company? Take the Porcupine district for instance? A. Yes, sir.

Q. What else? Shortly, tell me what districts? A. Cobalt, Boston Creek, 10 Matabitchouan, New Liskeard, Porcupine, South Porcupine, Timmins and—

Q. All right. At that time was there any other competitor generating or developing power in the north country? A. At the time of the amalgamation?

Q. Yes? A. No.

Q. Coming down to the date of the La Roche contract, December of 1931, did you have any competitors in this district at that time? A. No.

Q. So you had the field to yourself so far as the supplying of power was concerned in the areas you have mentioned? A. That is correct.

Q. Will you give, shortly, the installed capacity of your generating plants 20 at the time of the making of the La Roche contract in December of 1931? A. Installed capacity, Lower Sturgeon, 10,724 horsepower; Wawaitin, 16,756 horsepower; Sandy Falls, 5,006 horsepower. That is all.

Q. Will you give us the total of the installed capacity at that time? A. You want the lower plants as well?

Q. You had better make clear at the present time the set-up of your system. A. I only have the figures here for the 25 cycle plants in the northern district. I am sending for the 60 cycle figures.

Q. What is the nature of your set-up; have you both 25 and 60 cycles? A. Yes, two frequencies—25 and 60. The 25 cycle developed on the north- 30 ern system takes in Wawaitin, Sandy Falls and Lower Sturgeon.

Q. What was the cycle used in fulfilling the La Roche contract? A. 25 cycles.

Q. Is it possible under your system to interchange the 25 and 60 cycle frequency? A. To a limited extent, yes.

Q. What is that limited extent? A. The capacity of the frequency changer installed at Current Lake.

Q. And what is that capacity? A. 4,250 horsepower.

Q. Is that frequency changer actually functioning at the present time? A. Yes, sir.

Q. The generating plants you referred to a few minutes ago, were they all 25 cycle plants? A. Yes, sir.

Q. I don't think you gave us the aggregate figure for all those plants. Will you give us the total figure please? A. 32,486 horsepower is the total installed capacity of the three plants. 40

Q. In the carrying on of the operations of these plants—have you hydraulic leases? A. Yes.

Q. Will you produce the hydraulic leases? A. I don't know whether we have them here.

MR. LEGRIS: I have copies.

MR. ROBERTSON: What all this has to do with this case I don't know. If my friend says it has then all right.

HIS LORDSHIP: I am sure I can't tell you at the moment.

MR. WILSON: I am sure I am not going to labour these leases, but I think it is material to have them on file. My friend is producing certified copies of the leases.

Q. Will you just enumerate these, please? (Mr. Wilson hands documents to the witness).

MR. ROBERTSON: Perhaps my friend should do the enumerating. You are a little more adept at describing documents, Mr. Wilson.

Q. I first want the lease for Lower Sturgeon? A. Here it is.

Q. You are producing Crown Lease, No. 3 Water Power Lease, The Crown to Lower Sturgeon Power Company Limited, Township of Mahaffy, District of Temiskaming? A. Yes, sir.

20 Q. That Crown Lease is dated the 31st day of August, 1922? A. Yes, sir.

MR. WILSON: Any renewal of that lease?

MR. LEGRIS: Yes.

MR. WILSON: Mr. Legris, will you assist us in this? You are a little more familiar with these documents. Have you the renewal there? My friend tells me he has not the renewal here. I will put this lease in, my Lord.

EXHIBIT 16: Crown Lease, No. 3 Water Power Lease; The Crown to Lower Sturgeon Power Company Limited.

MR. WILSON: I want the production of the hydraulic lease for the Wa-  
30 waitin Falls.

MR. LEGRIS: Here it is.

MR. WILSON: My friend now produces Water Power Lease No. 50 in the Province of Ontario in favour of the Northern Ontario Power Company, Limited; and it is dated the 10th of June, 1931, and it refers to the Wawaitin Falls on the Mattagami River. That will be Exhibit 17.

EXHIBIT 17: Water Power Lease No. 50; The Crown to Northern Ontario Power Company, Limited.

MR. WILSON: Q. This is the Sandy Falls lease you are now producing? A. Yes, sir.

40 MR. WILSON: Water Power Lease No. 39 in the Province of Ontario in favour of the Northern Ontario Power Company, Limited, dated the 17th of March, 1930.

Q. This refers to the Sandy Falls development? A. Yes, that is correct.

MR. WILSON: That will be Exhibit 18.

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EXHIBIT 18: Water Power Lease No. 39; The Crown to the Northern Ontario Power Company, Limited.

MR. ROBERTSON: Are they for a term of years?

MR. WILSON: Yes, some are ten and some are twenty.

MR. ROBERTSON: They are renewals?

MR. WILSON: Oh, yes; and they are subject to termination and expropriation at the instance of the Crown.

HIS LORDSHIP: Are these renewals of previous leases?

MR. ROBERTSON: Oh, yes, my Lo d. Wawaitin and Sandy Falls are quite old developments.

MR. WILSON: Q. Have you the lease for the Upper Notch development? Will you look at that and tell me if that is the Upper Notch Lease? A. I think there is an amendment to this. That is the Lower Notch.

MR. WILSON: This is Water Power Lease No. 31, Province of Ontario, in favour of the Northern Ontario Light and Power Company, Limited. It is dated the 7th of December, 1928, and it is for a period of twenty years; and there is also produced with this the Amendment to Water Power Lease No. 31.

Q. You know the substance of the amendment? A. Yes, sir.

Q. What is it? A. The original lease covered the development at the Lower Notch. It was found necessary in order to construct the power dam to acquire additional land and a development was necessary at what is called "Paugan" Rapids. The amendment covers that.

MR. WILSON: This will be Exhibit 19 then.

EXHIBIT 19: Water Power Lease No. 31 and Amendment; The Crown to the Northern Ontario Light and Power Company, Limited.

Q. Have you the hydraulic lease for the Upper Notch? A. You have it there. You have the amendment.

Q. You mean the amendment to the Lower Notch lease covers the Upper Notch development? A. Yes.

Q. So we have had now produced all the hydraulic leases your Company has in Northern Ontario? A. Yes, sir.

Q. Your Company has no other leases outside of Northern Ontario? A. No, sir; Northern Ontario.

Q. The Quebec leases are in connection with the Quebec Company? A. Yes, sir.

Q. You have given us the installed capacity in December of 1931. Has there been any change in that installed capacity as at the present date? A. No.

Q. What was the actual power generated, say in December of 1931, by the 25 cycle system? Would it be easier to give the figure as a composite figure of the 25 and 60 cycle systems? Give me the average figure for 1931, which I think will be sufficient. A. (Not answered).

Q. I suggest the average horsepower was 46,931. Is that correct? A. (Not answered).

MR. WILSON: Apparently the witness has not these figures. There are a

couple of other points on which I would like Mr. Harrison to get information ready for this afternoon. We want to have available the figures not only of the generation of these plants for 1931 and the following years, but also the actual distribution. I want the average figure and the peak figure for generation and distribution. I think if Mr. Harrison will get these things ready for this afternoon it will help.

HIS LORDSHIP: Perhaps you gentlemen can discuss this among yourselves. We will proceed with this action at 1.30 this afternoon. (12.30 p.m. adjourned until 1.30 p.m.)

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10 Upon resuming at 1.30 p.m.:

BAILEY HARRISON, Already Sworn.

CROSS-EXAMINATION CONTINUED BY MR. WILSON:

Q. During the intermission did you get the figures as regards the generation of your Northern Ontario plants? A. No, we have not had time to break down our Canada Northern figures.

Q. Just exactly what does the Canada Northern figures mean? A. Well, you asked us during the examination for discovery for the production figures for the Canada Northern system, and we prepared them; and now you ask us to break them down.

20 Q. I want to know what you mean by the Canada Northern figure. What does it cover? A. Production figures for the entire system. We gave them to you in the manner you asked them for on the examination for discovery.

MR. ROBERTSON: There was a very long examination for discovery, my Lord, and we had to get certain information that my friend desired; and it was prepared after a great deal of time and labour. We discovered, when we got together at noon, that these figures are not the figures my friend is looking for. It took days before to get the figures he wanted then, and it will take days again to get the figures he wants now.

30 MR. WILSON: And I am still waiting for some of the information I should have got on the examination for discovery.

MR. ROBERTSON: There was a Motion, and it was dismissed, and —

MR. WILSON: Oh, no; the examination for discovery proceeded all right.

Q. You have not the aggregate figures for the generation of the Northern Ontario system? A. Not available.

Q. Has your production figure increased from 1931 to 1936? There has been a gradual step-up in your production? A. Oh, yes.

Q. And did that step-up in production terminate with the signing of the Hydro agreement in 1933? A. No.

40 Q. Did not the Hydro contract set out the base load for your system as of that date? A. Yes, as of that date.

Q. And after that date was it possible for you to increase your production by reason of that agreement? A. It was possible to increase it but not to our advantage to increase it gradually.

Q. You mean it was not sound for you to increase it because of the terms

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of the agreement? A. No, because our payments to the Hydro are based on the base load established at a certain period.

Q. Following that agreement was there any material increase in your production for the Northern Ontario system? A. No material increase.

Q. Has your distribution of power likewise increased from 1931 to the present time? A. Yes, slightly.

Q. And your revenues have also increased during that period? A. Yes, sir.

Q. Have you the figures for revenue from the sale of power in 1931 to 1935, just as a matter of comparison? A. No, I have not got them with me. 10

Q. On your examination for discovery you said that the revenue for 1931 was \$2,894,856.69 and that the revenue for 1935 was \$3,330,165.51. Have you any reason to change that answer? I refer you to questions 451 to 453 on your examination for discovery? A. I have no reason to change them.

Q. And that represents the revenue from your wholesale and retail sale of power? A. Yes, sir.

Q. And in addition to your sale of power you have a small revenue from your other enterprises such as the sale of appliances, the compressed air plant, and your pulp plant. A. We have a revenue from the sale of appliances and compressed air, but not from the pulp mill. The pulp mill has not been operating for some years. 20

Q. As an example of that end of your business was the revenue for 1935, from that part of your business, approximately \$100,000.00. A. Do you mean would this figure of \$3,330,165.51 be increased by \$100,000.00?

Q. Yes. A. No, sir; not to that extent.

Q. Would it be decreased? A. No, sir.

Q. Then to what extent would it be increased? A. I have not that figure. I can get that figure for you.

Q. On your examination for discovery, questions 537 and 538, you were asked these questions: "537. Q. Referring for a moment to Exhibit No. 14 which is copy of your Annual Statement for the period ending December 31, 1935, I notice that under the Statement of Income your Gross Earnings from Operation were \$3,409,534.73. That represents your gross revenue? A. Yes. 30

"538. Q. And for the same year you have told me that your revenue from sale of power wholesale and retail amounted to \$3,330,165.51 so that your revenue from the other phases of your business for that year was less than \$100,000.00? A. Whatever the difference is." There is no reason to change that answer today? A. No, sir.

Q. That is the only source of income you have apart from your wholesale and retail power revenue? A. Yes. 40

Q. And can you tell me what the relationship was in December of 1931 between the generative capacity of your plants and your contracted commitments of that date? A. No, I can't tell you.

Q. Can you tell me the diversity factor of that date?

MR. ROBERTSON: I don't understand that.

MR. WILSON: The diversity factor is the relationship between the gen-

erative capacity and the contractual commitments. I thought the witness might understand it if I put my question in the form of the diversity factor.

MR. ROBERTSON: What is the amount of the contractual commitments of this Company? Is that what you mean? It makes a considerable difference, you know, because we might have a hundred contracts on the 20,000 horsepower basis the same as this, and that would be 2,000,000. Just as long as the witness understands it.

MR. WILSON: Q. Do you not know your diversity factor for that period?  
10 A. No, sir.

Q. Is it not available? A. Yes, it is available.

Q. Who would have that information, your Engineer, Mr. Young. A. No, it is at the office. We can get it for you.

Q. Can you get it immediately?

MR. ROBERTSON: Q. What do you think he means by the diversity factor? A. As I understand the question he wants to know what relationship there is between our contracts and the amount of power we produce.

Q. What do you mean by your contracts? Take this contract, and if you were including this contract in your total what would you put it in at?

20 A. 20,000.

Q. So you take the totals in each case? A. Yes, sir.

HIS LORDSHIP: Q. And compare them with what, your installed capacity? A. No, production.

Q. Actual production? A. Yes, sir.

MR. WILSON: I said actual—

HIS LORDSHIP: You want to know if the contracts totalled 200,000 horsepower, you want to know how many horsepower the company is actually producing?

MR. WILSON: Yes, because the Company would have more contractual—

30 MR. ROBERTSON: There is a difference between the production capacity and what you actually produce, you know.

MR. WILSON: Oh, let us not confuse the issue.

MR. WILSON: Q. Can you get that information? A. You want the total covering our production, and you want the total of our contracts?

Q. Is it not a matter of good practice to have the diversity factor available for good engineering? A. We can get it for you.

Q. Has there been any change in the diversity factor between that time and the present time?

HIS LORDSHIP: Between 1931 and the present time?

40 MR. WILSON: Q. Yes, between 1931 and the present time? A. There have been additional contracts entered into.

Q. In order that we can understand that, how is it that you can contract to sell a greater amount of power than you actually can generate with your available plants? A. We take care of it when the time comes along. If their demand is more than we are able to supply we install additional equipment. A power company can't be expected to keep generating plants in operation to take care of fifty percent more power than is actually used.

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Q. And is it not a fact that another reason for that is that the power is not being used by all your customers at the same time? A. I would not say so in our district. The demands of the mines occur almost at the same period.

MR. ROBERTSON: Q. The municipal contracts do not light in the day-time? A. No, sir. The mining is a twenty-four hour rate practically.

Q. But your lighting is not? A. Oh, no; that is not.

MR. WILSON: Q. Have you here the contract, along with other companies, entered into with the Hydro in 1933?

MR. LEGRIS: Here is a copy.

MR. WILSON: Q. This is a contract, dated the 7th day of November, 1933, between the Hydro-Electric Power Commission of Ontario of the First Part, and the Canada Northern Power Corporation, Limited, and its subsidiaries, Northern Ontario Power Company, Limited, and Northern Quebec Power Company, Limited, of the Second Part; and the two subsidiaries are again named as parties of the Third Part. This is the contract, is it not, whereby you had the right to purchase blocks of power from the Hydro-Electric Power Commission of Ontario? A. Yes, sir. 10

Q. When did it become effective? When did you first purchase power from the Hydro? A. Commenced taking power from the Hydro on February 1, 1934. 20

MR. WILSON: I will put this Agreement in as Exhibit 20.

EXHIBIT 20: Agreement, dated November 7, 1933, between the Hydro-Electric Power Commission of Ontario and the Canada Northern Power Corporation, Limited, and its subsidiaries.

Q. What type of power were you taking from the Hydro under that contract? A. What do you mean by type?

Q. Well, was it for instance supplementary power or growth power? The contract speaks of growth power? A. Yes, that is what it was.

Q. What would growth power be? A. Increase over the established base load. 30

Q. Does the contract establish the base load for your system? A. The base load was established by measurement.

Q. By reason of the terms of the agreement? A. Yes, sir.

Q. In answering that question are you referring to the Northern Ontario Power system alone? Is the base load you speak of confined to your own companies? A. The base load was established on the Canada Northern system which includes the Quinze.

Q. Let us get this clear, that would be the Northern Ontario Power system and the Northern Quebec system? A. Yes, sir.

Q. And that base load was established or determined by virtue of clause 3A of this agreement, Exhibit 20? A. I have not got the agreement. What is clause 3A? 40

Q. Well, here it is, and you can read it? A. No, it is not 3A that is the base load clause. This is it. (Witness shows Mr. Wilson).

Q. You are referring to a clause on page 2 of the contract commencing with the words "Base Load"? A. Yes, in paragraph 1.

Q. You say it was under that paragraph that the base load was determined under this contract? A. Yes.

Q. That base load was determined on 85% power factor. Is that not what the clause provides? A. Yes, sir.

Q. And what was the base load as actually determined for the combined systems? A. The base load figures were worked out by our Engineer. It might save time if you got them from him.

10 Q. Can't-you get them? A. Oh, yes.

HIS LORDSHIP: Are you suggesting that this Company has no damage because they have all the business they can handle?

MR. WILSON: I am suggesting this, that following the date of the Hydro contract that any increase of this system beyond the fixed base load had to be purchased from the Hydro. From that date on all what is termed growth power had to be purchased from the Hydro.

MR. ROBERTSON: That is a matter that goes to quantum.

20 MR. WILSON: I want to get the contract on the Record and deal with this matter of growth power.

MR. ROBERTSON: Don't ask this witness to construe the contract.

MR. WILSON: I am not asking him to do that. It speaks for itself.

MR. WILSON: Q. Have you that figure? A. The base load agreed to by the Hydro was 63,857.77 kilowatts.

Q. And that being the case, following the date that that contract became effective, is it not a fact that all growth power had to be purchased from the Hydro-Electric Power Commission? A. Yes.

Q. And that is provided for in clause 3(g) of that contract, is it not? A. That is covered in 3(g).

30 Q. And in order to understand that wording of "Growth Power" just exactly what is meant by growth power? A. Any power taken over and above the established figure at that time.

Q. The figure you have given us for the base load would be the established figure for this contract? A. Yes, sir.

Q. If any power was taken over and above that figure, following the execution of this contract, it would have to be purchased from the Hydro-Electric Power Commission? A. Yes, sir.

Q. On the basis of the figures in the contract? A. Yes.

40 Q. You have purchased power from the Hydro-Electric Power Commission since then on the basis of that contract? A. Yes.

MR. ROBERTSON: That is so long as the Commission is willing to deliver it.

MR. WILSON: The contract speaks for itself. Q. In computing the base load in 1933 was the power delivered to the La Roche property taken in in computing that figure? A. I.—

MR. ROBERTSON: Which figure are you speaking of?

MR. WILSON: I am speaking of the base load figure the witness has given. I want to know whether or not in arriving at that base load figure the power delivered to the La Roche property was added in in arriving at the figure.

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WITNESS: To some extent, yes; but not the total of the demand shown on the part of La Roche.

MR. WILSON: Q. In 1933 Noranda was getting power supplied to them? A. Yes.

Q. Is it not a fact that in order to arrive at the base load you would put all the kilowatt hours in the system together to arrive at the base load figure?

A. The full amount of the power taken by La Roche from us would not be included because—

MR. ROBERTSON: The contract says 85%.

MR. WILSON: That is the power factor.

MR. ROBERTSON: Oh, no, it is the load factor.

MR. WILSON: Q. How do you arrive at the base load if you don't add together the kilowatt hours of the system for the year? A. I would like to have my Chief Engineer outline how the load was arrived at.

Q. You are not suggesting that the power delivered to the La Roche property that year would not be added in in arriving at the base load figure?

A. A certain proportion.

Q. And that would apply to all the customers? A. Yes, sir.

Q. And so the same treatment would be followed as regards the La Roche property as any other property served by your system? A. In proportion to the load. 20

MR. ROBERTSON: Q. Is it individual loads or what? A. We add together the total amount of power purchased or rather produced at all our various developments to arrive at the base load. We don't add our customers' demands together to get at the base load—to arrive at the base load.

HIS LORDSHIP: Q. The base load is arrived at by adding the production of all the various power plants? A. Yes, sir. In other words the total amount of power generated on your system at that particular time is the base load, and not the total of the customers' demands.

MR. ROBERTSON: Q. Then an 85% load factor applied to it? A. Yes, 30  
sir.

MR. WILSON: Q. I think it was a 90% load factor. Have you the figures there of the purchases of power from the Hydro, under the contract, in 1934 and 1935? A. I have them.

Q. Will you give them to us? A. Month by month?

Q. No, not month by month. Just for the years? A. What figure do you want, the kilowatt hours or what?

Q. What form have you them in? Give me the horsepower? A. 1934 the average horsepower 8,895. Average horsepower for 1935—15,400.

Q. Similarly have you the figure for the purchase of power from the Northern Quebec Power Company for say the year 1931 and the year 1936? 40  
Possibly I can refer you to your examination for discovery on that point, and possibly it would save time. No, I have not got it here. A. I have it here.

Q. Give it to us say for 1932 and 1935? A. What years?

Q. Say 1931 and 1935? A. The average horsepower purchased during the year 1931 by the Northern Ontario Power Company from Northern Quebec was 12,468.

Q. Give us the figure for the year 1935? A. 1935, average horsepower purchase—9,032.

Q. There was a decrease in the purchase in 1935? A. Yes, sir.

Q. That was by reason of your arrangement with the Hydro-Electric to purchase power from them? A. By reason of our using more power in Quebec.

Q. In other words you had more demand in Quebec and you accordingly used more of the Hydro power? A. We used more of the Northern Quebec power in Quebec.

10 Q. You didn't use Northern Ontario power in Quebec at any time? A. No.

MR. ROBERTSON: He means there was a larger demand in Quebec and they used the power of the Quebec plant there.

MR. WILSON: Your Company has entered into many contracts with mines in the north country? A. That is right.

Q. You say that the form of the contract in question here is your general form of contract? A. That is our standard form of contract.

20 Q. Is it usual for you to have a minimum obligation on the part of the customer for only one year in your mine contracts? A. That depends upon the capital investment of the Power Company.

Q. If you have a capital investment you increase the minimum obligation? A. Yes, sir.

Q. In this case did you have any capital investment at all? A. No, the customer put up the cost of the line.

Q. So you had no capital outlay? A. Not at that time, but eventually we would have it as we repaid the cost; rebate the cost.

Q. As a matter of fact there was no rebate under this contract? A. No, due to the fact they didn't fulfill their contract.

30 Q. In your Statement of Claim, or in the Statement of Claim of the plaintiff, in paragraph 5 there is an allegation that your Company incurred large expense in providing additional production capacity and transmission lines for the purpose of supplying said electrical power and energy under the said agreement to the Defendant Company. Are you advancing that claim in this action. A. We are not referring to the branch line for that claim.

Q. You are not, in fact, making claim that you had any capital expense or any other expense in supplying this contract? A. We will have.

Q. Any expense you might be put to is something you expect in the future? A. If the load at the mine increases then our conductors must increase.

40 Q. At the present time you have no expense you are asking the Court to give you judgment for? A. No line expense.

Q. Or for additional production capacity? A. Not at the present time.

Q. So we can disregard that particular allegation as being a present claim? A. The present claim is based on—

Q. Please answer that question? A. That is not included in the claim we made up.

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Q. I don't follow that? A. The claim is based on a definite amount of horsepower and a definite rate.

Q. I want to know whether or not you have any definite claim as set out in paragraph 5 of the Statement of Claim, or whether you abandoned that?

MR. ROBERTSON: The witness can't say that.

MR. WILSON: Q. Is there any expense you have been put to that you are asking these defendants to pay? A. There is nothing included in the Statement of Claim except a definite figure for horsepower.

MR. ROBERTSON: Upon the evidence, which appears perfectly plain, there has not been any expense in providing additional production capacity 10 and transmission lines for supplying power.

MR. WILSON: Am I to take it that that large amount, something over half a million, as set forth in the Statement of Claim is estimated on the power alone—the failure to take the power?

HIS LORDSHIP: Is that so, Mr. Robertson?

MR. ROBERTSON: That is right, my Lord.

HIS LORDSHIP: Why bother with the other figures then?

MR. WILSON: I will not do so, my Lord.

Q. Has your experience been that in all these mine contracts that a great proportion of the mines do not run for any great period of time? A. The 20 greater majority of them have been carrying on for twenty-five years.

Q. What would be the percentage of your contracts which lapse by reason of the failure of the companies to carry on? A. I can't answer that.

Q. There is quite a large mortality rate? A. No, sir.

Q. Can't you give us a rough idea of what percentage fall by the way-side after they make contracts with you? A. I can't answer that.

Q. You can't answer that at all? A. No, sir.

Q. You have been associated with this Company for twenty-five year? A. Yes.

Q. You have been living in the mining district of Ontario for a long 30 period? A. Yes.

Q. And you are well acquainted with mining conditions in this northern part of Ontario. A. Just general conditions.

Q. You can't give us any estimate as to the experience of your Company in regard to default in contracts made by mines for power? A. The greater number of customers are still taking power from us.

Q. That is as far as you can go? A. Yes, sir.

Q. In this contract, Exhibit 1, there is a minimum requirement requiring the customer to purchase power for one year only? A. No, I—

MR. ROBERTSON: I don't think my friend should ask the witness to interpret the contract. I hope to have something to say about the contract myself. 40

HIS LORDSHIP: I don't think the opinion of the witness on the contract is of any value at all. It may help Mr. Wilson with his story.

MR. WILSON: My friend is seeking to add terms to the contract. There is some reason for trying to delimit the claim that is being advanced here, my Lord.

MR. ROBERTSON: You are asking the witness whether the contract means a certain thing, and it is not for him to say.

MR. WILSON: Q. How did you fix the contract price for the La Roche contract, Exhibit 1? A. It is a standard rate with us. It was not fixed for La Roche.

Q. Was it based on any records you had as to the cost of supplying power with an additional reasonable profit on top of that? A. I don't know how the rate was arrived at.

10 Q. You recall being examined for discovery on that point? A. I think I made the remark then that it was a rate that would give us a reasonable profit, or something like that.

Q. Yes, that is right. Have you any figures available to show the cost per unit for power supplied in 1931 by your Company? A. The actual cost to us?

Q. Yes, the actual cost per unit? A. No, sir.

Q. Has it never been worked out? A. No.

Q. Have you the figure as to the revenue per unit for your system in 1931? A. Revenue per horsepower?

20 Q. Whatever your unit might be, kilowatt or horsepower. You are more familiar with that than I am. Have you any figure as to the revenue per unit? A. No.

Q. Has any such figure ever been worked out? A. No, sir.

Q. Does the same answer apply as to the revenue and cost per unit for the other years down to the present time? A. Yes.

Q. You have stated that in 1933 the power was delivered to Noranda. To whom was the bill made out and delivered? A. (Witness hesitates). Well, I think it was billed to the Noranda.

Q. Are those two statements copies of your invoices for power supplied in 1933? (Witness shown statements) A. Yes, to the Noranda Mines.

30 Q. You billed the Noranda Mines? A. Yes.

Q. You had a ledger account in the name of Noranda Mines in your office? A. Yes, sir.

Q. Then so far as 1933 is concerned no charges were made in the La Roche account? A. That is correct. During the year 1933 the only charge made was to the Noranda Mines.

MR. WILSON: I will put these accounts in as Exhibit 21, my Lord.

EXHIBIT 21: Copies of accounts rendered by the Northern Ontario Power Company, Limited, to Noranda Mines, Limited, in 1933.

40 Q. So that in 1932 any power used on the La Roche property was charged to La Roche, but in 1933 any power used on the La Roche property was charged to Noranda Mines, Limited? A. Yes, sir.

Q. In 1934 power was again supplied and charged to whom? A. La Roche.

Q. I think you said that the invoices were addressed to La Roche in care of Sylvanite? A. That is right.

Q. Was a copy of the invoices sent to La Roche? A. I can't tell you

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whether a copy went to La Roche. It was addressed to La Roche in care of Sylvanite.

Q. There has been a lot of correspondence put in here in regard to the attitude of your Company and La Roche following the sale of their property, and in that correspondence there are various requests for a definite claim reduced to a monetary amount. Can you tell me why such a claim was not made at any time prior to the liquidation of the Company? A. That was on account of legal opinion.

Q. That was on account of legal advice. A. Yes, sir.

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Q. Was there anything owing to your Company by La Roche at the date 10 of the sale of this property. A. No.

Q. Is there anything owing by the Liquidator of La Roche, assuming the contract is still in existence, at the present time in respect to power supplied to that property? A. The power is still being paid for.

Q. Have you suffered any loss as of this date by reason of any act of the La Roche Company or its Liquidator?

MR. ROBERTSON: I don't think that is a proper question. The witness has said that all the power has been paid for, and I think that is as far as he can go.

HIS LORDSHIP: I think the question is as to the future of this contract. 20 That is as I understand it at the moment.

MR. WILSON: I just wanted to have it quite clear. Perhaps in my endeavour to do so I was repeating myself.

Q. Your claim in this action is for \$524,163.24. Is that right? A. Yes, sir.

Q. Shortly, how do you make up that claim? A. The highest peak established by La Roche was in February of 1935—225.2 horsepower. We assumed the mine would continue to operate for a period of two years and continue to use 225.2 horsepower. This load at our regular contract rate for this period would call for a total payment of \$22,629.84. We for the next 23 30 years we assumed the mining company would operate a one hundred ton mill, which would require 435 horsepower to operate. The balance of the claim was arrived at on the basis of 23 years at 435 horsepower at the standard contract rate, which totals \$501,533.40; making a total in all of some \$524,163.24.

HIS LORDSHIP: Q. That is the amount claimed in this action? A. Yes, that is the amount in the action.

HIS LORDSHIP: Where does the 25 year period come from—in the contract?

MR. WILSON: This is a witness on behalf of the Company, and— 40

HIS LORDSHIP: That is an estimate of the reasonable life of the mine?

MR. WILSON: Yes, my Lord.

Q. How do you base that estimate of 25 years? A. Mainly on the history of other properties.

Q. Not from any particular knowledge of this property? A. Not from any definite knowledge of this property.

Q. There is just one other point I wish to deal with. The claim you have

advanced in detail here is based on the expectancy of loss of total revenue for the next five years? A. For the next 25 years.

Q. That is the full revenue without any allowance for the cost of generation and transmission to the property. A. It is based on the actual amount we estimate we would receive from La Roche during the next 25 years if the contract is lived up to.

Q. And I assume the power would cost you nothing to produce and transmit to the property? A. Nothing to produce?

Q. If I am wrong you correct me? A. You can't produce power for  
10 nothing.

Q. Then that being the case, would the figure you have just given represent your actual loss over the next 25 years? A. It represents the actual amount we would lose if the contract was not lived up to.

Q. It would not represent your actual loss because there is no consideration there for the cost of generation or transmission?

HIS LORDSHIP: You can't have your full price and not deliver the power. In other words you can't have your cake and eat it too.

MR. WILSON: Q. Questions 289 and 298 on your examination for discovery, you were asked these questions: "289. Q. No, power company's revenue under the contract. A. We are claiming the amount of revenue we should  
20 receive from the defendant company. 290. Q. Now then, that you say would be your actual loss as a result of this breach of contract? What you contend is a breach of contract? A. Actual loss in revenue, not net profits. 291. Q. You are claiming to hold the defendants liable for the entire loss of revenue? A. That is right. 292. Q. But that does not represent your actual loss? A. It represents the actual amount we would receive. 293. Q. I want a straight answer to that question. That does not represent your actual loss? A. It does not represent our actual loss." Is there any reason to change that today? A. No, sir.

30 Q. Then I will just read one other question, question 297: "Q. I will put it another way: Your loss in dollars and cents over the next twenty-five years, if you continue to supply power to that company, would be your loss in profit, not your loss of gross revenue—is that not right? Which would be the difference between what you received and what it cost you to supply it? A. That is correct. It would be the difference between the amount received and the cost of supplying it." Is there any reason to change that answer today, Mr. Harrison? A. No.

40 Q. Have you any idea, or any figures as to what it would cost you to generate and deliver this amount of power for twenty-five years? A. We have not the figures available.

HIS LORDSHIP: Q. Perhaps I may be going beyond this question today, but that strikes me as a very peculiar answer. Don't you know what your overhead is? A. Our system of accounting is such that we write off a lump sum for depreciation, and it is pretty hard to reduce that to one horsepower.

Q. It is a very extraordinary thing to pay dividends and yet you don't know what your cost of operation is? A. We don't set out any one amount against any one kilowatt hour, or horsepower, or anything like that.

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HIS LORDSHIP: Very well. I don't wish to go into it.

MR. ROBERTSON: It is not a divided sum. They would never get—

HIS LORDSHIP: Oh, surely. If you can't get that figure do you wish this Company to pay all the cost?

MR. ROBERTSON: We can get that, I presume. I didn't think we were going that far at this time, my Lord. I thought that would come on the reference.

HIS LORDSHIP: You are right there, yes.

MR. WILSON: I want to refer you to question 569 on your examination for discovery: "Q. I am, I think, to understand from that that the fulfillment or the delivery of that power would not entail any cost to your company? A. The amount of power is so small that if we lost the business we would not be able to reduce our operating expenses to any great extent. 570. Q. On that theory to fulfill this contract it would simply be using surplus power that would not cost your company anything? A. Not surplus power. 571. What power is it? A. Off peak power."

WITNESS: I corrected that.

Q. Yes. Then question 577: "Q. You have told me that the amount of your claim is made up of approximately the gross revenue under the contract. This being the case can you not tell me the expectancy of pro rata costs for the delivery of that amount of power for that period of twenty-five years. A. No." Is there any reason to change these answers today? A. I think I should explain that. The additional expense to take care of two hundred odd horsepower is very small, and if you lose the revenue from it you lose a great part of that revenue.

Q. You don't pro rata your costs at all in your bookkeeping setup? A. No.

Q. The amount of power involved here is negligible having regard to the size of your business? A. As regards operating costs. That is what I am referring to, operating costs.

HIS LORDSHIP: Q. What is the gross output of your Company? A. Approximately one hundred thousand horse power.

Q. And this is only two hundred horsepower. A. Yes, sir.

MR. WILSON: Q. The output of your Company has been increased since 1931? A. Yes.

Q. In 1932 La Roche took a certain amount of power? A. Yes.

Q. In 1933 you sold some power, whether under this contract or not, to Noranda for the two months they operated the property? A. Yes, sir.

Q. And since October of 1934 you have been supplying the present owner of the property? A. We have been supplying La Roche so far as we are concerned.

Q. You billed them in care of the Sylvanite? A. Yes.

Q. Is it not a fact that your revenue in 1935 and continuing on in 1936 has been much larger than any revenue you got while La Roche operated the property? A. There has been a gradual increase in our gross revenue each year.

Q. A substantial increase during that period? A. Depends upon what you call a substantial increase.

Q. You are now getting a regular monthly income from the sale of power to the property? A. From La Roche?

Q. I didn't say La Roche. You have already told us you are billing La Roche in care of Sylvanite? A. There has been no great increase in the amount received from La Roche.

Q. I say from that property? A. The demand is about the same.

Q. You mean the monthly demand? A. Yes.

10 Q. But now it is constant, and before it was two months in one year and two months in another? A. Yes, that is right.

Q. You have told my friend you have no contract with Delnite or any other company to supply power to this property? A. We have a contract with La Roche.

Q. Have you been negotiating with Delnite. A. Yes, we have talked to them.

Q. You are rather anxious to have them enter into a contract with you? A. We are satisfied with our present contract.

20 Q. But still you are negotiating with Delnite at the present time. A. At their request.

Q. There were certain letters put in that suggested this contract attached to the land. Were you the writer of those letters? A. No.

Q. Was that on your instructions? A. I saw the letters.

Q. Have you the financial statements say for the years 1931 and 1935 so that we can get the financial picture of your position in those two years? A. I have not got them.

Q. Your counsel has produced a copy of the Annual Statement of the Northern Ontario Power Company, Limited, for the year ending December 31st, 1931? A. Yes.

30 MR. WILSON: That will be Exhibit 22.

EXHIBIT 22: Copy of the Annual Statement of the Northern Ontario Power Company, Limited for the year ending December 31, 1931.

Q. And your counsel has also produced a copy of the Annual Statement of the Northern Ontario Power Company, Limited, for the period ending the 31st of December, 1935. A. Yes, sir.

MR. WILSON: That will be Exhibit 23.

EXHIBIT 23: Copy of the Annual Statement of the Northern Ontario Power Company, Limited, for the period ending December 31, 1935.

40 Q. There has been entered as an Exhibit in this case a letter from Mr. McMahan addressed to your Company. It is part of Exhibit 3. It is signed by La Roche Mines, Limited, per J. E. McMahan. Who got that letter? A. It was handed in to our Timmins office.

Q. You notice, of course, it is not on the Company's letterhead? A. Yes, I see that.

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Q. Do you know whether or not Mr. McMahon was an officer of this Company? A. I don't know what his official title is.

Q. You didn't know what his title was? A. No.

Q. What position did you think he occupied? A. He signed himself La Roche Mines so I thought he had some authority.

HIS LORDSHIP: What is that letter, Mr. Wilson?

MR. WILSON: It is Exhibit 3a, my Lord. It is a letter from Mr. McMahon, dated May 9, 1933, and addressed to the Northern Ontario Power Company, Limited, Timmins, Ontario:

"Dear Sir:

10

"This will be your authority to turn on electric power at the La Roche Mines for the Noranda Mines Limited to make an examination of the La Roche Mine workings. The Noranda Mines Limited will pay for power used.

"Yours very truly,

"LA ROCHE MINES LIMITED.

(Signed) "J. E. McMahon".

I wanted to ascertain what position this witness assumed Mr. McMahon held in the Company.

HIS LORDSHIP: Very well.

20

MR. WILSON: Q. One of the issues in this case is whether or not your Company has complied with the provisions of section 189 of the Ontario Companies Act, as you know from reading the Statement of Defence. You have read over the Statement of Defence, and you are quite aware it is one of the issues here raised as a defence? A. Well, I know you are raising it.

Q. It is a matter you undoubtedly went into with your solicitor as being one of the issues here? A. I have not gone into it.

Q. You leave all that to your able counsel, I suppose. A. Yes, sir.

Q. As a result of that particular issue did you endeavour to find out whether there was a document in existence approving of your by-laws? A. No.

30

Q. You made no endeavour to ascertain that fact? A. No.

Q. Did you instruct any other person to do so? A. Not yet.

MR. WILSON: That is all, thank you.

HIS LORDSHIP: Q. Your main expense in a power company is the original capital expenditure? A. Yes, sir.

Q. The actual cost of operation is small? A. Yes, it is small.

Q. I suppose in connection with this claim your capital expenditure has been made, but the actual overhead cost of operation is small? A. Yes, sir.

MR. WILSON: May I ask a question, my Lord?

40

HIS LORDSHIP: Yes.

MR. WILSON: Q. That transmission line which served La Roche was serving many other customers, and had for many years? A. Oh, no.

Q. It had been erected when? A. The line is a tap-off—

Q. Oh, I am talking of the main transmission line that connected with the sub-transmission line for three-quarters of a mile in to La Roche? A. That is the main line.

Q. And that had been there for many many years prior to this contract? A. Yes, the main line had.

Q. So far as this particular contract is concerned you had no capital expenditure? A. Not on the main line.

HIS LORDSHIP: I was talking about the whole plant.

10 MR. WILSON: That is all, thank you.

RE-EXAMINED BY MR. ROBERTSON:

Q. You have a good many mines taking power? A. Yes, sir.

Q. What is your largest customer? A. Hollinger.

Q. What is the highest it takes? A. It averages 16,000 horsepower.

Q. You never had one take 20,000? A. No.

Q. This 20,000 figure which is in the contract I see is printed in. Is that your standard contract? A. Yes, that is our standard contract.

Q. You said something in a general way about your connection for 25 years here. 25 years ago which company were you with—the Northern Canada Power or the Northern Ontario Heat, Light and Power? A. I was with the Northern Light and Power.

Q. When was that? A. 25 years ago.

Q. When you came in you were with this organization at Haileybury or New Liskeard? A. Yes, sir.

Q. The Northern Ontario Light Heat and Power Company was incorporated a great many years ago? A. Yes, sir.

Q. Developing power on the Montreal River? A. Yes, sir.

Q. And its business, substantially, was to supply the Cobalt mines? A. Yes.

30 Q. And then in about 1910, when the Porcupine gold mine district opened up, the Canada Northern Power Company started? A. Yes, sir.

Q. They were a separate organization? A. Yes.

Q. But you were with the Northern Ontario Power Company? A. Yes, sir.

Q. And these lines that were put in, like the main transmission line coming from the Mattagami River development, that was done by the Northern Canada Power Company? A. Yes.

Q. And those two companies didn't amalgamate until some time after? A. No.

40 Q. In those days Mr. Allen was your General Manager of the Northern Light Heat and Power Company. A. Yes, sir.

Q. And Mr. J. H. Black was the Manager of the Northern Canada Power Company? A. Yes, sir.

Q. Separate offices and so on? A. Yes.

Q. And these power lines like the ones here, and the Quinze line also, were Northern Canada lines? A. Yes, sir.

*In the  
Supreme Court  
of Ontario.*

Plaintiff's  
Evidence.  
No. 9

Bailey  
Van Norman  
Harrison,  
Cross-  
Examination.

—continued

Plaintiff's  
Evidence.  
No. 9

Bailey  
Van Norman  
Harrison,  
Re-  
Examination.



*In the  
Supreme Court  
of Ontario*

—  
Plaintiff's  
Evidence.

No. 9

Bailey  
Van Norman  
Harrison,  
Re-  
Examination.

—continued

Q. And certain Montreal financial interests then first acquired the Canadian Northern? A. Yes.

Q. And then the Northern Ontario? A. Yes.

Q. Acquired the whole thing? A. Yes.

Q. And there has been changes in the setup since? A. Yes, sir.

HIS LORDSHIP: Q. That was in 1928? A. Yes, I think so.

MR. ROBERTSON: Q. I think your Company was first reorganized separately, and then we have it as it is here? A. Yes.

Q. The Quebec end was finally cut off? A. Yes, sir.

Q. There has been a lot of reorganization since that has had nothing to do with your work? A. Yes.

Q. And you finally became Manager of the whole Ontario operation? A. Yes.

Q. And the Quebec system is separate and under another Manager? A. No, I manage that too.

Q. Oh, I see. You are head of the whole thing? A. Yes, sir.

Q. My friend was asking you something about some by-laws, and he was asking you about section 189 of the Companies Act. Let me read it to you: "The company may pass by-laws regarding the control and management of its undertakings, its dealings with the public, the collection of tolls, charges, rates or levies for the public service given by the company, and for the uses, protection and care of its property while being used, enjoyed or otherwise subject to public use—" and that is the main part of the section. Dealings with the public, collection of tolls and so on. What do you know about by-laws of that kind? Are there any? A. I don't know anything about by-laws of that kind. I had in mind by-laws with our various municipalities, franchises—ten year franchises and so on.

Q. That would be a municipal by-law? A. Yes, sir.

Q. And not passed by the Company at all. A. They are passed by the municipalities.

Q. Do you know anything about whether the companies that were amalgamated in 1928 had any such by-laws? A. I don't know. Do you mean by-laws with the municipalities?

Q. No. I am speaking of whether or not the other companies passed such by-laws? A. That comes under our Secretary in Montreal.

Q. This is a Nesbitt Thompson organization? A. Yes, sir.

Q. Run from Montreal? A. Yes.

Q. Whether the other companies had by-laws or not you don't know anything about it? A. No, sir.

MR. ROBERTSON: I think that is all.

—(Witness retires).

MR. ROBERTSON: That is the case, my Lord.

HIS LORDSHIP: Defence.

30

40

## DEFENCE

JAMES EDWARD DAY, Sworn.

EXAMINED BY MR. WILSON: . . .

Q. You are a practising Solicitor in the City of Toronto? A. Yes, sir.

Q. When did you first become associated with La Roche Mines, Limited?

A. When Mr. Brown and those got interested. It was in 1930—December, 1930.

Q. In what way did you become associated with the Company? A. Solicitor for the men who went in and were interested in its financing, and then I became a Director and President of it.

Q. Give us the date you became Director and President of the Company?

A. The same date, in December of 1930. Will you allow me to take dates from the Minute Book?

Q. Yes, certainly? A. The 22nd of December, 1930. I was President first, and then in 1934 I become Managing Director as well.

Q. As President of the Company did you have anything to do with the negotiating of this contract, Exhibit 1? A. The power contract?

Q. Yes? A. No. I had to sign it. It was submitted to us. The Engineer recommended we get power. Mr. R. B. Brown who was putting up the money was the Managing Director, and Mr. Gray was the Engineer at the mine.

Q. Up to the time of the execution of the contract, the power contract, what was the extent of the work done on the properties of the Company?

A. There had been some surface work, and I think a little shallow shaft.

Q. Can you tell us how much money was actually expended in those operations down to the time of the power contract? A. Prior to the time I came in the financial statement showed there had been \$615,44 in labour, etc., but there were several thousands spent by the shareholders—around \$6,000.00 had been spent altogether.

Q. What expense did the Company have, if any, as a result of the power contract? A. It furnished power for the operation of—

Q. I think you misunderstand me. Did the Company have any expense in connection with the transmission line agreement? A. Yes, we had to supply the transmission line. We bought the land and paid for that. It was mentioned this morning that the deeds were not handed over. Well, that is a mistake. I think it was on the 29th of December, 1931, the deeds were sent.

MR. ROBERTSON: Q. Sent where? A. To your office.

Q. Deeds of what? A. The right-of-way. There is one of them on the table there.

HIS LORDSHIP: Q. They were sent where? A. To the Northern Ontario Power Company.

MR. WILSON: Q. Is that a duplicate of one of them? A. Yes, sir.

Q. There was more than one conveyance? A. Yes, they went through to the Martin property in the north, which is now in the new company, and then there was some other property we bought.

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of Ontario*

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Evidence.

No. 10  
James  
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Q. This, you say, is a conveyance of only part of the right-of-way? A. A conveyance of such part of the right-of-way as was on the La Roche right-of-way.

MR. WILSON: I will put this in as Exhibit 24.

EXHIBIT 24: Deed, La Roche Mines, Limited, to Northern Ontario Power Company, Limited.

Q. This simply covers the property originally owned by La Roche? A. Yes.

Q. That is the two mining claims referred to in the agreement with Sylvanite? A. Yes.

Q. And following that a further conveyance was forwarded to the Northern Ontario Power Company? A. That was of the Martin property.

Q. Does that take the right-of-way right to the main transmission line? A. There was some property to the north of that, and I see in my files I had a letter from the owner of that land in Hamilton sending the papers.

Q. That was the Harris Consolidated? A. Something like that.

Q. You got that and forwarded it to the Northern Ontario Power Company? A. They said they would not turn the power on until they got them, and we gave them those papers and they were satisfied and went ahead.

Q. Can you tell me in dollars and cents what it cost the La Roche Company to erect the transmission line? Was it approximately \$1,400.00? A. It will be in the Minute Book. Yes, it would be around that.

Q. That is for the construction of the sub-transmission line? A. Yes, sir.

HIS LORDSHIP: That doesn't include the land?

MR. WILSON: No, that is the actual expense of erection, my Lord.

WITNESS: The cost was \$1,487.01.

MR. WILSON: Q. Following the turning on of power on this property what development took place? A. Well, the Company went on with the sort of prospecting operations they were carrying on, and kept that on as long as they had any money.

Q. What was the nature of the operation—shaft sinking? A. Yes.

Q. Any levels opened up? A. Two, I think. I would like to refer to the Engineer's report. Perhaps this will answer that question for you: October 30, 200 foot shaft sunk and a cross-cut run to the main vein. Total cost about \$30,000.00.

Q. But that is prior to the power contract. Following the execution of the contract further development was carried on? A. Yes, but not very much because we closed down absolutely in May—the following May.

Q. May of 1932? A. Yes, and put a caretaker in charge.

Q. Were you, as the President, receiving Engineer's reports from time to time? A. Yes, while we had money, and while we were getting power; and the people who were putting up the money said everything must go into the ground, so after that most of the stuff came direct to me.

Q. What was the reason for closing down the property in 1932? A. We were broke. The Company had no money and could not get any money.

Q. What was the capitalization of this Company? A. I think it was 3,000,000 shares at \$1.00 each, of which 1,500,000 had been issued for the property.

Q. The financing was being carried on by the sale of these shares? A. They had tried to sell them. Mr. Roche had been handling this, and the result was they sold about 5,000 of the Company shares, and the total receipts from the sale of stock was \$5,124.00. It had not come in enough to pay the expenses. This was prior to Brown coming in.

Q. That was prior to the time you took over the presidency? A. Yes.

10 Q. Following that how was the Company financed? A. By an agreement by which the issue of capital stock was cut down by the original vendor handing us back 200,000 shares, and Mr. Brown had an option from the vendor on other shares. Before taking this option he had arranged with two companies, the Federal Company and the Buffalo Canadian, if he got the option, we were to put up some money. We were to retain the option on the vendor's stock which was at five cents. The first block of stock was at five cents, then twelve and a half, and then twenty-five cents.

20 Q. Did he exercise this? A. On the five cent stock. The Federal put up money on the five cent stock and so did the Buffalo Canadian. We didn't get the results we looked for—for which we were hoping. We began to see that the whole scheme was wrong. The work was done on the south end of the property and the goods were not there.

Q. When did the Brown option lapse? A. It lapsed in the Spring of 1932. We got behind. We were given an extension, and we made a change in which we allowed 100,000 shares to be sold for five cents to Buffalo Canadian and the Federal.

Q. Was the option still existing, under the extension, at the time you closed the property down? A. No.

Q. The property was closed down in May, 1932? A. Yes.

30 Q. Noranda didn't come into the picture until 1933? A. By May of 1932 we had to get a plant. Federal kept itself in good standing by selling the plant for some \$18,000.00

Q. You mean Federal turned over certain equipment and machinery as part payment on the option it had? A. Yes, and on May 2, 1932, Buffalo Canadian said it didn't want to put in any more money, put up any more money; and Federal gave notice they could not put any more money up. Then the last money we got was on May 10th when Buffalo Canadian said they would put up \$3,000.00 to continue the work through May and to pay up the debts. I got \$2,500.00 more from Mr. Wright to carry on.

40 Q. And when that money ran out the property shut down? A. Yes, and we served notice on these people that we had to have money or we could not run.

Q. What was the condition of the development at the time you closed down as indicated by the reports to you as President? A. We got a report from Mr. Gray—

Q. Who was he? A. The Engineer in charge. The Minute Book of La Roche, page 146, will tell exactly what work had been done. He pointed

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out that the first stage of the development justified a large expenditure, and the lateral underground work there had only begun. This was—

MR. ROBERTSON: Surely this is hardly evidence.

MR. WILSON: I think it is.

MR. ROBERTSON: Oh, go on.

MR. WILSON: Q. What steps were taken following the shut-down in May of 1932 by the Company to carry on? A. Well, our job was to try and get money. I personally carried on a good many negotiations. Mr. Gray reported he was doing that, and Mr. Brown was too. The Federal were too, and so was Buffalo Canadian. Nothing could be got by reason of the fact that the physical conditions of the property were such that it was not a likely thing to put your money into. Noranda had the property right next to us, and Mr. Brown and Mr. Murdock negotiated. Here is a map—

Q. This is a map showing the relationship between the Noranda property and your property? A. Yes, sir.

Q. The "LeR" represents the La Roche claims? A. Yes.

Q. And the "N" represents the Noranda claims? A. Yes.

Q. And the "M" is the Martin claim? A. Yes.

MR. WILSON: I will put this sketch in, my Lord.

EXHIBIT 25: Sketch showing the relationship of the Noranda property and the La Roche property. 20

Q. So Noranda had properties to the east and west of your property? A. Yes, Noranda had property to the east and to the west of us. They had money, and they could take our development and work it and be finding out a great deal about their properties at the same time. Finally we made a deal with Noranda.

Q. And as a result of that agreement Noranda did certain development work on the property? A. Yes, they went ahead and did a certain amount of work, and then they—

Q. To shorten this up, this work they did was in May and June of 1933? A. No, it was some time later than that. They first did some prospecting, and then they did some work. 30

Q. In June and July? A. Yes, and then they stopped. They wrote a letter giving their reasons why they stopped.

Q. What were the reasons?

MR. ROBERTSON: Oh, no, no.

WITNESS: They said—

MR. ROBERTSON: I object to their reasons.

HIS LORDSHIP: I don't think it is evidence.

WITNESS: They said the property by itself was of no use without the property to the north. 40

HIS LORDSHIP: I don't think it has much bearing on the actual contract.

MR. WILSON: Some of it may have significance, my Lord, in the application of the law.

WITNESS: What I found out, and what the Engineers found out, and what Noranda told us was that we didn't have a mine—veins we thought were

at the north were at the south. They said we should have the next property. I joined with some others in getting the Martin property.

MR. WILSON: Q. You say the Martin property was acquired, which was the property to the north? A. Yes.

Q. And in which was the direction of the vein? A. Yes.

Q. The Noranda option lapsed, and subsequently the Company entered into an agreement with Sylvanite. That was what date? A. It would be some time around October. It was in October of 1934 that it was confirmed.

10 Q. The original was June? A. Well, they make an agreement and they work on it, and there is no use in going to the shareholders for confirmation until after that. They agreed to do \$15,000.00 worth of work.

Q. Subject, or rather I should say subsequent to the termination of what you have called the Brown option the Company still had unissued treasury stock? A. Yes, sir.

Q. What efforts were made to sell the stock apart from the negotiations with Noranda and Sylvanite? A. It was put up—it was not a public issue—but it was put up to a great many promoters and mining men. It was put up to Mr. Wright and—

HIS LORDSHIP: Q. W. H. Wright? A. Yes, the purchaser of the Globe.

20 MR. WILSON: Q. And I believe these efforts were abortive? A. Yes, nobody could make a deal or be given the mine. Mr. Gray went to a lot of people about it, and so did Mr. Brown, and so did Mr. Day.

Q. And it finally resulted in the Sylvanite deal? A. Yes.

Q. At the time of the sale of the property to Delnite what was the financial position of the Company? A. We had no money.

Q. Did you have obligations? A. Yes, sir.

Q. To what extent? A. Several thousands.

HIS LORDSHIP: Q. The sale to Delnite was in pursuance of the Sylvanite agreement? A. Yes.

30 MR. WILSON: Q. Look at your documents there and tell us the position of the Company? A. We owed \$5,866.00 and we had \$20.00 in the bank.

Q. What was the position of the treasury? A. The Workmen's Compensation Board had judgment against us and actually seized our property and machinery, and I put up the money and paid them off.

Q. What was the amount of the claim? A. Three or Four Hundred Dollars.

Q. Give me the position of the treasury at the time? A. Treasury stock?

Q. Yes? A. I think we had a million shares.

40 Q. You have already told me that efforts were made to sell those unissued treasury shares? A. Yes.

Q. What was the total amount of money received by this Company as a result of the sale of shares during the period of its existence? A. There was some \$30,000.00 sold to—

Q. I think you have already mentioned the \$30,000.00. Apart from shares issued to the vendor what was the amount of cash received by the Company? A. Our balance sheet items, development and other expenditures, comes to \$52,500.00.

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of Ontario.*

—  
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No. 10

James  
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James  
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—continued

Q. Prior to the execution of the agreement between the Company and Sylvanite, which is Exhibit No. 8, did you have any discussion with the Sylvanite Company as to the power contract, Exhibit 1? A. No. There had been no trouble. We had an agreement with Noranda and Noranda went in and took the power. We didn't anticipate any trouble at all.

HIS LORDSHIP: The Power Company didn't make any trouble over Sylvanite.

MR. WILSON: They made certain suggestions in their letters that there was an obligation attached.

WITNESS: We were through.

Q. Referring to the Noranda situation. There is a letter here, Exhibit 3A, a letter signed by La Roche Mines Limited per J. E. McMahon, dated the 9th day of May, 1933. At that time what office did Mr. McMahon hold in the Company. A. A director, non-resident director, who I don't think had ever attended any meetings of the Company until later. He was not an officer. What is the date of that?

Q. The letter is dated May 9, 1933? A. That letter was not authorized, and I never heard of it or knew about it until it became a production in this case.

Q. You stated something about the Engineer's reports. What did they indicate? A. They indicated that the dip of the vein was struck. 20

Q. When the deal was made with Sylvanite were the properties involved simply the two original claims by La Roche? A. No, sir; Sylvanite knew as well as we did that the vein was dipping. Noranda wanted to buy the properties to the north and asked us to hold this open to see if they could get them. Sylvanite owned several properties to the north, and the Martin property was in between, and the La Roche property was at the bottom. The original offer simply included La Roche.

Q. The deal, as set out in Exhibit 8, shows that the property is comprised of the original La Roche property and the Martin claim? A. Yes. 30

Q. And how many claims of Sylvanite? A. Sylvanite 1, and Delnite own two properties to the north that were not in our contract. We could not sell them.

Q. Are you aware of how much money has been spent on the properties which ultimately comprised the claims belonging to Delnite? A. No. Do you mean the total amount of expenditure on them?

Q. Yes, do you know approximately the figure spent by Delnite to date? A. Yes, to July 31st last it had paid \$199,252.00.

MR. WILSON: That is all, thank you.

HIS LORDSHIP: Q. What do you mean by up to July 31st—when? A. 40 July 31st, this year.

Q. Had expended what? A. It paid into the Erie Canadian Company for stock and had expended out \$199,252.00.

Q. Power and developments and so forth? A. Yes, power, developments and everything. They put a new shaft in two hundred feet from the Martin line.

HIS LORDSHIP: Very well.

CROSS-EXAMINED BY MR. ROBERTSON :

Q. In Exhibit 13, a general map of the district, in looking at the connecting power line running down to the La Roche property I see there is a property marked here as the Quinze. I am told the property belongs to Mr. Harris' company, and is now the Ambassador Mines? A. Yes, sir.

Q. My instructions are you never got any conveyance or right-of-way across that property? A. I don't know. I have the files on it. I know the Liquidators undertook to sign it and turn it over.

10 Q. Was it anything more than this, that they would not object to the line going across, and it was from some Trustee or Liquidator who could not give it? Is that not all it was? A. I can tell you in a minute. Yes, they wrote a letter to the Northern Ontario and they said there would be no harm in the continuation of the construction across their claim until such time as arrangements could be made with the Company.

Q. You went on and built the line as stated? A. Yes, but that property is Delnite property now.

Q. Delnite never made any conveyance to the Northern Ontario? A. I don't know.

20 Q. Then your Company, the La Roche Company, put down shafts some distance? A. Yes.

Q. And when Delnite got the property they sunk the same shaft or shafts deeper? A. Yes, they did, a little deeper.

Q. Is it not several times deeper? Was it not about a hundred and twenty-five feet at the time Delnite got it? A. If it was, and I think it went four hundred and twenty-five feet recently, then they must have sunk it some three hundred feet.

Q. The Delnite work that has been done, money has probably been expended on the other La Roche claim? A. Oh, yes.

30 Q. And developments have been rather favourable? A. At the new section in the north near the Martin, yes. The other is abandoned.

Q. What is the present market price of those shares? We have the price in the contract that Sylvanite was getting, but what is the market price now. A. People buying La Roche stock—

Q. I mean Delnite? A. It was from ninety cents to a dollar.

Q. The Liquidator still holds 800,000 shares? A. Yes, but remember one thing about the Delnite stock is that its members can do nothing. La Roche's 800,000 shares cannot be sold, and Delnite will not sell theirs.

Q. And all this is while you get richer? A. Well, when the pool breaks look out.

40 Q. And it is now proposed to put up a mill because things have been so favourable. A. I believe so.

Q. Well, you are a Director? A. They are now sending me their reports, their working reports, and their plans, and they have decided to borrow \$250,000.00. Originally \$360,000.00 was what they were going on, which was represented as being sufficient to build a mill and so on. Now it is going to cost \$250,000.00 more. Sylvanite has undertaken the loan to the Company on bonds at eighty cents.

*In the  
Supreme Court  
of Ontario.*

—  
Defendants'  
Evidence,  
No. 10.

James  
Edward Day,  
Cross-  
Examination.

—continued



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Supreme Court  
of Ontario.*

—  
Defendants'  
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No. 10

James  
Edward Day,  
Cross-  
Examination.

—continued

Q. I notice in a letter my friend put in, a letter of March 29, 1935, from La Roche Mines to the Power Company, and written by you, you use this expression, referring to Delnite, and you refer to Delnite as "The wholly owned subsidiary of Sylvanite". That was hardly accurate? A. Was Delnite in existence at that time?

Q. Yes, because you refer to it in the letter? A. Erie Canadian would have been in my mind. It was wholly owned.

Q. Of course your Company knew in 1932 that Noranda was carrying on some operations, and that was by arrangement with you? A. Yes.

Q. And Mr. Mc Mahon was a Director of your Company? A. Yes. 10

Q. And Mr. McMahan lived at Timmins, quite nearby. A. Yes.

Q. You don't doubt he wrote the letter produced here, do you? A. I don't know.

Q. You don't doubt it? A. I rather do.

Q. You do? Do you know his signature? A. Yes.

Q. Well, take a look at this, and if you don't know say so? A. I won't swear to it.

Q. Do you really doubt that McMahan wrote that letter? A. I would like to know more about it. He is very much interested in this litigation and — 20

Q. Please answer my question. I want to know if you doubt the authenticity of that letter. A. No, because that would involve Noranda with a forgery and I would not like to think that.

Q. Do you doubt that? A. I don't think it is fair. I don't doubt that really. Otherwise it would be forgery, and Noranda would not be mixed up with a forgery.

MR. WILSON: It was put in by my friend for what it was worth. We are not denying it.

MR. ROBERTSON: That is all.

—(Witness retires). 30

MR. WILSON: That is the defence, my Lord.

MR. ROBERTSON: There is no reply, my Lord.

(ARGUMENT BY COUNSEL)

HIS LORDSHIP: I will reserve judgment in this case.

JUDGMENT RESERVED.

Certified, W. G. Buskard, Official Reporter, S.C.O.

No. 11

Judgment of Trial Judge

THE HONOURABLE MR. JUSTICE GREENE Thursday, the 28th Day of January, A.D. 1937.

In the Supreme Court of Ontario.

No. 11 Judgment of Trial Judge, 28th January, 1937.

This action coming on for trial on the 15th and 16th days of October, A.D. 1936, before this Court at the Sittings holden at the Court House, Haileybury, Ontario, for the trial of actions without a jury, in the presence of Counsel for the Plaintiff and the Defendants, upon hearing read the pleadings and hearing the evidence adduced and upon hearing what was alleged 10 by Counsel aforesaid, this Court was pleased to direct that this action do stand over for Judgment and the same coming on this day for Judgment,—

1. THIS COURT DOTH ORDER AND ADJUDGE that this action be and the same is hereby dismissed.

2. AND THIS COURT DOTH FURTHER ORDER AND ADJUDGE that the Defendants do recover from the Plaintiff their costs of this action forthwith after taxation thereof.

Judgment signed this 3rd day of February, A.D. 1937.

Entered J.B. 69, page 70, February 3, 1937. E.B.

D'Arcy Hinds, Registrar, S.C.O.

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No. 12

Reasons for Judgment of Trial Judge

Trial at Haileybury, October 15th and 16th, 1936, before Greene, J., without a jury.

No. 12 Reasons for Judgment of Trial Judge, 28th January, 1937.

The Plaintiff, Northern Ontario Power Company, Limited, supplies electric power to the district in Northern Ontario known as the Porcupine District. The Defendant Company on the 30th December, 1931, owned a mining property consisting of two mining claims, about two and a half miles south of the Town of Timmins in the Porcupine District and about three-quarters of a mile from the main transmission line belonging to the power 30 company. On that date the two companies entered into two contracts, the main one covering the sale of power and a collateral one dealing with the construction of the necessary power transmission lines from the power company's main line into the property of the mining company. Nothing turns on the "transmission line" agreement. The provisions of the power contract pertinent to the issues in this action are set out hereunder in full or paraphrased where the same may be conveniently and properly done;

"NORTHERN ONTARIO POWER COMPANY, LIMITED"

.....

"Subject to the following general conditions, and the schedule of prices 40 contained herein, Northern Ontario Power Company, Limited, hereinafter

In the  
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of Ontario.

No. 12  
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called "The Company" is hereby authorized and requested by the undersigned, hereinafter called "The Consumer" to connect its electric system with the wiring of the Consumer at a point on the boundaries of the latter's property convenient to Company's lines and to cause electric current to be there delivered during the period noted or any renewal or continuation thereof as provided and at the rate specified, which current, it is hereby agreed, shall be used by the Consumer only and only for the purpose hereinafter specified.

GENERAL CONDITIONS.

1. For service supplied under this contract, the Consumer agrees to pay the Company at its office at regular intervals as required by the Company, and at the rate and on the basis hereinafter stated xxxx" 10

.....

6. Provides that during the continuance of the contract no system of electricity other than that furnished by the Company shall be used on the premises providing the Company is able and ready to supply the same, except with the written consent of the Company.

8. The Company does not guarantee a constant supply of electricity, and will not be liable for any damages to the Consumer in consequence of its failure to supply electricity at any time or times nor be considered in default. This clause shall not be interpreted as giving the Company any right to arbitrarily interrupt or cease supplying service under this contract. 20

In case the Company shall be prevented from supplying, or the Consumer from taking, the power herein contracted for, by reason of Acts of God, King's enemies, fires, strikes or other acts beyond their respective control, all payments for power shall cease, and the Company shall be excused from furnishing power during such prevention, and the Consumer shall be excused from taking it, and both parties shall use all diligence to restore the service.

9. The right is expressly reserved to the Company to supply current for City or Municipal lighting, traction or purposes affecting the general public before the Consumer. 30

11. Provides for cancellation by either party on default of the other.

12. Provides that readiness of the Power Company to deliver shall constitute a valid tender of the power.

13. The benefits and obligations of this contract shall inure to and be binding upon the successors, survivors and executors or administrators, as the case may be, of the original parties hereto respectively for the full period of this contract, but this contract shall not be assignable by the Consumer except with the written consent of the Company, but such consent shall not be unreasonably withheld. 40

14. No representation, promise or agreement shall be binding upon either party unless the same shall be incorporated in this contract in writing before the same is signed and accepted except those made in writing by an executive officer of either party."

SPECIAL CONDITIONS

PERIOD OF CONTRACT

This agreement when executed shall extend for the mining life of the properties now or hereafter operated or owned or controlled by the Consumer in the Porcupine District."

AMOUNT OF POWER COVERED BY THIS INSTALLATION

The Consumer's initial installation will be approximately 500 H.P., for which the Company agrees to supply service; and the Consumer agrees to pay for at least a minimum quantity of 50 H.P. for the first year of this agreement. Further power will be supplied in accordance with clause (6).

PRICE:

- "\$4.63 per H.P. per month for each of the first 5,000 H.P.
- \$2.78 per H.P. per month for each of the next 5,000 H.P.
- \$1.85 per H.P. per month for each of the next 5,000 H.P.
- \$1.39 per H.P. per month for each of the next 5,000 H.P.

Contract limited to 20,000 H.P.; all less ten per cent. for prompt payment.

The power company admits that under the above contract it cannot compel the mining company to mine and take power for that purpose, but it does claim that under clause 6 whenever any mining work is done on the property requiring the use of electric power such power must be taken from it alone and that it is entitled to this advantage for "the mining life of the property."

Power was supplied for periods in 1932 and 1933. In May, 1932, La Roche Mines Limited had exhausted its ready money and no further power was taken until May, 1933, when the mining company wrote the power company authorizing it to supply electric power at the La Roche Mines for Noranda Mines Limited, to make an examination of such mines. The examination and prospecting of the property by Noranda Mines Limited did not lead to a sale of the property. On August 15th, 1934, La Roche Mines wrote the power company requesting it to supply power to the Sylvanite Gold Mines Limited as its agent to be used for work on the property, the mining company agreeing to pay the accounts for power. In pursuance of this request the power company resumed delivery of power and down to the date of the trial had continued to supply power to the property which power is used in the mining operations on the property. All the power supplied to the property for mining operations up to the date of the trial had been taken from the power company and there had been no default in payment for the same.

From the beginning of the contract until its money was exhausted, La Roche Mines Limited took and paid for power to the amount of ..... \$2,662.14  
 During the period of prospecting (May and June, 1933) Noranda Mines Limited paid for power ..... 1,036.27  
 After August 15th, 1934, up to January, 1936, the power company was paid for power supplied to the property the sum of \$12,106.17

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—continued

Since January, 1936, down to the trial, power has been supplied continuously to the property and paid for.

The mining company having expended its ready money in its operations entered into an agreement, dated 18th June, 1934, with Sylvanite Gold Mines Limited for the further development of its property. The purpose of the agreement is set forth in the last recital—"AND WHEREAS La Roche being desirous of financing the further development of its properties has negotiated with Sylvanite, as a result of which it has been decided to make this agreement." The agreement then provides for some exploratory work to be done by Sylvanite on the property, and paragraph 3 provides for the sale of the La Roche property, if requested by Sylvanite, to a new company with a capitalization of three million shares of which La Roche is to receive eight hundred and forty thousand shares in exchange for its property. The Sylvanite Company assigned its interest in this agreement to Erie Canadian Mines and later the agreement, with some alteration of details, was carried out. The La Roche property was vested in Delnite Mines Limited and the defendant company received eight hundred and forty thousand shares of Delnite's capital stock. 10

Upon the consumation of this transaction the defendant company notified the power company by letter dated November 30th, 1934, that it had sold its property and that it would be responsible no longer for power supplied to the property. In a long correspondence the defendant company made very plain its contention that by the sale of its property it had terminated the contract and that all its responsibilities under the contract were at an end. The power company made it equally plain that it did not accept this as the position and maintained that the contract was still in force. 20

In 1935 the defendant company went into voluntary liquidation and the power company filed a claim for damages for breach of contract in an unstated amount. The liquidator repudiated the claim in whole and this action was brought asking a declaration that the plaintiff is entitled to damages for breach of contract and fixing the amount of the claim at the sum of Five Hundred and Twenty-four Thousand, One Hundred and Sixty-three (\$524,163.-24) Dollars and Twenty-four cents. 30

This claim, which cannot be commended for its modesty, was explained in evidence as follows:

"225 horsepower continuous supply for two years during the development of the property . . . . . \$ 22,629.84

"435 horsepower for next twenty-three years based on the assumption that at the end of the first two years a mill with one hundred tons daily capacity would have been installed and that the mine would continue to operate for a further period of twenty-three years . . . . . 501,533.40 40

Total . . . . . \$524,163.24

It was suggested on behalf of the plaintiff that this was a reasonable estimate of the mining life of the property. There was no evidence which carried

any conviction to me that the above estimate was anything more than a pure guess.

The plaintiff further claims that its damages are measured by the contract price of the current without any deduction, as its power house being built and the transmission lines all erected, it saves nothing by not having to deliver the power.

10 It was argued strongly on behalf of the plaintiff that the voluntary liquidation by the defendant was a deliberate scheme for the sole purpose of putting an end to the power contract. The defendant company by an ordinary sequence of events arrived at the stage where it had no undertaking and was simply holding eight hundred and forty thousand shares of another company in its treasury as its sole asset. Under the circumstances it would seem to be perfectly natural for a company in such a condition to distribute its assets and surrender its charter. On July 18th, 1934, the mining company wrote to the power company as follows:

"We have made an agreement with Sylvanite Mines granting it a working option on our property and right to sell same to a new company, if they like the property. If this is carried out, our Company will surrender its charter. Have you any claim against us

20 "Our auditors' statement shows as an asset, Ontario Northern Power deposit \$5.00."

The letter of November 30th, 1934, already referred to, read as follows:

"As you know, we were unable to procure further funds for development, and our property was shut down for a long time until the Sylvanite was given the right to carry on exploratory work on the property, with a view of purchasing the property if satisfied. In pursuance of its rights, Sylvanite has brought about the formation of a new company Delnite Mines Limited, and pursuant to our agreement, the property has been sold to it, and we no longer have any ownership in the property.

30 "This new Company is Delnite Mines Limited, whose Managing Director is Mr. W. V. Moot, c/o the Sylvanite Gold Mines Limited, Buffalo. We asked Delnite Mines if it would take over the contract that we had with you, and we are advised that they did not care to do so, though they said they would send you a written acknowledgment of their liability to pay for any power that may be supplied by you in their operation of the property. If any power is used it will be used by the new Company by reason of its ownership of the property, and you will please take notice that Delnite Mines Limited and not our Company will be responsible.

"We are proceeding to distribute our assets and surrender our charter."

40 In my opinion there is nothing in the evidence nor the surrounding circumstances to justify a finding of bad faith on the part of the mining company.

The plaintiff pleads "It was an implied term of the said agreement that the said defendant should not during the mining life of the properties then operated, owned or controlled by it in the Porcupine District, dispose of the said properties, "which would mean that the mining company could never take power from any other source than this plaintiff for any of its operations in

*In the  
Supreme Court  
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No. 10  
Reasons for  
Judgment of  
Trial Judge,  
28th January,  
1937.

—continued

*In the  
Supreme Court  
of Ontario.*

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No. 12  
Reasons for  
Judgment of  
Trial Judge,  
28th January,  
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—*continued*

the Porcupine District. If such an implied term is read into the contract the facts would then be analogous to those dealt with in *Crediton Gas Company v. Crediton Urban District Council* (L.R. (1928) Ch. Div. 174). The Gas Company agreed with the municipality to light all the public lamps within the district "from and after the first day of September in every year up to the following first day of May inclusive." It was contended for the plaintiffs that the contract was intended to be perpetual. In the judgment Russell, J., said:

"It is true that the character of perpetuity attaches to the legal personality of each of the contracting parties, one being a statutory company and the other a public authority; but it is impossible in these days when limited liability is the general rule to say that for that reason a contract indefinite in point of time, by which a gas company secured a customer on particular terms, was intended to be permanent. 10

"I am of opinion that the nature of the contract involves an implication that either party can terminate it by notice."

In my opinion there was no implied term in the agreement as suggested by the plaintiff that the defendant should not dispose of its properties. If such was the case, an extraordinary situation might easily arise. It is common knowledge that mining companies in this district frequently do a considerable amount of development work on a mining claim without getting results sufficiently favourable to induce the company to continue its work. Consider the case of such a property changing ownership several times and finally years later developing into a substantial mine. The last owner then takes electric power in large quantities from some power producer other than the plaintiff. If the plaintiff's interpretation of this contract is correct then it could demand from any intervening owner operating under this contract damages equivalent to the value of the electric power used at such mining property subsequent to the ownership of such intervening owner. 20

The Porcupine District is an important part of one of the great mining areas of the world, namely Northern Ontario, where practically the whole country is being prospected, with innumerable claims examined, worked on and then abandoned. 30

It is difficult to believe that any such construction as that now put forward by the plaintiff could have been within the contemplation of the parties at the time the contract was made. The plaintiff in effect now says: "Once you contract with me you cannot during your whole corporate existence contract with anyone else for electric power in the Porcupine District."

The contract was drawn at a time when the plaintiff company had a monopoly of the sale of power in the Porcupine District. It was drawn by the plaintiff company on its standard printed form and it is difficult to avoid a strong suspicion that the mining company had to accept the contract or none at all. Under the circumstances it is only proper that the contract should be construed as strictly as possible against the plaintiff. 40

In *Hamlyn v. Wood*, L.R. (1891) 2 Q.B.D. 488, the defendants entered into an agreement in writing by which they agreed to sell to the plaintiffs and the plaintiffs agreed to buy all the grains made by the defendants for a

period of ten years. Four years after the contract was made the defendants sold their business and thereby precluded themselves from delivering grains for the balance of the period. The plaintiffs contended that it was an implied term of the agreement that the defendants would not by any voluntary act of their own prevent themselves from continuing the sale of the grains under it for a period specified and that the sale of their business was a breach of such implied term. In dealing with that contention Lord Esher M.R. said:

*In the  
Supreme Court  
of Ontario.*

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1937.

—continued

10 “I have for a long time understood that rule to be that the Court has no right to imply in a written contract any such stipulation, unless, on considering the terms of the contract in a reasonable and business manner an implication necessary arises that the parties must have intended that the suggested stipulation should exist. It is not enough to say that it would be a reasonable thing to make such an implication. It must be a necessary implication in the sense that I have mentioned . . . It seems to me that such an implication is tremendously strong, and one which is beyond all bounds. I cannot come to the conclusion that the defendants ever contemplated such a thing, or that the plaintiffs were entitled to suppose that they did so.”

Kay, L. J., in the same case said:

20 “In this case it seems to me very reasonable to conclude from the language used, and all the circumstances of the case, that all that either party intended was that, if the defendants should carry on business for ten years, they should sell their grains to the plaintiffs at the current prices to be ascertained as mentioned in the contract.”

(See also *Re Railway & Electrical Appliances Company L.T.*, (1888) 38 Ch. Div. 597 at P. 608).

30 In *Hotel and General Advertising Company v. Wiskendon* (1899) 15 T.L.R. 302 C.A. a hotel proprietor agreed upon the plaintiffs delivering 500 of their hotel tariff frames to hang them in his hotel for five years from the date of delivery and the plaintiffs agreed to a recommendatory notice of the hotel in 2,000 of their tariff frames. Two years after the frames were delivered the hotel proprietor died and his executors sold the hotel to a company who removed the frames. It was held that the contract was intended to last only as long as the hotel continued to be carried on by the particular hotel proprietor

40 In the case at bar there does not seem to be any necessary implication that the parties must have intended “that the defendant should not during the mining life of the properties then operated, owned or controlled by it in the Porcupine District dispose of the said properties.” The natural and reasonable view of the contract is that it is a personal one between the parties, probably compelling the defendant while the contract is in force to take from the plaintiff all the electric current used at all mining properties while owned, operated or controlled by the defendant. To say that the contract means that the mining company must not in any event dispose of any mining property once acquired is in the words of Lord Esher quoted above “beyond all bounds.”

The plaintiff relied on *Ogdens Limited v. Nelson* (L.R. (1905) A.C.



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No. 12  
Reasons for  
Judgment of  
Trial Judge,  
28th January,  
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—continued

109), and *Maritime National Fish Limited v. Ocean Trawlers Limited* (L.R. (1935) A.C. 504).

The facts in both these cases are readily distinguishable from the case before me. In the first one, *Ogdens Limited*, tobacco manufacturers, made an open offer to retail tobacco dealers, to distribute for four years the sum of \$200,000 per year amongst such of their customers in the United Kingdom as purchased direct from them. Nelson, a retail dealer, accepted the offer in writing and performed the obligations required of him until the manufacturers sold their business and went into voluntary liquidation. Lord Halsbury in his judgment said:

“I very much doubt whether in dealing with this contract we can get any light from other cases decided upon other forms of contract. I do not think the question here depends upon how much you can imply. That part of the contract upon which I rely, and on which the Court of Appeal relied, is that which is expressed . . . . Under these circumstances I construe this document without any reference to other documents. I confess I am very jealous of attempting to interpret one contract by another contract made under different circumstances. I look at this contract alone, and I cannot entertain a doubt that there was a breach of contract . . . .”

In the next case *Maritime National Fish Limited* chartered a steam trawler which could only operate with an otter trawl, from *Ocean Trawlers Limited* at a time when both parties knew that a Canadian Statute which was applicable made it an offence to use such a vessel except under license from the Minister of Fisheries. The Minister intimated that only three licenses would be granted and *Maritime National Fish Limited* which was operating five trawlers in all chose to take licenses in respect of three trawlers operated by them which did not include the trawler chartered from *Ocean Trawlers Limited*. In commenting on the judgment of the trial judge which dismissed the claim of the owners of the steam trawler against the charterer the judgment of the Privy Council is as follows:

“It seems that the learned Judge proceeded on the footing that the change of law was subsequent to the making of the contract, whereas it was in fact anterior to the agreement of 1932, under which the trawler was being employed at the time the license was refused.

“This judgment was unanimously reversed by the judges in the Supreme Court *En Banco*. The judges of that Court rightly pointed out that the discharge of a contract by reason of the frustration of the contemplated adventure follows automatically when the relevant event happens and does not depend on the volition or election of either party. They held that there was in this case no discharge of the contract for one or both of two reasons. In the first place they thought that the appellants when they renewed the charter in 1932 were well informed of the legislation, and when they renewed the charter at a reduced rate and inserted no protecting clause in this regard, must be deemed to have taken the risk that a license would not be granted. They also thought that if there was frustration of the adventures, it resulted from the deliberate act of the appellants in selecting the three trawlers for which they desired licenses to be issued.

In this case there was no "frustration" of the adventure by "deliberate act" of the mining company. Its funds were exhausted and its action in selling to another company has redounded to the benefit of the plaintiff. If the mining company had done nothing further when its treasury became depleted the power company could have made no complaint and it would not have received some \$13,000 for power which it has received between the time that the defendant's funds became exhausted and the trial of this action.

The plaintiff's action is dismissed with costs.

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*In the  
Supreme Court  
of Ontario.*

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No. 13  
Reasons for  
Judgment of  
Trial Judge,  
28th January,  
1937.

*—continued*

## No. 13

## Notice of Appeal

*In the  
Court of  
Appeal for  
Ontario.*

No. 13  
Notice of  
Appeal,  
10th February,  
1937.

TAKE NOTICE that the Plaintiff hereby appeals to the Court of Appeal for Ontario from the judgment pronounced herein by the Honourable Mr. Justice Greene on the 28th day of January, 1937, and asks that the said Judgment may be reversed and that Judgment should be entered in favor of the Plaintiff upon the following amongst other grounds:—

1. That the learned Judge at the trial erred in law in holding that the Appellant is not entitled to rank as a creditor of the Defendant Company in respect of its claim.

2. That in point of law the Appellant is entitled to damages from the Defendant Company and the Liquidator thereof for breach of the contract between the Plaintiff Company and the Defendant Company.

3. That the learned trial Judge erred in the construction which he placed on the expression "the mining life of the property" mentioned in the contract and in effect substituted therefor the words "the mining life of the Company."

4. That the term of the contract has not expired and the Defendant has repudiated the contract.

5. That by the terms of its contract the Defendant Company is bound to see that during the mining life of the property no other power is used than that supplied by the Plaintiff and the learned Judge at the trial should have so found accordingly.

6. That on the evidence the Defendant Company did not act in good faith in going into voluntary liquidation but did so for the purpose of escaping from the obligations of its contract with the Plaintiff and for no other purpose.

7. That there is an obligation on the Defendant Company not to part with its properties without providing for the disposal of the contract entered into with the Plaintiff and the learned Judge at the trial should have so found.

8. And upon other grounds appearing in the pleadings and proceedings at the trial.

AND TAKE NOTICE that in support of this appeal will be read the pleadings and other proceedings had and taken in this action, the evidence at the trial hereof, the Reasons for Judgment of the learned trial Judge, and formal Judgment complained of.

Dated this 10th day of February, A.D. 1937.

Joseph A. Legris, K.C., Haileybury, Ontario, Solicitor for the Plaintiff.

To the above-named Defendants;  
and to Messrs. Day, Ferguson, Wilson & Kelly,  
Federal Building, Toronto 2.

Solicitors for the Defendants.

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## No. 14

## Order of Court of Appeal

*In the  
Court of  
Appeal for  
Ontario.*

No. 14  
Order of Court  
of Appeal,  
20th July, 1937.

THE HONOURABLE  
THE CHIEF JUSTICE OF ONTARIO  
THE HONOURABLE  
MR. JUSTICE MIDDLETON  
THE HONOURABLE  
MR. JUSTICE MASTEN

Tuesday, the 20th  
day of July, 1937.

1. UPON MOTION made unto this Court on the 7th and 8th days of  
10 June, 1937, by Counsel on behalf of the Plaintiff, in the presence of Counsel  
for the Defendants, by way of appeal from the Judgment pronounced by  
The Honourable Mr. Justice Greene on the 28th day of January, 1937, dis-  
missing this action, upon hearing read the pleadings and proceeding in this  
action and the evidence adduced at the trial and the said Judgment, and  
upon hearing what was alleged by Counsel aforesaid, this Court was pleased  
to direct this appeal to stand over for judgment, and the same coming on this  
day for judgment;

2. THIS COURT DOTH ORDER that the said appeal be and the  
20 same is hereby allowed, and that the said Judgment of the 28th day of January,  
1937, be varied and as varied be as follows:

(1) THIS COURT DOTH DECLARE that under the contract be-  
tween the Plaintiff and the Defendant Company dated the 30th day of De-  
cember, 1931, the Defendant Company is under an obligation to the Plaintiff  
to see that during the continuance of the mining life of the properties in the  
pleadings and in the said contract mentioned, but not after the 30th day of  
December, 1941, no system of electric power other than that furnished by  
the Plaintiff shall be used on the said premises, provided the Plaintiff is able  
and ready to supply the same, and this Court doth order and adjudge the same  
accordingly.

30 (2) AND THIS COURT DOTH FURTHER DECLARE that the  
Defendant Company has repudiated the foregoing obligation, and that the  
Plaintiff is entitled to the damages resulting therefrom, and doth order and  
adjudge the same accordingly.

(3) AND THIS COURT DOTH FURTHER ORDER that pur-  
suant to the arrangement made between the parties it be and it is hereby re-  
ferred to the Master of this Court at Toronto to inquire and report the  
amount of the damages to which the Plaintiff is entitled as aforesaid having  
regard to the terms of this Judgment.

40 (4) AND THIS COURT DOTH FURTHER ORDER AND DE-  
CLARE that the Plaintiff is entitled to rank for damages as aforesaid in the  
distribution of the assets of the Defendant Company.

*In the  
Court of  
Appeal for  
Ontario.*

No. 14  
Order of Court  
of Appeal,  
20th July, 1937.

—continued

(5) AND THIS COURT DOTH FURTHER ORDER AND AD-  
JUDGE that the Plaintiff do recover from the Defendants its costs of this  
action, including the costs of this appeal, forthwith after taxation.

Entered O.B. 163, page 352,  
September 10, 1937. E.B.

D'Arcy Hinds,  
Registrar, S.C.O.

No. 15  
Reasons for  
Judgment of  
Court of  
Appeal,  
20th July, 1937.

### No. 15

#### Reasons for Judgment of Court of Appeal

BEFORE ROWELL, C. J. O., MIDDLETON AND MASTEN, J. J. A.

Argued 7th and 8th June, 1937.

Judgment of the Court delivered by Masten, J.A., 20th July, 1937. 10

MASTEN, J. A.—This is an appeal from the judgment of Greene, J.,  
dated January 28th, 1937, whereby he dismissed the plaintiff's action.

The respondent company is in process of voluntary winding up under  
Part 14 of the Ontario Companies Act, pursuant to a resolution in that be-  
half. The Respondent, Heard, is the Liquidator for the purpose of such wind-  
ing up. The appellant filed with the liquidator a claim asserting liability of  
the respondent to it. The claim was disallowed by the liquidator and in giving  
notice of such disallowance he required the appellant within thirty days to  
bring an action to establish its claim. In pursuance of such requirement the  
present action is brought for a declaration of the right of the plaintiff to be  
collocated as a creditor in the voluntary winding up of the defendant the La  
Roche Mining Company and for a reference to quantify its damages. 20

The appellant's claim arises out of a contract dated December 30th, 1931  
(Exhibit 1) for the supply of electric power by the appellant to the respon-  
dent company.

The contract purports to fix the duration of its existence by one of its  
special conditions which provides that it shall extend for the mining life of  
the properties then or thereafter operated or owned or controlled by the re-  
spondent in the Porcupine District.

The following provisions of the contract are relied upon by the parties 30  
in support of their respective contentions:

#### NORTHERN ONTARIO POWER COMPANY, LIMITED

“Subject to the following conditions, and the schedule of prices con-  
tained herein, Northern Ontario Power Company, Limited, hereinafter  
called ‘The Company’ is hereby authorized and requested by the under-  
signed, hereinafter called ‘The Consumer to connect its electric system  
with the wiring of the Consumer at a point on the boundaries of the lat-  
ter's property convenient to Company's lines and to cause electric cur-  
rent to be there delivered during the period noted or any renewal or con-  
tinuation thereof as provided and at the rate specified, which current, it 40

is hereby agreed, shall be used by the Consumer only and only for the purposes hereinafter specified.

GENERAL CONDITIONS

1. For service supplied under this contract, the Consumer agrees to pay the Company at its office at regular intervals as required by the Company, and at the rate and on the basis hereinafter stated: . . .

*In the Court of Appeal for Ontario.*

No. 15  
Reasons for Judgment of Court of Appeal,  
20th July, 1937.

6. Provides that during the continuance of the contract no system of electricity other than that furnished by the Company shall be used on the premises providing the Company is able and ready to supply the same, except with the written consent of the Company.

*—continued*

8. The Company does not guarantee a constant supply of electricity, and will not be liable for any damages to the Consumer in consequence of its failure to supply electricity at any time or times nor be considered in default. This clause shall not be interpreted as giving the Company any right to arbitrarily interrupt or cease supplying service under this contract.

In case the Company shall be prevented from supplying, or the Consumer from taking, the power herein contracted for by reason of Acts of God, King's enemies, fires, strikes or other acts beyond their respective control, all payments for power shall cease, and the Company shall be excused from furnishing power during such prevention, and the Consumer shall be excused from taking it, and both parties shall use all diligence to restore the service.

9. The right is expressly reserved to the Company to supply current for City or Municipal lighting, traction or purposes affecting the general public before the Consumer.

11. Provides for cancellation by either party on default of the other.

12. Provides that readiness of the Power Company to deliver shall constitute a valid tender of the power.

13. The benefits and obligations of this contract shall inure to and be binding upon the successors, survivors and executors or administrators, as the case may be, of the original parties hereto respectively for the full period of this contract, but this contract shall not be assignable by the Consumer except with the written consent of the Company, but such consent shall not be unreasonably withheld.

14. No representation, promise or agreement shall be binding upon either party unless the same shall be incorporated in this contract in writing before the same is signed and accepted except those made in writing by an executive officer of either party."

SPECIAL CONDITIONS.

PERIOD OF CONTRACT.

This agreement when executed shall extend for the mining life of

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*In the  
Court of  
Appeal for  
Ontario.*

No. 15  
Reasons for  
Judgment of  
Court of  
Appeal,  
20th July, 1937.

—continued

the properties now or hereafter operated or owned or controlled by the Consumer in the Porcupine district.

AMOUNT OF POWER COVERED BY THIS INSTALLATION.

The Consumer's initial installation will be approximately 500 H.P., for which the Company agrees to supply service; and the Consumer agrees to pay for at least a minimum quantity of 50 H.P. for the first year of this agreement. Further power will be supplied in accordance with clause (6).

PRICE:

\$4.63 per H.P. per month for each of the first 5,000 H.P.	10
\$2.78 per H.P. per month for each of the next 5,000 H.P.	
\$1.85 per H.P. per month for each of the next 5,000 H.P.	
\$1.39 per H.P. per month for each of the next 5,000 H.P.	

Contract limited to 20,000 H.P.; all less ten per cent, for prompt payment."

The appellant admits that under the above contract it cannot compel the respondent to mine and take power for that purpose, but it does claim that under clause 6 whenever any mining work is done on the property requiring the use of electric power such power must be taken from it alone and that it is entitled to this advantage for 'the mining life of the property'.

The appellant's contention is stated by it as follows:

"8. The substantial question on this appeal is whether the Defendant Company can by methods adopted get rid of the obligation of its contract. Having obtained service from the Plaintiff on a promise that the contract would continue for the mining life of the property and the further promise that during the continuance of the contract no system of electricity other than that furnished by the Plaintiff was to be used in the premises, can the Plaintiff free itself from the obligation by the device of exchanging its property for shares in another company which is to operate it and by itself going into voluntary liquidation.

"9. . . . That Plaintiff does not claim that the Defendant Company could not sell its property, nor does it claim that either the Defendant Company or anyone else was under obligation to continue to take electric power except as and to the extent provided in the special conditions. (Appeal Book p. 40 and 41, and clause 6 Appeal Book p. 37) (*Record, pages . . . .*) The Plaintiff does claim that for the mining life of the property the Defendant Company assumed the obligation to see that no system of electricity other than that furnished by the Plaintiff is used on the property.

"10. So long as Clause 6 of the contract was observed and the Defendant Company remained liable in case it should not be observed, the Plaintiff was not concerned with any attempted repudiation of the contract as set forth in the correspondence. An entirely new situation arose,

however, when the Defendant Company went into voluntary liquidation for the very definite purpose of getting rid of its contract obligation and required once for all that any claim should not be made against it before the distribution of all its assets in the winding up.

10       “11. The Plaintiff's claim does not rest upon any term to be implied, but upon the express terms of the contract as hereinbefore mentioned. It is the Defendant Company that seeks to imply a term limiting its contractual obligation not to the mining life of the property as the contract states, but to the time for which the Defendant Company chooses to remain bound.”

Prima facie the contract contains an express obligation on the part of the respondent to see that during the continuance of the mining life of the properties then owned by it no system of electricity other than that furnished by the appellant shall be used in the said premises provided the appellant is able and ready to supply the same. It is not suggested but that the appellant has up to the present time been able and ready to supply the requirements of the contract.

20       Hence it follows that unless the contentions of the respondent or some of them operate to defeat the appellant's prima facie right the appellant is entitled to a declaration that as the mining life of the properties still continues, the obligation created by the contract also continues and creates an existing liability on the part of the respondent.

I, therefore, proceed to consider and discuss the several arguments presented by the respondents in support of the judgment below.

30       After detailing the circumstances relied on, the respondent sets up (paragraph 5 in its memo) that the sale of the properties and the proceedings for a voluntary winding up have all been taken in good faith. I am ready to assume that this is the case. If the respondent's contention that it is under no liability to the appellant is well founded, it can, with perfect good faith, seek to have that question brought to a test in this Court. But good faith is not the crux of the matter. The sole question is whether the prima facie liability arising out of the contract is still existent. Good faith has nothing to do with the question.

The next suggestion (paragraph 6) is that in the circumstances the contract should be strictly construed as against the appellant. I agree with this contention but I have failed to find where its application aids the respondent.

Paragraph 7 of the Respondent's factum reads as follows:

40       “The Power Contract (Ex. 1) is essentially a personal contract between the Plaintiff and the consumer, La Roche Mines, providing for services to La Roche Mines Limited, and all the promises made by La Roche are on the assumption that it will be operating the mine and using power, as evidenced by the following reference to the agreement itself.”

I agree with the respondent's submission that this is a personal contract (whatever that means), but it is plain that it is not a contract for personal service. It is a contract between two corporations for the rendering by the appellant to the respondent of certain services, namely, the supplying of elec-



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trical power, and an agreement by the respondent to see that during the life of the mine the electric power required for its operation shall be taken exclusively from the appellant company.

I find nothing in the agreement to preclude the respondent from selling the property, and the appellant admits the right of the respondent to sell. Further, clause 13 above quoted manifestly contemplates that the contract here in question may be assigned and that the successor of the respondent shall be entitled to the benefits of it.

I find no adequate basis for implying as the basis of the contract a term that its duration shall continue only so long as the mine is operated by the respondent company. Such an implied term appears to me to contradict the express provision of the contract itself. 10

In his observation that the interpretation of other contracts affords little assistance I respectfully agree with the quotation of the learned trial Judge from *Hamlyn v. Wood* (1891) 2 Q.B.D. 488, and to that I would add and adopt the statement of Scrutton J. in *Lazarus v. Cairn Line of Steamships* (1912) 28 T.L.R. 244, where he says:

“I was referred by each side to a number of cases in which, in somewhat similar states of fact, contracts had or had not been implied, and defendants had or had not been held liable. I respectfully sympathise 20 with the protests of Lord Esther and Lord Justice Bowen in *Hamlyn v. Wood* (7 *The Times* L.R., 731; (1891) 2 Q.B. 488) against being compelled to examine numerous cases on other contracts. But as counsel have advised their clients on the faith of reported decisions of the Court of Appeal and House of Lords, a Judge of first instance can hardly relieve himself of the duty of seeing whether the view he takes of a particular contract is consistent or inconsistent with the views that the superior tribunals have taken of similar contracts, and I have carefully considered the numerous cases cited to me to see what assistance I can get from them. I read them as deciding: (1) that the first thing to consider is the ex- 30 press words the parties have used; (2) that a term they have not expressed is not to be implied because the Court thinks it is a reasonable term, but only if the Court thinks it is necessarily implied in the nature of the contract the parties have made; (3) that where there is a principal subject matter in the power of one of the parties, and an accessory or subordinate benefit arising by contract out of its existence to the other party, the Court will not, in the absence of express words, imply a term that the subject matter shall be kept in existence merely in order to provide the subordinate or necessary benefit to the other party; (4) but that where there is an express term requiring 40 the continuance of the principal subject matter, or giving the plaintiff a right to a continuing benefit, the Courts will not imply a condition that the plaintiff’s right in this respect shall cease on certain events not expressly provided for.”

Out of respect for Mr. Wilson’s able argument I have considered all the cases cited by him and some others, but without receiving much assistance.

This appeal must be decided on the provisions of the contract here in question. I am clear however that the present appeal does not fall within the third category of cases mentioned by Scrutton, J., because the right of the appellant is not an accessory or subordinate benefit. Also I think this contract does fall within his fourth category illustrated and supported by the cases of *Turner v. Goldsmith* (1891) 1 Q.B. 544; *Ogden v. Nelson*, 1905 A.C. 109, and *Reigate v. Union Manufacturing Co. et al* (1918) 1 K.B. 592,

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Further I am of opinion that the principle illustrated by *Maritime National &c., v. Ocean Trawlers*, 1935 A.C. 524, applies here and makes it plain  
10 that the respondent cannot by voluntarily committing *Hari Kari* absolve itself from a contractual liability. See also the case of *Midland Counties & Atwood* (1905) 1 Ch. 357, holding that a voluntary winding up does not operate to discharge a contract even with a servant of the company.

—continued

Section 59 of the Public Utilities Act, R.S.O. (1927) Cap. 249, makes applicable to the appellant company mutatis mutandis Section 22 of that Act. Section 22 reads as follows:

“The Corporation may, from time to time and upon such terms as may be deemed advisable, enter into contracts for the supply of a public utility to any person for any period not exceeding ten years.”

20 The respondent contends that the provisions of the contract in question are in breach of the statute and render the contract wholly void. I am not of that opinion, but I do think that by the statute the appellant is limited to a period of ten years in the exercise of its power to contract for the supply of electric power and I point out in support of the validity of the contract that the life of the mine may be less than ten years.

Mr. Robertson in his reply argued that Section 22 was enabling and not restrictive; that the Northern Ontario Light & Power Co. Limited (one of the companies which amalgamated to form the appellant company) was incorporated in 1911 with powers to contract unlimited in time and that Section  
30 22 above quoted was first enacted in 1913, and does not purport to take away any powers which the Northern Ontario Light & Power Company then possessed.

The Charter of the appellant is dated December 20th, 1928, and provides for the amalgamation of the NORTHERN ONTARIO LIGHT & POWER COMPANY, LIMITED, and NORTHERN CANADA POWER LIMITED, as a Corporation under the name of:

NORTHERN ONTARIO POWER COMPANY, LIMITED.

for the following purposes and objects, that is to say:  
(enumerating them)

40 The purposes, objects and powers so stated are express and do not include an exemption from the provision of Section 22 of the Public Utilities Act.

The Charter of the appellant was therefore in my opinion taken subject to the provisions of Section 22 of the Public Utilities Act, and the duration of the contract must be limited to ten years from December 30th, 1931.

The last point urged by Mr. Wilson on behalf of the respondent is that

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the plaintiff's claim is not provable against the liquidator in the winding-up of the company. This contention is based on Section 212 of the Companies Act, R.S.O. Cap. 218, which provides as follows:

“For the purpose of proving claims, sections 25, 26 and 27 of The Assignments and Preferences Act shall mutatis mutandis apply except where the word ‘judge’ is used there shall be substituted for it the words “master or local master mentioned in section 213’.”

As pointed out by Mr. Robertson the answer to this contention is that under Section 201 of the Ontario Companies Act by Clause A: “The property of the corporation shall be applied in satisfaction of all its liabilities *pari passu*”. The term liabilities is a broad word and includes the damages to which the appellant is entitled on repudiation by the respondent of the contract here in question. 10

The provisions of Section 212 as above quoted relate only to procedure. As stated in the section itself the reference to The Assignments and Preferences Act is not with regard to the substantive right but “for the purpose of proving claims”, that is for the purpose of procedure.

In the case of The Assignments and Preferences Act the only claim that can be proved is a debt. In the Voluntary Winding-Up Act the claim which may be proved is in respect to a liability, but the method of procedure for instituting and supporting the claim is identical under the two Acts. I am, therefore, of opinion that the claim for damages on the part of the appellant is maintainable, that the judgment below must be set aside and that in lieu thereof judgment should be issued declaring, first, that the respondent is now under an obligation to see that during the continuance of the mining life of the properties in the pleadings mentioned, but not after 30th December, 1941, no system of electricity other than that furnished by the appellant shall be used on the said premises provided the appellant is able and ready to supply the same; second, a declaration that the respondent has repudiated the foregoing obligation and that the appellant is entitled to the damages resulting therefrom; third, pursuant to the arrangement made between the parties it is referred to the Master at Toronto to inquire and report the damages which the appellant is entitled having regard to the terms of this judgment. 20 30

The appellant will be entitled to the costs here and below.

ROWELL, C. J. O.—I agree.

MIDDLETON, J. A.—I agree, and have nothing to add.

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## No. 16

**Order Allowing Security and Admitting Appeal by Plaintiff**

THE HONOURABLE  
MR. JUSTICE FISHER

Tuesday, the 5th  
day of October, 1937.

*In the  
Court of  
Appeal for  
Ontario.*

No. 16  
Order Allowing  
Security  
and Admitting  
Appeal by  
Plaintiff,  
5th October,  
1937.

Upon the application of the above-named Plaintiff for an Order allowing the security of the Plaintiff on its appeal to His Majesty in His Privy Council from the Judgment of the Court of Appeal for Ontario pronounced herein on the 20th day of July, 1937, in the presence of Counsel for the Defendants, upon reading the Pleadings and proceedings herein, the Order of the Court of  
10 Appeal herein dated the 20th day of July, 1937, and the Reasons for Judgment of the Court of Appeal, the Affidavit of Bailey V. Harrison, filed, and the Certificate of Payment into Court of the sum of \$2,000.00 and upon hearing what was alleged by Counsel aforesaid;

1. IT IS ORDERED that the said sum of \$2,000.00 paid into Court by the Plaintiff as security that it will effectually prosecute its appeal to His Majesty in His Privy Council from the said Judgment of the Court of Appeal for Ontario and pay all costs and damages that may be awarded in case the Judgment appealed from is affirmed or in part affirmed be and the same is hereby approved and allowed;

20 2. AND IT IS FURTHER ORDERED that an appeal by the Plaintiff herein to His Majesty in His Privy Council from the said Judgment of the Court of Appeal for Ontario be and the same is hereby admitted;

3. AND IT IS FURTHER ORDERED that the costs of this application be costs in the said appeal.

Entered O.B. 164 pages 382-3  
October 6, 1937. H.F.

D'ARCY HINDS,  
Registrar, S.C.O.

No. 17

*In the  
Court of  
Appeal for  
Ontario.*

**Order Allowing Security and Admitting Cross-Appeal by Defendants.**

No. 17.  
Order Allowing  
Security  
and Admitting  
Cross-Appeal  
by Defendants,  
15th November,  
1937.

THE HONOURABLE  
MR. JUSTICE FISHER  
In Chambers.

Monday, the 15th  
day of November,  
A.D. 1937.

Upon the application of the Defendants and upon reading the pleadings and proceedings in the Action, the Judgment of the Court of Appeal for Ontario, delivered on the 20th day of July, 1937, the Order of the Honourable Mr. Justice Fisher, dated the 5th day of October, 1937, admitting an appeal therefrom to His Majesty in his Privy Council by the Plaintiff, and the affidavit of F. L. Heard filed, and upon hearing Counsel for the Plaintiff, and it appearing that the Defendants desiring to cross-appeal have paid into Court \$2,000.00 as appears by the Certificate of Payment filed. 10

1. IT IS ORDERED that the sum of \$2,000.00 paid into Court by the Defendant as security that they will effectually prosecute their appeal by way of cross-appeal as against the Plaintiff to His Majesty in his Privy Council from the said Judgment of the Court of Appeal for Ontario, and pay all costs and damages that may be awarded in case the Judgment appealed from is affirmed or in part affirmed be and the same is hereby approved and allowed.

2. AND IT IS FURTHER ORDERED that an appeal by the Defendants by way of cross-appeal to His Majesty in His Privy Council from the said Judgment of the Court of Appeal for Ontario, be and the same is hereby admitted. 20

3. AND IT IS FURTHER ORDERED that the Appeal by the Plaintiff and the appeal by the Defendants by way of cross-appeal as aforesaid be and the same are hereby consolidated and that they do proceed as one consolidated appeal on the record printed for the appeal by the Plaintiff, each party to the said appeals being at liberty to file one case in the said consolidated appeal.

4. AND IT IS FURTHER ORDERED that the costs of the said application shall be costs in the appeal. 30

Entered O.B. 165 pages 16-17  
November 15, 1937. H.F.

D'ARCY HINDS,  
Registrar, S.C.O.

## PART II.—EXHIBITS.

## Exhibit 14

(Defendants' Exhibit)

Copy of Letters Patent, Northern Ontario Power Company,  
Limited, 20th December, 1928

NORTHERN ONTARIO POWER COMPANY LIMITED

LETTERS PATENT

PROVINCE OF ONTARIO

December 20th, 1928.

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

TO ALL TO WHOM THESE PRESENTS SHALL COME:

GREETING:

WHEREAS the Companies Act provides that any two or more corporations to which the said Act applied having the same or similar objects within the scope of the said Act may, in the manner herein provided, amalgamate and may enter into all contracts and agreements necessary to such amalgamation:

- 20 AND WHEREAS it is provided that the Corporations proposing to amalgamate any enter into a joint agreement for the amalgamation prescribing the terms and conditions thereof, the mode of carrying the same into effect and stating the name of the new corporation, the names, callings and places of residence of the first directors thereof and how and when the subsequent directors shall be elected, with such other details as may be necessary to perfect the amalgamation, and to provide for the subsequent management and working of the corporation and, in cases of companies, the number of shares of the capital, the par value of each share and the manner of converting the share capital of each of the companies into that of the new Company:

- 30 AND WHEREAS it is further provided that, upon complying with the conditions therein contained, the several corporations by their joint petition may apply to the Lieutenant-Governor for Letters Patent confirming the said agreement and on and from the date of the said Letters Patent the Corporation shall be deemed and taken to be amalgamated and to form one corporation by the name in the Letters Patent provided and the corporation so incorporated shall possess all the property, rights, privileges and franchises and be subject to all the liabilities, contracts, disabilities and duties of each of the corporations so amalgamated;

*In the  
Supreme Court  
of Ontario.*

Exhibits.  
Ex. 14.

Copy of  
Letters Patent,  
Northern  
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Company  
Limited,  
20th, December,  
1928.

*In the  
Supreme Court  
of Ontario.*

—  
Exhibits.  
Ex. 14.

Copy of  
Letters Patent,  
Northern  
Ontario Power  
Company  
Limited,  
20th. December,  
1928.

—continued

AND WHEREAS by the said The Companies Act it is further provided that the Provincial Secretary may, under the seal of his office, have, use, exercise and enjoy any power, right or authority conferred by the said Act on the Lieutenant-Governor;

AND WHEREAS NORTHERN ONTARIO LIGHT AND POWER COMPANY LIMITED, incorporated under the Ontario Companies Act by Letters Patent bearing date the twenty-third day of February, A.D. 1911, and NORTHERN CANADA POWER, LIMITED, incorporated under the said Act by Letters Patent bearing date the fifth day of November, A.D. 1919, are valid and subsisting corporations having the same or similar objects;

10

AND WHEREAS the said Corporations have entered into a joint agreement for their amalgamation and by their joint petition in that behalf the said Corporations have prayed for the issue of Letters Patent confirming the said joint agreement;

AND WHEREAS it has been made to appear that the said Corporations have complied with the conditions precedent to the grant of the desired Letters Patent and that the said undertaking come within the scope of the said Act;

NOW THEREFORE KNOW YE that under the authority of the hereinbefore in part recited Statute, I, Lincoln Goldie, do by these Letters Patent hereby confirm their joint agreement for the amalgamation of and DO HEREBY AMALGAMATE the said NORTHERN ONTARIO LIGHT & POWER COMPANY, LIMITED, and NORTHERN CANADA POWER, LIMITED, as a Corporation under the name of:

20

NORTHERN ONTARIO POWER COMPANY, LIMITED,

for the following purposes and objects, that is to say:—

- (a) To carry on the business of light, heat, power and water company in all its branches and to produce and convert heat, light and power from hydraulic, pneumatic or other energy or from gas or otherwise;
- (b) To purchase, lease or otherwise acquire and to construct, erect, operate and maintain dams and other necessary works, machinery, plant, apparatus and appliances connected with the generation, accumulation, distribution, supply and sale of electricity and other means of developing light, heat, and power and to generate, accumulate, distribute, supply and sell the same and to undertake and enter into contracts and agreements for the lighting of municipalities, buildings and other places and for the supply of light, heat and motive power for any or all public or private purposes;
- (c) To construct, maintain, and operate all works and things necessary or convenient for obtaining, storing, selling, delivering, measuring and distributing water;
- (d) To construct, maintain, manage, carry out or control and to purchase, lease or otherwise acquire, and to hold, use, sell, lease or otherwise dispose of any lands, works, mains, machinery, roads, ways, bridges, reservoirs, watercourses, wharves, manufactories, ware-

30

40

houses, electrical works, shops, stores and other works and conveniences which may seem capable of being used or operated in connection with any part of the Company's undertaking for the time being or calculated, directly or indirectly, to benefit the company; and to equip, maintain and operate by electric, hydraulic or other mechanical power, all works belonging to the Company or in which the Company may be interested and to contribute to, subsidize or otherwise assist or take part in the construction, improvement, maintenance, working, management, carrying out or control thereof;

- 10 (e) To construct, maintain or operate lines of wires, poles, tunnels, conduits and other works and to conduct, store, buy, sell, contract for, dispose of and distribute any and all hydraulic electric or other mechanical power and with such lines, wires, poles, conduits, and other conductors or devices to conduct, convey, furnish or receive such electricity or other power or energy to and from any company or companies, person or persons;
- (f) To construct, acquire and operate railways, tramways, telegraph and telephone lines and other means of communication on lands owned or controlled by the Company and for the purposes of the Company only;
- 20 (g) To purchase or otherwise acquire and undertake all or any of the assets, business, property, privileges, contracts, rights, obligations, and liabilities of any company, society, partnership or persons carrying on any part of the business which the Company is authorized to carry on or possessed of property suitable for the purposes of the Company or of any company in which the Company holds shares, bonds, debentures, debenture stock or other securities and, subject to the provisions of the Companies Act, to pay for the same in cash or in shares or securities or any other consideration and to carry on the business of any such company, society, partnership or person whose assets are so acquired;
- 30 (h) To manage, promote, control and act as fiscal or financial agent for or on behalf of any company or undertaking for such remuneration as may be agreed upon and, for that purpose, to appoint and remunerate any attorneys, accountants or other experts and agents; and
- (i) To manufacture, buy, sell, and deal in lumber, timber, pulpwood and paper and all products thereof.

40 THE CAPITAL of the Company to be divided into twenty-five Thousand preferred shares of the par value of One Hundred dollars each and Five Hundred Thousand common shares without any nominal or par value.

THE HEAD OFFICE of the Company to be situated at the Town of New Liskeard, in the District of Temiskaming and Province of Ontario; and

THE FIRST DIRECTORS of the Company to be Arthur James Nesbitt and Peter Alfred Thomson, financiers; Edgar Reginald Parkins, Advocate; James Blain Woodyatt, Manager; and Lewis Clark Haskell, Secretary, all of the City of Montreal, in the Province of Quebec.

*In the  
Supreme Court  
of Ontario.*

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—continued



*In the  
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—continued

AND IT IS HEREBY ORDAINED AND DECLARED that the said Company shall be subject to the provisions of Part XIII of the Companies Act and that Section 193 of such Act shall be applicable to the Company; PROVIDED, however, that sub-section 3 of Section 68 of the Railway Act shall not apply to any expropriation by the Company and in lieu thereof the following provision shall apply: THE BOARD, before approving such map and location, may require evidence as to the nature and character of the work proposed to be constructed, and may make such changes and alterations therein as it may deem expedient, and upon being satisfied therewith shall signify its approval upon the map, or the Board may refuse to approve such map and location, 10  
in which case the Company shall not be entitled to exercise the right of expropriation;

AND IT HEREBY FURTHER ORDAINED AND DECLARED THAT:—

(1) The holders of said preferred shares shall be entitled to receive out of the moneys of the Company applicable to the payment of dividends, when and as declared by the Board of Directors, dividends at the rate of six per centum (6%) per annum, and no more, on the amount for the time being paid thereon; said dividends to accrue and be cumulative from and after the thirtieth day of June, A.D. 1928, and shall be payable on the twenty-fifth day of January, A.D. 1929, and quarterly thereafter on the twenty-fifth days of 20  
April, July, October and January in each year to preferred shareholders of record on the last day of the month preceding the payment of such dividend, and no dividend shall be declared, paid or set apart upon other stock of the Company unless all accrued and cumulative dividends upon the said preferred shares shall have been paid or set apart and the current instalment of dividends on the preferred shares shall have been declared and paid or set apart;

(2) In the event of the winding up or dissolution of the Company, whether voluntary or involuntary, or for reorganization or otherwise, or upon any distribution of capital, the holders of preferred shares shall be entitled to receive out of the assets of the Company, before any payment or distribution is made to the holders of any other class of stock the capital amount paid upon the preferred shares held by them respectively, plus all cumulative dividends at the rate of six per centum (6%) per annum which have been accrued and remained unpaid, whether or not declared, and whether or not there be profits sufficient to pay such dividends, and in the event that such liquidation, dissolution or winding up being voluntary and not necessitated by the bankruptcy or insolvency of the Company in addition to the foregoing sum a premium of ten per centum (10%) of the par value of said preferred shares, if fully paid up; or of the amount paid up thereon, if only 30  
partly paid up; after payments as aforesaid to the holders of the said preferred shares, the remaining assets and funds of the Company shall be divided amongst and paid to the holders of the other shares, in accordance with their rights; 40

(3) The Company shall have the right at any time and from time to time to purchase all or any of the outstanding preferred shares at or under

the redemption price hereinafter mentioned and/or to redeem all or any of the outstanding preferred shares at One Hundred and Ten per centum (110%) of the par value thereof if fully paid up or of the amount paid up thereon, if only partly paid up, plus accrued and unpaid dividends to the date fixed for redemption; if the Company desires at any time to redeem less than all the outstanding preferred shares, the shares to be redeemed shall be selected in such manner as may be prescribed by the Directors of the Company; not less than sixty (60) days' notice in writing of the redemption of any such preferred shares shall be given by mail directed to the registered holders thereof at the last address of such shareholder as it appears in the books of the Company, or in the event of the address of such shareholder not so appearing then at the last known address of such shareholder, specifying the date and place of such redemption; if notice of any such redemption be given by the Company in the manner aforesaid and an amount sufficient to redeem the preferred shares called for redemption at the redemption price above mentioned be deposited with the Company's transfer agents or bankers or at any other place specified in the notice on or before the date fixed for such redemption, dividends on the preferred shares so called for redemption shall cease to accrue after the date so fixed for redemption and the holders of such preferred shares so called for redemption—shall thereafter have no rights in or against the Company and no other right except upon surrender of certificates for preferred shares so called for redemption to receive payment of the redemption price out of the money so deposited; preferred shares purchased or redeemed by the Company hereunder shall be and be deemed to be cancelled and upon purchase by or for the Company of any such preferred shares or upon payment or deposit by the Company of moneys for the redemption in the manner hereinabove provided, the capital stock of the Company and the authorized amount of such preferred shares shall be *ipso facto* reduced by an amount equivalent to the aggregate par value of the preferred shares so purchased or called for redemption; provided that the Company shall not redeem and/or purchase any preferred shares less than the total amount then outstanding while the Company is in default in respect of the payment of preferential dividend;

(4) A holder of the said preferred shares shall have the right at any time up to fifteen days before the date specified in any notice as the date of redemption of preferred shares held by him to convert the whole or any number of such preferred shares into common shares without nominal or par value of the Company at the rate of two (2) such common shares without nominal or par value for each outstanding preferred share held by him and offered for conversion, and the Company shall keep available for conversion unissued common shares without nominal or par value in its capital stock sufficient to permit conversion of all preferred shares from time to time outstanding;

(5) A holder of preferred shares desiring to convert such shares into common shares without nominal or par value shall present the certificate representing the preferred shares which he desires to convert as aforesaid to the Company or to its Transfer Agent named on the preferred share certifi-

*In the  
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cate together with a written notice exercising his right to convert such shares and shall surrender such certificate, endorsed in blank for transfer, and shall pay any necessary transfer tax and in exchange therefor shall be entitled to receive from the Company or its Transfer Agent certificates for common shares without nominal or par value at the rate aforesaid; if less than all of the preferred shares represented by any certificate are to be converted the holder shall be entitled to receive a new preferred share certificate representing the shares comprised in the original certificates which are not to be converted; any preferred shares converted hereunder shall be deemed to be redeemed and shall be cancelled;

(6) All common shares without nominal or par value issued with respect to any conversion of preferred shares shall be deemed to be fully paid and non-assessable and the holder of such shares shall not be liable to the Company or its creditors in respect thereof;

(7) No holder of shares of the capital stock of the Company of whatsoever class shall have any right of subscription to any shares or to any issue of securities convertible into shares, unless and except as rights of subscription thereto may be extended to any such shareholder by the Board of Directors in its discretion; and

(8) The Common Shares without nominal or par value shall be subject to the prior rights and privileges of the Preferred Shares as set out above; AND, subject to the provisions of Part VII of the Companies Act, IT IS HEREBY FURTHER ORDAINED AND DECLARED that the Company may pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares, debentures or other securities of the Company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares, debentures or other securities of the Company; PROVIDED, however, that the said commission shall not exceed twenty-five per centum of the amount realized upon the sale of such shares, debentures or other securities;

AND IT IS HEREBY FURTHER ORDAINED AND DECLARED that the Company may hold meetings of its shareholders, directors and executive committees (if any) at any place other than the head office either within or without the province of Ontario;

AND IT IS HEREBY FURTHER ORDAINED AND DECLARED that the by-laws set out in schedule "c" to the said amalgamation agreement shall be the by-laws of the Company until such time as they shall be repealed or amended.

THE CAPITAL of the Company shall be at least equal to the sum aggregate par value of all issued shares having par value, plus the aggregate amount of consideration received by the Company for the issuance of shares without par value. plus such amounts as, from time to time, by by-law of the Company, may be transferred thereto, a certified copy of the contract or by-law fixing the amount of consideration received by the Company for the issuance of shares without par value to be filed forthwith in the Office of the Provincial Secretary; and the Company may issue and may sell its authorized shares without par value from time to time in the absence of fraud in the

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transaction for such consideration as from time to time may be fixed by the Board of Directors.

IN TESTIMONY WHEREOF we have caused these Our Letters to be made Patent and the Great Seal of Our Province of Ontario to be hereunto affixed.

WITNESS: The Honourable William Donald Ross,  
Lieutenant-Governor of Our Province of Ontario.

At Our Government House, in Our City of Toronto, in Our said Province, this twentieth day of December in the year of Our Lord, one thousand, nine hundred and twenty-eight, and in the nineteenth year of Our Reign.

10 BY COMMAND.

L. Goldie,  
Provincial Secretary.

*In the  
Supreme Court  
of Ontario.*

Exhibits.  
Ex. 14.  
Copy of  
Letters Patent,  
Northern  
Ontario Power  
Company  
Limited,  
20th, December,  
1928.

—continued

### Exhibit 24

(Defendants' Exhibit)

## Deed of Right-of-Way, La Roche Mines Limited, to Northern Ontario Power Company, Limited

### LAND TITLES ACT

I, LA ROCHE MINES LIMITED (No Personal Liability)  
(hereinafter called the owner)

20 the registered owner of the Mining Claim H. R. 1001, in the Township of Deloro,  
lands registered  
in the Land Titles Office at Cochrane  
as Parcel 1636

in the register for Sudbury North Division,  
in consideration of the sum of One———Dollars now paid to me by Northern Ontario Power Company Limited, a corporation incorporated under the Ontario Companies Act having its head office at the Town of New Liskeard, in the Province of Ontario, hereinafter called the transferee, (the receipt whereof is hereby acknowledged) do hereby transfer, give and grant  
30 unto the said transferee, its successors and assigns a right-of-way (exclusive of all others, for the same or any similar purposes) from time to time and at all times hereafter upon and over a strip of land described as follows:

40 All and singular that certain parcel or tract of land situate, lying and being in Mining Claim TRS 824, in the Township of Deloro, in the District of Cochrane and in the Province of Ontario, being composed of a strip of land One hundred feet wide and measured fifty feet on either side of and at right angles to the hereinafter described Centre Line, the outside limits of said strip of land being produced Northerly to the Northerly limit of TRS 824, as shown tinted red on attached plan by Arch Gillies, O.L.S., dated December 4th, 1931, the said strip of land

Exhibits.  
Ex. 24.  
Deed of  
Right-of-Way,  
La Roche Mines  
Limited to  
Northern  
Ontario Power  
Company  
Limited,  
28th December,  
1931.

*In the  
Supreme Court  
of Ontario.*

Exhibits.  
Ex. 24.  
Deed of  
Right-of-Way,  
La Roche Mines  
Limited to  
Northern  
Ontario Power  
Company  
Limited,  
28th December,  
1931.

containing by admeasurement two and fifty-seven hundredths (2.57) acres, more or less, and the said centre line being more particularly described as follows:—

That is to say, commencing at a point on the northerly limit of Mining Claim TRS 824, the said point being distant easterly Two Hundred and Eighty-five (285') feet from the North-west angle thereof; THENCE South forty-one (41) degrees and forty-six (46) minutes east five hundred and thirty-four feet (534') thence south seven (7) degrees and twenty (20) minutes east five hundred and eighty-seven feet (587') to the end of the line.

10

Being part of the said parcel for the purposes and with the privileges following, that is to say:

To thereon erect, construct, inspect, maintain, rebuild, repair, replace and renew a transmission line or transmission lines for the conduct of electric current and a telephone line or telephone lines for telephone purposes, the said lines to be tower or pole lines or partly one and partly the other and to be equipped with such wiring, cross arms, insulators, guy wires, anchors and other equipment as the said Transferee, its successors or assigns, may from time to time desire, and to use the said transmission line or lines for the conduct of electric current and to use the said telephone line or lines for telephone purposes, and for said purposes or any of them to make such connections between the said transmission and telephone lines or any of them and the premises of any customer or customers of the transferee, its successors or assigns as shall from time to time be reasonably required in its or their business and for all or any of the said purposes from time to time to enter upon the said lands with such engineers, officers, employees, servants, assistants, horses, vehicles, plant and machinery as shall be reasonably required and with privileges to cut down and/or remove all timber, trees, logs, stumps and stones now or hereafter on the said right-of-way which in the opinion of the transferee may interfere with the safety of any of its property on the right-of-way or with the convenient user of the right and privileges hereby granted.

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DATED this 28th day of December, 1931.

WITNESS:

R. R. BROWN.

(Corporate Seal)  
LA ROCHE MINES LIMITED  
(No Personal Liability)  
Per: JAMES E. DAY, President  
F. L. KING, Secretary

LAND TITLES ACT.

40

I, ROBERT R. BROWN, of the City of Toronto, in the County of York, MAKE OATH AND SAY:

1. THAT I am a director of La Roche Mines Limited (No Personal Liability).

2. THAT James E. Day, whose signature is affixed to the annexed document, is the President of the said Company and F. L. King, whose signature is also affixed thereto is the Secretary thereof, and the seal affixed thereto is the corporate seal of the said company.

3. THAT under the by-laws of the said Company the President and Secretary are empowered to execute on behalf of the company all deeds and other instruments requiring the seal of the Company.

4. THAT I am well acquainted with the said James E. Day and F. L. King and saw them execute the said document, and I am a subscribing witness thereto.

5. THAT the said Company is, I verily believe, the owner of the land mentioned in the said document.

SWORN before me at the City of Toronto, in the County of York, this 28th day of December, A.D. 1931.

R. R. BROWN.

T. J. DAY.

NOTE.—A sketch showing location of Transmission Line through Mining Claim TRS 824, attached to this deed, is not printed.

*In the Supreme Court of Ontario.*

Exhibits.  
Ex. 24.  
Deed of Right-of-Way, La Roche Mines Limited to Northern Ontario Power Company Limited, 28th December, 1931.

—continued

**Exhibit 1**

(Plaintiff's Exhibit)

**Contract for electric power between Northern Ontario Power Company, Limited, and La Roche Mines, Limited**

**NORTHERN ONTARIO POWER COMPANY LIMITED**

**Power: 12,000 Volts, 3 Phase, 25 Cycles.**

Subject to the following general conditions, and the schedule of prices contained herein, Northern Ontario Power Company, Limited, hereinafter called "The Company", is hereby authorized and requested by the undersigned, hereinafter called the "Consumer", to connect its electric system with the wiring of the Consumer at a point on the boundaries of the latter's property convenient to the Company's lines and to cause electric current to be there delivered during the period noted or any renewal or continuation thereof as provided and at the rate specified, which current, it is hereby agreed, shall be used by the Consumer only and only for the purposes hereinafter specified.

**GENERAL CONDITIONS**

1. For service supplied under this contract, the Consumer agrees to pay the Company at its office at regular intervals as required by the Company, and at the rate and on the basis hereinafter stated within ten days from the date of its accounts; and in addition thereto all taxes, dues or fees or other charges of whatsoever kind or nature which may be charged or imposed in

Exhibits.  
Ex. 1.  
Contract for electric power between Northern Ontario Power Company Limited and La Roche Mines Limited, 30th December, 1931.

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30

40

*In the  
Supreme Court  
of Ontario.*

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Exhibits.  
Ex. 1.

Contract for  
electric power  
between  
Northern  
Ontario Power  
Company  
Limited and  
La Roche Mines  
Limited,  
30th December,  
1931.

—continued

any way by any authority in respect of the service rendered hereunder. All payments shall be made without any deductions for any claim or counter claim which the consumer may have or pretend to have against the Company under this contract or otherwise.

All claims or counter claims which the Consumer may have or claim to have against the Company, arising under this contract, shall be notified in writing to the latter within one month, and, if not so notified within the said delay, the consumer shall be deemed to have forfeited all rights for the recovery of such claims.

Accounts shall be subject to the discount for prompt payment hereinafter stated if paid within ten days of accounts, and to interest at the rate of 10% per annum from the date of accounts if not paid within the discount period. 10

2. The Consumer will provide all lines and electrical equipment (except meters) on the property for connecting same with the point of delivery, and maintain the same, at all times, to the exoneration of the Company in efficient condition with proper protective devices, the whole according to the requirements of the Canadian Fire Underwriters Association or any other Body having regulating power, and the reasonable rules and regulations of the Company. The Consumer shall protect and indemnify the Company in respect to injuries or damage or both to persons and property of the Company, of the Consumer and of others, resulting in any way from defective electrical equipment in Consumer's premises or from any negligence on the part of Consumer. Inspection of Consumer's equipment by Company's inspectors does not mean that wiring has been accepted as being free from defects, even if electric connection be afterwards made. 20

The Consumer agrees to grant and convey to the Power Company the necessary right or easement over the surface of the Consumer's property to enable the Company to construct, maintain and operate its transmission line or lines and apparatus to enable it to supply power to the Consumer and other Consumers taking power from the Company during the period of this agreement, or subsequent thereto, with the right to the Company, its servants and agents, to enter upon the Consumer's property for the purpose of erecting, maintaining and repairing such transmission lines and apparatus. Should the said line or lines at any time interfere with the free and undisturbed use of the property by the consumer, the Company will, at the request of the Consumer, move the line or lines to another right-of-way supplied by the Consumer, of equal width to the former. All expenses incurred in connection with the changing of the lines to be borne by the Consumer. 30

When necessary to place transforming apparatus upon the Consumer's premises, the latter will provide the necessary plot of land for same. The Company shall have the right to supply service to other Consumers from such transformer house. 40

The Consumer agrees that the operation of its electrical apparatus shall be carried on in a manner which will not introduce any disturbing element into the electrical system of the Company. The Company reserves the right to discontinue on ten days' notice at any time the supply of electrical energy

hereunder, if, and so long as, the method of the Consumer in operating its motors, conductors, transforming machinery or translating devices is so abnormal or unusual as to cause such objectionable disturbances or displacements on the Company's electrical system as to interfere with its reasonably successful operation.

The Consumer shall endeavor to use the power herein contracted for in such manner that the current will be taken equally from the three phases and should the differences in the currents in any two phases be greater than ten per cent. of the lesser, then the power per phase to be charged and paid for shall be computed on the basis of the greatest amount actually taken from any one phase.

3. When necessary, a meter or meters for measuring the current supplied shall be installed on connections provided by the Consumer at a convenient and safe location approved by the Company.

Should any meter fail to register accurately, the Company may at its option charge for the current supplied during the time over which such failure extends either on the basis of the quantity of current registered during the corresponding term immediately preceding the period of alleged inaccurate registration, or on the basis of the amount of current used during the corresponding term in the previous year, or the value of the current supplied as established by evidence. The Consumer may at any time request that the meter be examined by a Government inspector, and if such inspection shows that the meter is working correctly, the cost of such inspection, disconnection and reconnection shall be paid by the Consumer, who shall previously be required to make a deposit to cover such costs, and if found to be working incorrectly, cost of inspection shall be paid by the Company.

4. Any changes of location of connections or meters due to Consumer's requirements, shall be at the expense of the Consumer.

5. Meters, transformers, apparatus or other appliances of the Company on said property used exclusively for Consumer's service, shall be in the sole care and at the risk of the Consumer, and if destroyed or damaged by fire or any cause whatsoever, other than ordinary wear and tear, the Consumer shall pay to the Company the value of such meters, or appliances, or the cost of replacing the same.

It is agreed that all meters, wires, poles and other apparatus or equipment installed by the Power Company upon the Consumer's premises shall always remain in the property of the Power Company and may be removed by it upon the discontinuation of the service or the termination of this contract, and if such apparatus or appliances shall be destroyed or damaged by causes arising upon the Consumer's premises, not attributable to the Power Company, the Consumer shall pay to the Company the value of such damage done or the cost of making necessary repairs and replacements. The Company is to have the right of access to such meters or other appliances at all reasonable times for the purpose of reading, testing or removing same.

6. The Consumer agrees not to make any major change in or 10% addition to installation without having first given the Company reasonable notice

*In the  
Supreme Court  
of Ontario.*

—  
Exhibits.  
Ex. 1.

Contract for  
electric power  
between  
Northern  
Ontario Power  
Company  
Limited and  
La Roche Mines  
Limited,  
30th December,  
1931.

—continued



*In the  
Supreme Court  
of Ontario.*

Exhibits.

Ex. 1.

Contract for  
electric power  
between  
Northern  
Ontario Power  
Company  
Limited and  
La Roche Mines  
Limited,  
30th December,  
1931.

—continued

of such additions. During the continuance of this contract, no system of electricity other than that furnished by the Company shall be used in said premises, providing Company is able and ready to supply same, except with the written consent of the Company, and, if at any time, during the term of this contract, the Consumer requires additional service in or about the premises over and above the amount herein provided for, it is hereby agreed that the Consumer shall take such additional service from the Company providing Company is able and ready to supply same.

7. The Consumer is strictly forbidden to interfere with meters or other appliances of the Company. In case of defective service, notice of the fact should be sent to the Company's office immediately. 10

8. The Company does not guarantee a constant supply of electricity, and will not be liable for any damages to the Consumer in consequence of its failure to supply electricity at any time or times nor be considered in default. This clause shall not be interpreted as giving the Company any right to arbitrarily interrupt or cease supplying service under this contract.

In case the Company shall be prevented from supplying, or the Consumer from taking, the power herein contracted for, by reason of Acts of God, King's enemies, fires, strikes or other acts beyond their respective control, all payments for power shall cease, and the Company shall be excused from furnishing power during such prevention, and the Consumer shall be excused from taking it, and both parties shall use all diligence to restore the service. 20

9. The right is expressly reserved to the Company to supply current for City or Municipal lighting, traction or purposes affecting the general public before the Consumer.

10. The Company shall, in the supply of electric current, make use of, or when necessary furnish to the Consumer, only recognized standard transformers, meters, wires and other appliances, and shall incur no liability for damage to persons or property caused in any manner whatsoever by high tension electric current, or because of its wires being connected to the Consumer's property, whether through failure of any of the said appliances or otherwise. 30

11. The Company reserves the right to discontinue its current on thirty days' notice in writing, or to cancel this contract, at its option, in case the Consumer is in arrears in payment of any of the Company's accounts or fails to take service according to the provisions of this contract, or in case the Consumer violates any condition of this contract whatsoever or becomes insolvent, and in case of the Company violating any such condition, the Consumer shall have the like right to cancel the contract.

12. The Company cannot deliver power or energy, unless the Consumer will receive the same, and at any time the Consumer does not take the power or energy he is obligated to take hereunder, the readiness of the Company to deliver the said power or energy as evidenced by maintenance of normal voltage and frequency at the point of delivery shall constitute a valid tender of the same. 40

13. The benefits and obligations of this contract shall inure to and be

binding upon the successors, survivors and executors or administrators, as the case may be, of the original parties hereto respectively for the full period of this contract, but this contract shall not be assignable by the Consumer except with the written consent of the Company, but such consent shall not be unreasonably withheld.

14. No representation, promise or agreement shall be binding upon either party unless the same shall be incorporated in this contract in writing before the same is signed and accepted except those made in writing by an executive officer of either party.

*In the  
Supreme Court  
of Ontario.*  
—  
Exhibits.  
Ex. 1.  
Contract for  
electric power  
between  
Northern  
Ontario Power  
Company  
Limited and  
La Roche Mines  
Limited,  
30th December,  
1931.

10 SPECIAL CONDITIONS.

LOCATION OF CONSUMER'S PROPERTY :

Township of Deloro.

POINT OF DELIVERY :

At outside wall of Consumer's Transformer House.

CONNECTING LINE :

The Consumer agrees to execute the Company's standard agreement attached hereto, covering the provision and payment for the necessary transmission line between the point of delivery mentioned below and the Company's transmission line.

20 At Consumer's Transformer House, located on Mining Claim H.R. 1001, in the Township of Deloro.

NATURE OF SUPPLY :

12,000 volts, 3 phase, 25 cycles, subject to commercial fluctuations of voltage and cycles usually obtaining in service to a mining load. Under ordinary conditions the voltage shall not fluctuate more than ten per cent. up or down from normal, nor frequency more than five per cent. up or down from normal.

PERIOD OF CONTRACT :

30 This agreement when executed shall extend for the mining life of the properties now or hereafter operated or owned or controlled by the Consumer in the Porcupine district.

AMOUNT OF POWER COVERED BY THIS INSTALLATION :

The Consumer's initial installation will be approximately 500 H.P., for which the Company agrees to supply service; and the Consumer agrees to pay for at least a minimum quantity of 50 H.P. for the first year of this agreement. Further power will be supplied in accordance with clause (6).

PRICE :

	\$4.63	per H.P.	per month	for each	of the	first	5,000	H.P.
	\$2.78	"	"	"	"	"	next	5,000
40	\$1.85	"	"	"	"	"	"	5,000
	\$1.39	"	"	"	"	"	"	5,000

—continued

*In the  
Supreme Court  
of Ontario.*

—  
Exhibits.  
Ex. 1.  
Contract for  
electric power  
between  
Northern  
Ontario Power  
Company  
Limited and  
La Roche Mines  
Limited,  
30th December,  
1931.

—continued

Contract limited to 20,000 H.P.; all less ten per cent. for prompt payment.

Meter rent (\$5.00 indicating Type); (\$12.00 Graphic Type); per month, less 10 per cent. for prompt payment as above.

The service herein is to be used for the purpose of operating motors for Mining and Milling Purposes and Mine Lighting.

#### HOURS OF SERVICE:

The Power shall be normally available during twenty-four hours per day but the Company shall have the right to discontinue the service at times most convenient to the Consumer and on Sundays and legal Holidays for the purpose of repairing, maintaining and extending its lines and equipment; due notice, however, shall be given to the Consumer when such interruptions are to be made. 10

#### MEASUREMENT:

The power to be paid for each billing period shall be determined from the maximum amount of power recorded during such period by a Lincoln indicating or graphic demand meter, having the characteristics shown on the attached pamphlet unless such amount during the first year of operations be less than the minimum amount specified above.

#### POWER FACTOR:

The Consumer shall at all times operate his equipment so as not to impose on the Company's system a power factor of less than 85%. If the power factor be less than 85% then the Company may at its option base its accounts on 85% of the maximum K.V.A. recorded by a Lincoln indicating or recording meter connected so as to read in K.V.A. (Kilo volt ampere) divided by .746 (seven hundred and forty-six thousandths). 20

The foregoing is signed by the undersigned after reading and receiving copy of same and is subject to the Company's acceptance by letter addressed to Consumer within thirty days:

Date of Signature: December 30th, 1931. 30

Signature of Consumer:

Acceptance by Company:

LA ROCHE MINES, LIMITED.	(Sgd.) B. V. Harrison,
(Sgd.) James E. Day, President.	Vice-President & General Manager.
(Seal of La Roche Mines Limited)	(Sgd.) H. A. Seymour,
(Sgd.) F. L. King, Secretary.	Asst. Secretary-Treasurer.
	(Seal of Northern Ont. Power Co. Limited)

NOTE.—A graph showing characteristics of Lincoln Demand Meter, referred to in Exhibit 1, is not printed. 40

**Exhibit 2**  
(Plaintiff's Exhibit)

*In the  
Supreme Court  
of Ontario.*

**Transmission Line Agreement between La Roche Mines, Limited  
and Northern Ontario Power Company, Limited**

Exhibits.  
Ex. 2.  
Transmission  
Line Agree-  
ment between  
La Roche Mines  
Limited and  
Northern  
Ontario Power  
Company  
Limited,  
30th December,  
1931.

THIS AGREEMENT made and entered into this 30th day of December, 1931.

BETWEEN:

LA ROCHE MINES, LIMITED  
(Hereinafter called the "CUSTOMER")  
*Of the First Part,*

10

and

NORTHERN ONTARIO POWER COMPANY, LIMITED  
(Hereinafter called the "COMPANY")  
*Of the Second Part.*

WHEREAS the parties hereto have entered into an Agreement bearing date December 30th, 1931, for the supply of power by the Company to the Customer, which Agreement is hereinafter referred to as the "Power Contract."

AND WHEREAS in order to induce the Company to enter into the said Power Contract, the Customer has agreed to execute these presents and it is  
20 agreed that these presents shall be read and construed as a part of the said Power Contract.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and of the mutual covenants and agreements herein contained the parties hereto mutually covenant and agree as follows:—

1. The Customer will forthwith after the execution of these presents, at its own expense, with due diligence, erect and complete to the satisfaction of the Company, a power transmission line, of the same type as the Company's standard construction (including among all other things, poles, wiring, and insulators as per blue print attached and hereby made part of this agreement)  
30 connecting a substation to be erected by the Customer, approximately at the point marked for that purpose on the sketch hereto attached, along the line of right-of-way as shown on said sketch and connecting with the Company's transmission line approximately at the point marked for that purpose on said sketch, said transmission line and all parts and appurtenances to be free and clear of all encumbrances.

2. Before the Company shall be obligated to supply power to the Customer, the Customer will without expenses to the Company, cause to be conveyed to the Company, as its own absolute property, a Right-of-way clear of all encumbrances, for the Power Transmission line to be erected as afore-  
40 said, such right-of-way to be one hundred feet wide and to be for the purpose of erecting and maintaining and operating an electric power transmission line and to continue for all such time as the Company shall desire to use the same for the purpose of its business, the instrument granting such right-of-

*In the  
Supreme Court  
of Ontario.*

—  
Exhibits.  
Ex. 2.  
Transmission  
Line Agree-  
ment between  
La Roche Mines  
Limited and  
Northern  
Ontario Power  
Company  
Limited,  
30th December,  
1931.

way to be on the Company's usual form and duly registered against the lands affected thereby.

3. Upon completion of the erection of the said power transmission line before the Company can be required to supply power over the same, it shall be permitted by its officers, servants, employees, and/or agents to inspect the said line (including poles, wiring, crossarms and insulators) and the said right-of-way, and the Customer will, at its own expense, make such changes or alterations to the said line, poles, wiring, crossarms, and insulators and right-of-way as may be required by the Company to bring the line and right-of-way to the type of Company's standard construction and to make all of the same to the satisfaction of the Company. 10

4. Upon completion as aforesaid of the said transmission line and after the construction thereof has been approved by the Company, the Customer will forthwith furnish the Company with a sworn statement showing in detail (accompanied by proper vouchers) all expenditures made by the Customer for work and material done and supplied in constructing and erecting the said transmission line, excluding, however, all overhead charges, office charges, and charges for superintendence, and excluding the cost (if any) of such right-of-way.

5. The Company will rebate to the Customer (ten per cent.) 10% of all monies for power received by the Company from the Customer or any other person, firm or corporation to whom power is transmitted over the said transmission line (to be constructed by the Customer hereunder) during the continuance of this agreement and the said Power Contract until by such rebates and monies paid by the Company to the Customer, as its proportion of contributions under Clause 8 hereof, the amount of the expenditures referred to in paragraph 4 of this agreement and which expenditures have been approved by the Company, has been repaid to the Customer, but in no case shall the amount so rebated exceed Three Thousand Dollars (\$3,000.00) for each mile of line constructed and there shall not be included in such expenditures any item or items for overhead charges, office charges, charges for superintendence or for cost of acquiring said right-of-way. 20 30

6. The Company will at its own expense after the said transmission line has been completely erected as aforesaid, and while this agreement and the said Power Contract are in force and effect from time to time, make all repairs to the said transmission line rendered necessary by reason of damage caused by ordinary wear and tear.

7. In the event of damage to the said transmission line from any cause except ordinary wear and tear and not being caused by the fault or negligence of the Company or the Customer or the workmen, servants or agents of either of them, all repairs rendered necessary thereby shall be made by the Company, but the expense thereof shall be borne by the Company and the Customer in the following proportions, that is to say:— 40

The proportion to be borne by the Company shall bear the same proportion to the total cost of such repairs as the amount which shall have been rebated by the Company to the Customer at the date of such damage under

—continued

Clause 5 hereof bears to the total amount required to be rebated under said Clause 5 and the remaining portion of such repairs shall be paid by the Customer to the Company forthwith after the making of such repairs. It being understood and agreed that all repairs rendered necessary by reason of damage caused by the fault or negligence of the Company or the Customer or the workmen, servants, or agents of either of them shall be repaired by the Company, but the cost thereof shall be borne by the party hereto whose negligence or fault or the negligence or fault of whose workmen, servants or agents is the cause of the damage.

10 8. The Company shall have at all times the right to use the said transmission line for the purpose of its other business, providing such use does not unreasonably interfere with the supply of power to the Customer pursuant to this agreement and the Power Contract, and in the event of the Company exercising such right it may if it so desires, require any other persons, firms or corporations to whom it proposes to deliver power over the said transmission line to contribute to the cost of the said transmission line in such amounts as the Company thinks fit, and the amount or amounts so contributed during the continuance of the Power Contract shall be divided between the Company and the Customer as follows:—

20 The Company's proportion shall bear the same proportion to the amount or amounts so contributed as the amount of the monies rebated under Clause 5 hereof at the date of such contribution bears to the total amount to be so rebated until in that way the Company has been paid the total amount so rebated by it and the balance, if any, of such contribution shall be paid over to the Customer until in that way and with rebates made to it under Clause 5, the Customer has received the total amount it is entitled to have rebated to it under said Clause 5, and thereafter all such contributions shall belong to the Company.

30 9. Upon payment by the Company to the Customer of all rebates required to be made by the Company to the Customer pursuant to Clause 5 hereof, less all sums received by the Customer pursuant to Clause 8 hereof, the said transmission line and all poles, crossarms, wires, insulators, hardware and other equipment in connection therewith shall become and be the absolute property of the Company and the Customer agrees to then forthwith convey the same or cause the same to be conveyed to the Company free of all encumbrances.

40 10. As each rebate to the Customer is made under Clause 5 hereof, and as each payment is paid by the Company to the Customer under Clause 8 hereof, part of the transmission line so to be constructed by the Customer shall become and be the property of the Company together with all poles, crossarms, wires, insulators, hardware and other equipment in connection therewith and the length of such part shall bear the same proportion to the total length of such transmission line as the amount of such rebate or payment bears to the total amount required to be rebated under said Clause 5, and shall be measured from the point where the said transmission line joins the line supplying power to the Company's Schumacher Substation or from the

*In the  
Supreme Court  
of Ontario.*

—  
Exhibits.

Ex. 2.

Transmission  
Line Agree-  
ment between  
La Roche Mines  
Limited and  
Northern  
Ontario Power  
Company  
Limited,  
30th December,  
1931.

—continued

*In the  
Supreme Court  
of Ontario.*

—  
Exhibits.

Ex. 2.

Transmission  
Line Agree-  
ment between  
La Roche Mines  
Limited and  
Northern  
Ontario Power  
Company  
Limited,  
30th December,  
1931.

—continued

point in the said transmission line to be constructed by the Customer where the Company's title thereto ceases and the Customer will from time to time when requested so to do, convey or cause to be conveyed to the Company free of all encumbrances such part of the said transmission line including poles, crossarms, wires, insulators, hardware and other equipment as the Company is entitled to as aforesaid.

11. Notwithstanding anything herein or in the said Power Contract contained the Company shall be at liberty at any time during the currency of the said power contract or within one year after the expiration or other termination of said Power Contract upon giving to the Customer thirty days' notice in writing of the Company's intention so to do, to take possession of the said transmission line with all poles, crossarms, wires, insulators, hardware and other equipment in connection therewith and have absolute title thereto upon paying to the Customer a sum equal to the amounts required to be rebated to the Customer under Clause 5 hereof, less the amounts which have at that time been so rebated and less the amounts, if any, received by the Customer under the terms of said clause 8 hereof, and upon such payment being made the Customer agrees to thereupon forthwith convey or cause to be conveyed to the Company free of all encumbrances, the said transmission line and all poles, crossarms, wires, insulators, hardware and other equipment in connection therewith or such part thereof as has not been already conveyed to the Company under Clause 10 hereof. 10

12. The Company shall at all times have a first lien and charge upon the said transmission line and all poles, crossarms, wires, insulators and hardware and other equipment in connection therewith for an amount equal to the amounts rebated by the Company to the Customer pursuant to Clause 5 hereof, and for the amounts received by the Customer pursuant to Clause 8 hereof. 20

13. If before the Company shall have rebated to the Customer all the monies under this agreement required to be so rebated, this agreement or said power contract shall be terminated or the supply of power by the Company to the Customer be discontinued in accordance with the terms of said Power Contract, the Company shall in addition to its rights under Clause 11, hereof, and in addition to its property rights under Clause 10 hereof, be at liberty to continue to use the said transmission line for the purposes of its business and shall also be entitled to sell and dispose of the same and/or any of the poles, crossarms, wires, insulators, hardware and other equipment in connection therewith, either by public auction or by private sale and in such manner, upon such terms and at such prices as the Company shall see fit. Out of the proceeds derived from such sale or sales the Company shall be entitled to reimburse itself for all costs and expenses properly incurred by it in preparing for, making and carrying out such sales and salvaging and dismantling the said transmission line and the poles, crossarms, wires, insulators, hardware and other equipment in connection therewith, the balance of such proceeds shall be retained by the Company until the amount so retained equals the amounts rebated by the Company to the Customer under said Clause 5 to 30 40

gether with the contributions received by the Customer pursuant to Clause 8 hereof, and the balance of such proceeds, if any, shall be paid by the Company to the Customer.

14. Notwithstanding anything herein or in the said Power Contract contained, the Company shall be at liberty at any time to cancel this agreement, and the said Power Contract, if the Customer shall fail during any period of three months after first delivery of power to accept and pay for at least 50 Horsepower of electrical energy delivered over the said transmission line.

15. Any notice required to be given by the Company to the Customer under this agreement shall be deemed to have been effectually given if mailed by Post Prepaid addressed to the Customer at \_\_\_\_\_.

16. This agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF THE parties hereto have caused their Corporate Seals to be hereunto affixed attested by the hands of the proper officers in that behalf.

SIGNED, SEALED AND DELIVERED

20 In the Presence of

LA ROCHE MINES LIMITED  
 (Sgd.) James E. Day, President.  
 (Corporate Seal)  
 (Sgd.) F. L. King, Secretary.  
 NORTHERN ONTARIO POWER COMPANY LIMITED  
 (Sgd.) B. V. Harrison, Vice-President & General Manager.  
 (Corporate Seal)  
 (Sgd.) H. A. Seymour, Asst. Secretary-Treasurer.

30

*In the Supreme Court of Ontario.*

Exhibits.  
Ex. 2.  
Transmission Line Agreement between La Roche Mines Limited and Northern Ontario Power Company Limited,  
30th December, 1931.

*—continued*



**Exhibit 22**

(Defendants' Exhibit)

**Annual Statement of Northern Ontario Power Company, Limited  
for 1931**

NORTHERN ONTARIO POWER COMPANY LIMITED

ANNUAL STATEMENT FOR THE YEAR ENDED 31ST DECEMBER, 1931.

*Assets*

Plant Investment.....	\$30,139,247.49	
Cash on Hand and in Bank.....	20,890.99	
Notes Receivable.....	994,998.58	10
Accounts Receivable.....	314,455.25	
Mortgages Receivable.....	1,500.00	
Materials and Supplies.....	255,488.52	
Deferred Charges.....	479,569.97	
	<u>\$32,206,150.80</u>	

## AUDITORS' CERTIFICATE.

26th February, 1932.

To the Shareholders,  
Northern Ontario Power Company, Limited,  
New Liskeard, Ont. 20

We have audited the books of account of Northern Ontario Power Company, Limited, for the year ended 31st December, 1931, and we certify that, in our opinion, the attached statement of Assets and Liabilities and relative Revenue and Profit and Loss Accounts show the position of the Company at 31st December, 1931, according to the best of our information, the explanations given to us, and as shown by the books of account examined by us.

We have received all the information and explanation we have required.

P. S. Ross & Sons,  
Chartered Accountants. 30

NORTHERN ONTARIO POWER COMPANY LIMITED.

ANNUAL STATEMENT FOR THE YEAR ENDED 31ST DECEMBER, 1931.

## LIABILITIES.

*To the Public:*

Debenture Notes.....	\$11,265,000.00	
Demand Notes Payable.....	763,554.96	
Accounts Payable and Accrued Liabilities.....	467,792.60	
Dividend Payable January, 1932.....	157,496.50	
Debenture Interest Accrued.....	122,950.00	40
Consumers' Deposits with Interest Accrued.....	97,251.67	
	<u>\$12,874,045.73</u>	

In the  
Supreme Court  
of Ontario.

Exhibits.  
Ex. 22.

Annual  
Statement  
of Northern  
Ontario Power  
Company Limited for 1931,  
26th February,  
1932.

*To the Shareholders:*

Capital Stock:		
Preferred—		
Authorized — 25,000 6% Cumulative Convertible Shares of \$100 each.....		\$2,500,000.00
Issued—less converted—24,993 6% Cumulative Con- vertible Shares of \$100 each.....		2,499,300.00
(Callable at 110 and accrued dividend after 60 days' notice.)		
10 Common—		
Authorized—500,000 shares of No Par Value.		
Issued —240,014 shares of No Par Value.		
		11,091,326.90
Reserves—Depreciation .....		4,872,784.55
Miscellaneous .....		116,500.47
Profit and Loss.....		752,193.15
		<u>\$32,206,150.80</u>

*In the  
Supreme Court  
of Ontario.*

—  
Exhibits,  
Ex. 22.  
Annual  
Statement  
of Northern  
Ontario Power  
Company Limi-  
ted for 1931,  
26th February,  
1932.

—continued

NORTHERN ONTARIO POWER COMPANY LIMITED  
REVENUE ACCOUNT

20	<i>For Year Ended 31st December, 1931.</i>	
	Gross Earnings.....	\$2,991,222.33
	Expenses .....	\$1,639,082.30
	Interest .....	715,370.39
	Bad Debts .....	7,836.06
	Balance .....	628,933.58
		<u>\$2,991,222.33</u>
		<u>\$2,991,222.33</u>

PROFIT AND LOSS ACCOUNT.

30	Balance at Credit 31st December, 1930.....	\$ 827,007.60
	Add: Prior Year Adjustments.....	6,923.80
		<u>\$ 833,931.40</u>
	Earnings for year ended 31st December, 1931.....	628,933.58
	Dividends on Preferred Stock.....	\$ 149,958.00
	Dividends on Common Stock.....	480,028.00
	Depreciation .....	80,685.83
	Balance at 31st December, 1931.....	752,193.15
40		<u>\$1,462,864.98</u>
		<u>\$1,462,864.98</u>

Audited and Certified in accordance with our attached Certificate.

P. S. Ross & Sons,  
Montreal, 26th February, 1932. Chartered Accountants.

*In the  
Supreme Court  
of Ontario.*

**Exhibit 3**

(Plaintiff's Exhibit)

**Letter, Northern Ontario Power Company, Limited, to  
La Roche Mines Limited**

Exhibits.  
Ex. 3.  
Letter,  
Northern  
Ontario Power  
Company  
Limited to  
La Roche Mines  
Limited,  
9th May, 1933.

TIMMINS, Ontario,  
May 9th, 1933.

NORTHERN ONTARIO POWER CO. LIMITED,  
TIMMINS, Ontario.

—continued

Dear Sir:

This will be your authority to turn on electric power at the La Roche 10  
Mines for the Noranda Mines Limited to make an examination of the La  
Roche Mines working.

The Noranda Mines Limited will pay for power used.

Yours very truly,

LA ROCHE MINES LIMITED.  
"J. E. McMahon."

---

**Exhibit 11**

(Defendants' Exhibit)

**Letter, La Roche Mines Limited, to Northern Ontario  
Power Company Limited**

LA ROCHE MINES LIMITED  
(No Personal Liability)

20

Exhibits.  
Ex. 11.  
Letter,  
La Roche Mines  
Limited to  
Northern  
Ontario Power  
Company  
Limited,  
18th July,  
1934.

Mine Office:  
Reed Block,  
TIMMINS, Ontario.

Head Office:  
1120 Federal Building,  
TORONTO, Ontario.  
July 18th, 1934.

The Northern Ontario Power Company Limited,  
New Liskeard, Ont.

Dear Sirs:

We have made an agreement with Sylvanite Mine granting it a working 30  
option on our property and right to sell same to a new Company, if they like  
the property. If this is carried out, our Company will surrender its Charter.

Have you any claims against us?

Our auditors' statement shows as an asset, "Ontario Northern Power  
deposit \$5.00."

Yours truly,

LA ROCHE MINES LIMITED,  
Per "J. E. DAY," *President.*

JED/TW

**Exhibit 11a**

(Defendants' Exhibit)

**Letter, Northern Quebec Power Company, Limited, to  
La Roche Mines Limited**

NORTHERN ONTARIO POWER COMPANY LIMITED

New Liskeard, Ont.,  
July 21st, 1934.La Roche Mines, Limited,  
1120 Federal Building,  
10 TORONTO, Ont.

Dear Sirs:

Replying to your letter of the 18th instant.

Apart from any situation that may arise in connection with the existing Power Contract dated December 30, 1931, we have no claim against your Company.

In the matter of a deposit of \$5.00, our records indicate that this was refunded in September, 1932.

Yours very truly,

NORTHERN QUEBEC POWER COMPANY, LIMITED,

20  
WFBC:MM

"W. F. B. CADMAN,"

Commercial Manager.

**Exhibit 11b**

(Defendants' Exhibit)

**Letter, Messrs. Day, Ferguson & Co., to Northern Ontario  
Power Company, Limited**DAY, FERGUSON, WILSON & KELLY,  
Barristers, Solicitors, &c.,  
Federal Building,  
85 Richmond Street West,  
30 Toronto 2, Canada.Exhibits.  
Ex. 11b.  
Letter, Messrs.  
Day, Ferguson  
& Co. to  
Northern  
Ontario Power  
Company  
Limited,  
23rd July, 1934.

July 23rd, 1934.

Northern Ontario Power Company, Limited,  
New Liskeard, Ont.

Dear Sirs:

*Re: La Roche Mines, Ltd.*

This Company has agreed to sell out its property to a new Company to be formed, and would want to distribute its assets among its shareholders.

It wrote you on the 18th intending to ask whether there was anything

*In the  
Supreme Court  
of Ontario.*

—  
Exhibits.  
Ex. 11b.  
Letter,  
Messrs. Day,  
Ferguson & Co.  
to Northern  
Ontario Power  
Company  
Limited,  
23rd July, 1934.

in your contract which would prevent it from selling its property, paying its debts and distributing what it receives among its shareholders.

It knows it has to pay of course for any power that may be used but what it wants to know is: Have you any bill against it now and have you any claim which will prevent it selling out to this new Company and distributing among its shareholders the proceeds?

Yours truly,

JAMES E. DAY,  
per "D."

JED/TW

—continued

Exhibits.  
Ex. 11c.  
Letter,  
Northern  
Ontario Power  
Company  
Limited to  
Messrs. Day,  
Ferguson & Co.,  
30th July, 1934.

**Exhibit 11c**

10

(Defendants' Exhibit)

**Letter, Northern Ontario Power Company, Limited, to  
Messrs. Day, Ferguson & Co.**

NORTHERN ONTARIO POWER COMPANY LIMITED

New Liskeard, Ont.,  
July 30th, 1934.

Messrs. Day, Ferguson, Wilson & Kelly,  
Barristers, Solicitors, etc.,  
Federal Building,  
85 Richmond St. W.,  
TORONTO, Ont.

20

*Re—La Roche Mines, Limited.*

Dear Sirs:

We have your letter of July 23rd, evidently crossing our reply to you of the 21st instant.

In the matter of surrendering your charter to a successor or selling of your property, you will note that it is provided under Clause 13 of the Power Contract, that the benefits and obligations shall inure to and be binding upon the successors and survivors, etc., for the full period of the Contract, but may be assignable by the Consumer with the written consent of the Company. 30

Provided La Roche Mines, Limited, applies for our consent to an assignment of its Contract, coupling with it an acceptance thereof by the new Company assuming same, we would be pleased to concur in the matter.

Yours very truly,

NORTHERN ONTARIO POWER COMPANY, LIMITED,

"W. F. B. CADMAN,"  
Commercial Manager.

WFBC:MM

**Exhibit 11d**

(Defendants' Exhibit)

**Letter, Messrs. Day, Ferguson & Co., to Northern Ontario  
Power Company, Limited**

DAY, FERGUSON, WILSON & KELLY,  
Barristers, Solicitors, &c.,  
Federal Building,  
85 Richmond Street West,  
Toronto 2, Canada.

*In the  
Supreme Court  
of Ontario.*

—  
Exhibits.  
Ex 11d.  
Letter, Messrs.  
Day, Ferguson  
& Co. to  
Northern  
Ontario Power  
Company  
Limited,  
31st July, 1934.

10

Northern Ontario Power Company, Limited,  
New Liskeard, Ont.

July 31, 1934.

Gentlemen:

*Re: La Roche Mines Limited.*

Yours of the 30th received. The situation is that the Company has made an agreement with the Sylvanite by which the Sylvanite is satisfied with prospects. The new Company will be formed and the mines sold to that Company, the consideration being stock.

To distribute the stock among its shareholders, La Roche must surrender  
20 its Charter.

Before surrendering its Charter, it must have its debts and obligations paid and provided for. What we are trying to get at is whether there is anything in your contract that is going to prevent the Company surrendering its Charter.

Yours truly,

DAY, FERGUSON, WILSON & KELLY,

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e;G

*In the  
Supreme Court  
of Ontario.*

Exhibits.  
Ex. 11e.  
Letter,  
Northern  
Ontario Power  
Company  
Limited to  
Messrs. Day,  
Ferguson & Co.,  
2nd August,  
1934.

**Exhibit 11e**

(Defendants' Exhibit)

**Letter, Northern Ontario Power Company, Limited, to  
Messrs. Day, Ferguson & Co.**

NORTHERN ONTARIO POWER COMPANY LIMITED

New Liskeard, Ont.,  
August 2nd, 1934.

Messrs. Day, Ferguson, Wilson & Kelly,  
Barristers, Solicitors, etc.,  
Federal Building,  
85 Richmond St. W.,  
TORONTO, Ont.

10

*Re—La Roche Mines, Limited.*

Dear Sirs:

We are in receipt of your letter of July 31st.

We presume that the La Roche Mines, Limited, has handed to you copy of its Contract with this Company dated December 30th, 1931, to which we would refer you.

After looking over our previous correspondence, we cannot help but feel that we have given you all the necessary information, and we are sure you will readily appreciate that we are not legal advisers to our Customers. 20

Yours very truly,

NORTHERN ONTARIO POWER COMPANY, LIMITED,

“W. F. B. CADMAN,”  
Commercial Manager.

WFBC:MM

**Exhibit 3a**

(Plaintiff's Exhibit)

**Letter, La Roche Mines Limited, to Northern Ontario  
Power Company, Limited**

LA ROCHE MINES LIMITED

(No Personal Liability)

30

Mine Office:  
Reed Block,  
TIMMINS, Ontario.  
Northern Ontario Power Company,  
NEW LISKEARD, Ont.

Head Office:  
1120 Federal Building,  
TORONTO, Ontario.  
August 15th, 1934.

Dear Sirs:

We have made a contract with Sylvanite Gold Mines Limited giving them an option on our property, and in the meantime allowing Sylvanite to

Exhibits.  
Ex. 3a.  
Letter,  
La Roche Mines  
Limited to  
Northern  
Ontario Power  
Company  
Limited,  
15th August,  
1934.

carry on work on the property for us, but at Sylvanite's expense.

They tell us now that you need an order from us to turn on the power. Will you kindly see that whatever is necessary to be done to have the power turned on is done.

While Sylvanite is guaranteeing payment of the bills, the contract is with us, and the work is being done for us, so the bills will be rendered to us. You can, whichever is more convenient for you, send them direct to the head office of the Company here, or have them delivered to the representative of our agent, Sylvanite, on the property.

10

Yours truly,

LA ROCHE MINES LIMITED,

per "JAMES E. DAY,"  
President.

JED/K

Copy to Mr. Harrison—Aug. 16/34.

*In the  
Supreme Court  
of Ontario.*

—  
Exhibits.  
Ex. 3a.

Letter,  
La Roche Mines  
Limited to  
Northern  
Ontario Power  
Company  
Limited,  
15th August,  
1934.

—continued

---

**Exhibit 3b**

(Plaintiff's Exhibit)

**Letter, Northern Ontario Power Company, Limited, to  
La Roche Mines Limited**

Office of the Vice-President and General Manager,

20

NORTHERN ONTARIO POWER COMPANY, LIMITED

New Liskeard, Ont.,  
Aug. 16th, 1934.

La Roche Mines Limited,  
1120 Federal Building,  
TORONTO, Ont.

Gentlemen :

We have your letter of the 15th instant, and in accordance with your request we have authorized the delivery of power when you are ready to receive same.

30 In addition to bills being rendered to your Toronto Office, we will also for your convenience, forward a copy to your Mine Office.

Yours very truly,

NORTHERN ONTARIO POWER COMPANY, LIMITED  
"W. F. B. CADMAN,"

WFBC/S

Commercial Manager.

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Exhibits.  
Ex. 3b.

Letter,  
Ontario Power  
Northern  
Company  
Limited to  
La Roche Mines  
Limited,  
16th August,  
1934.



*In the  
Supreme Court  
of Ontario.*

Exhibits.  
Ex. 3c.  
Letter,  
La Roche Mines  
Limited to  
Northern  
Ontario Power  
Company  
Limited,  
30th November,  
1934.

**Exhibit 3c**

(Plaintiff's Exhibit)

**Letter, La Roche Mines Limited, to Northern Ontario  
Power Company, Limited**

LA ROCHE MINES LIMITED

(No Personal Liability)

Mine Office:  
Reed Block,  
TIMMINS, Ontario.

Head Office:  
1120 Federal Building,  
TORONTO, Ontario.

November 30th, 1934. 10

Northern Ontario Power Company,  
NEW LISKEARD, Ontario.

Dear Sirs:

As you know, we were unable to procure further funds for development, and our property was shut down for a long time until the Sylvanite was given a right to carry on exploratory work on the property, with a view of purchasing the property if satisfied.

In pursuance of its rights, Sylvanite has brought about the formation of a new Company, Delnite Mines Limited, and pursuant to our agreement the property has been sold to it, and we no longer have any ownership in the 20 property.

This new Company is Delnite Mines Limited, whose Managing Director is Mr. W. V. Moot, c/o of The Sylvanite Gold Mines, Limited, Buffalo. We asked Delnite Mines if it would take over the contract that we had with you, and we are advised that they did not care to do so, though they said they would send you a written acknowledgment of their liability to pay for any power that may be supplied by you in their operation of the property.

If any power is used it will be used by the new Company by reason of its ownership of the property, and you will please take notice that Delnite Mines Limited and not our Company will be responsible. 30

We are proceeding to distribute our assets and surrender our charter.

Yours truly,

LA ROCHE MINES LIMITED,

per "JAMES E. DAY,"  
President.

JED:K.

Copy to Mr. Cadman—Dec. 3/34.

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**Exhibit 3d**  
(Plaintiff's Exhibit)

*In the  
Supreme Court  
of Ontario.*

**Letter, Northern Ontario Power Company, Limited to  
La Roche Mines Limited**

—  
Exhibits.  
Ex. 3d.  
Letter,  
Northern  
Ontario Power  
Company  
Limited to  
La Roche Mines  
Limited,  
4th December,  
1934.

NORTHERN ONTARIO POWER COMPANY, LIMITED

New Liskeard, Ont.,  
December 4th, 1934.

Messrs. La Roche Mines, Limited,  
1120 Federal Building,  
10 TORONTO, Ontario.

*Re—Power Contract.*

Dear Sirs:

We have for acknowledgment your letter of November 30th and contents of same carefully noted.

We take it for granted that there will be no surrender of your Charter until you have complied with the provisions of the Ontario Companies' Act, and on this point we are advised that the power contract entered into with your Company and dated December 30th, 1931, and to which we would refer you, is undoubtedly an obligation or a liability which must be disposed of  
20 before your application could be placed before the Lieutenant-Governor for surrender of charter.

We trust that you will bear this in mind.

Yours very truly,

NORTHERN ONTARIO POWER COMPANY, LIMITED

"W. F. B. Cadman,"  
Commercial Manager.

WFBC:MM.

---

*In the  
Supreme Court  
of Ontario.*

Exhibits.  
Ex. 11e.  
Letter,  
La Roche Mines  
Limited to  
Northern  
Ontario Power  
Company  
Limited,  
5th December,  
1934.

**Exhibit 11e**

(Defendants' Exhibit)

**Letter, La Roche Mines Limited to Northern Ontario  
Power Company, Limited**

LA ROCHE MINES LIMITED  
(No Personal Liability)

Mine Office:  
Reed Block,  
TIMMINS, Ontario.

Head Office:  
1120 Federal Building,  
TORONTO, Ontario.  
December 5th, 1934. 10

Northern Ontario Power Company, Ltd.,  
NEW LISKEARD, Ont.

Dear Sirs:

We have yours of the 4th. Kindly send us an account for what you claim,  
so that we can deal with it.

Yours truly,

LA ROCHE MINES LIMITED,

per "J. E. DAY,"  
President.

JED/K.

---

**Exhibit 11f**

(Defendants' Exhibit)

**Letter, Northern Ontario Power Company, Limited to  
La Roche Mines, Limited**

NORTHERN ONTARIO POWER COMPANY, LIMITED

New Liskeard, Ont.,  
December 6th, 1934.

La Roche Mines Limited,  
1120 Federal Building,  
TORONTO, Ontario.

Dear Sirs:

Referring to your letter of December 5th. 30

As the Sylvanite has been paying the La Roche power accounts, and as  
we presume last month's account will be taken care of by the Sylvanite as in  
the past, we have forwarded same direct to them. If this is not the manner  
in which you wish this handled, we will be glad to hear from you.

Yours very truly,

NORTHERN ONTARIO POWER COMPANY, LIMITED

"W. F. B. CADMAN,"  
Commercial Manager.

WFBC/MM

**Exhibit 11g**

(Defendants' Exhibit)

**Letter, La Roche Mines Limited to Northern Ontario  
Power Company, Limited****LA ROCHE MINES LIMITED****(No Personal Liability)**

Mine Office:  
Reed Block,  
TIMMINS, Ontario.

Head Office:  
1120 Federal Building,  
TORONTO, Ontario.

*In the  
Supreme Court  
of Ontario.*

Exhibits.  
Ex. 11g.

Letter,  
La Roche Mines  
Limited to  
Northern  
Ontario Power  
Company  
Limited,  
12th December,  
1934.

10

Northern Ontario Power Company,  
NEW LISKEARD, Ontario.

December 12th, 1934.

Dear Sirs:

We acknowledge yours of December 6th.

On November 30th we wrote you that we had sold our property and no longer had any interest in same, and that any power supplied to the purchaser of the property, the Delnite Mines Limited, would be supplied to them and not to us, and that it was our intention to surrender our Charter.

20 On the 5th we received a letter from you dated December 4th, claiming that there was some liability under our contract with you, which of course we should settle before surrendering our Charter.

On the 5th we wrote you asking for an account or statement of what you claimed, so that we could deal with it.

Your letter of the 6th advises that any power accounts we have have been paid.

30 We have advised you that we do not own the property, are not operating it, have no right to operate it, and that if you supply any power you are supplying it to the present owners, and not to us, so we do not quite understand your reference to "the La Roche Power Accounts." We have no Power accounts, and we will not have any. We are not concerned how the matter will be handled. We understand the new Company is willing to keep on taking power from you. We have asked if you have any claim against us, and you do not give us any claim, so we will proceed with our distribution of assets.

Yours truly,

LA ROCHE MINES LIMITED,

per "JAMES E. DAY,"  
President.

JED/K

Copy to Mr. Harrison—Dec. 13/34.

*In the  
Supreme Court  
of Ontario.*

**Exhibit 11h**

(Defendants' Exhibit)

**Letter, Northern Ontario Power Company, Limited to  
La Roche Mines Limited**

NORTHERN ONTARIO POWER COMPANY, LIMITED

New Liskeard, Ont.,  
Dec. 14th, 1934.

Exhibits.  
Ex. 11h.  
Letter,  
Northern  
Ontario Power  
Company  
Limited to  
La Roche Mines  
Limited,  
14th December,  
1934.

Messrs. La Roche Mines, Limited,  
1120 Federal Building,  
TORONTO, Ontario.

10

Dear Sirs:

We have for acknowledgment your letter of the 12th instant and contents of same carefully noted.

The power contract entered into between your Company and ours, under date December 30th, 1931, is what we usually call "our Standard Life of Mine Contract", and we are advised that same attaches to the mining property of your Company and concerning which you now propose to apply for a surrender of charter.

Whatever may happen to the mining property of your Company, in our opinion, does not alter the fact that your property remains subject to the obligations and benefits accruing to or to be derived from the said contract. 20

We are not aware of the dealings which have taken place between your Company and its successors or assigns, but we do know that our contract attaches to your property.

At the present time we are supplying power to your property in pursuance of contract, and you will readily agree with us that it is immaterial to us where the money comes from for payment thereof.

In any event, we must ask you to abide by your contract and be governed by same in any dealings that you are having with the assets of your Company and with respect to your application for surrender of charter. 30

As previously requested, we are presently billing you with power accounts c/o The Sylvanite Gold Mines, Limited.

We trust that we have made our position clear.

Yours very truly,

NORTHERN ONTARIO POWER COMPANY LIMITED

"W. F. B. CADMAN,"  
Commercial Manager.

WFBC:MM.

**Exhibit 11i**

(Defendants' Exhibit)

**Letter, La Roche Mines Limited to Northern Ontario  
Power Company, Limited****LA ROCHE MINES LIMITED****(No Personal Liability)**

Mine Office:  
Reed Block,  
TIMMINS, Ontario.

Head Office:  
1120 Federal Building,  
TORONTO, Ontario.

December 17th, 1934.

10 Northern Ontario Power Co.,  
NEW LISKEARD, Ont.

Dear Sirs:

We acknowledge receipt of yours of the 14th. In reference to your statement that at the present time you are supplying power to our property, and are as at presently requested billing us with power accounts care of the Sylvanite Gold Mines Limited, we have already notified you that we are not taking any power, that we have sold the property. You have no authority to make any bills against us.

20 We have sold the property and that includes the power line. The present owners; Delnite Mines Limited, want you to supply them with power. As far as we are concerned, we have no objection. In fact, we have nothing to do with it. We do not know whether they are taking power under the contract that we made with you, or not. If they are getting any special benefit in the way of rights, by taking advantage of the contract, they are probably adopting it.

But in any event, they purchased the property from us with full knowledge of the contract.

30 It may be, as you say, that whatever happens to the mining property, (by which I take it you mean whoever the property may be sold to), that the property remains subject to the obligations and benefits accruing to or to be derived from the said contract. In any event, the Delnite knew of the contract and they can only take what we can give them.

40 But our Company has not made ourselves responsible for any power that is taken by anybody else under the contract. We want to surrender our charter, and we want to settle any obligations that we have. As far as we know we have settled all obligations with you. We have asked for figures, and particulars of any claim, and you do not give them to us, so we take it for granted that so far as any debt binding our Company is concerned, we have none.

We know of no reason why the Delnite should not want to take power from you. If it is essential that that should be done, we are willing to assign

*In the  
Supreme Court  
of Ontario.*

Exhibits.  
Ex. 11i.

Letter,  
La Roche Mines  
Limited to  
Northern  
Ontario Power  
Company  
Limited,  
17th December,  
1934.

*In the  
Supreme Court  
of Ontario.*

Exhibits.  
Ex. 11i.  
Letter,  
La Roche Mines  
Limited to  
Northern  
Ontario Power  
Company  
Limited,  
17th December,  
1934.

our contract to Delnite, but we were given to understand that until its man-  
agement had a talk with you, it did not want to execute any assignment.

Yours truly,

LA ROCHE MINES LIMITED,

"JAMES E. DAY,"  
President.

JED/K  
Copy to Mr. Harrison—Dec. 18/34.

—continued

Exhibits.  
Ex. 11j.  
Letter,  
Northern  
Ontario Power  
Company  
Limited to  
La Roche Mines  
Limited,  
22nd December,  
1934.

**Exhibit 11j**

(Defendants' Exhibit)

**Letter, Northern Ontario Power Company, Limited to  
La Roche Mines Limited**

10

NORTHERN ONTARIO POWER COMPANY LIMITED

New Liskeard, Ont.,  
December 22nd, 1934.

Messrs. La Roche Mines, Limited,  
1120 Federal Building,  
TORONTO, Ontario.

Dear Sirs:

We acknowledge receipt of your letter of December 17th.

The matter we feel has been well covered in our previous correspon- 20  
dence.

Yours very truly,

NORTHERN ONTARIO POWER COMPANY, LIMITED

"W. F. B. CADMAN,"  
Commercial Manager.

WFBC:MM.

**Exhibit 11k**

(Defendants' Exhibit)

**Letter, La Roche Mines Limited to Northern Ontario  
Power Company, Limited**

LA ROCHE MINES LIMITED

(No Personal Liability)

Mine Office:  
Reed Block,  
TIMMINS, Ontario.

Head Office:  
1120 Federal Building,  
TORONTO, Ontario.

*In the  
Supreme Court  
of Ontario.*

Exhibits.  
Ex. 11k.  
Letter,  
La Roche Mines  
Limited to  
Northern  
Ontario Power  
Company  
Limited  
26th December,  
1934.

10

Northern Ontario Power Co. Ltd.,  
NEW LISKEARD, Ontario.

December 26th, 1934.

Dear Sirs:

We acknowledge yours of the 22nd, and can only take it that we do not owe you any money.

Yours truly,

LA ROCHE MINES LIMITED,

per "J. E. DAY,"  
President.

e-K.

20 Copy to Mr. Harrison—Dec. 27/34.

**Exhibit 11l**

(Defendants' Exhibit)

**Letter, La Roche Mines Limited to Northern Ontario  
Power Company, Limited**

LA ROCHE MINES LIMITED

(No Personal Liability)

Mine Office:  
Reed Block,  
TIMMINS, Ontario.

Head Office:  
1120 Federal Building,  
TORONTO, Ontario.

Exhibits.  
Ex. 11l.  
Letter,  
La Roche Mines  
Limited to  
Northern  
Ontario Power  
Company  
Limited,  
23rd March,  
1935.

30

Northern Ontario Power Company,  
NEW LISKEARD, Ontario.

March 23rd, 1935.

Dear Sirs:

On November 30th, 1934, we notified you that we had sold our property in Deloro to Delnite Mines, Limited, and that therefore we could not take any power under the contract, and we have had several letters to you since.



*In the  
Supreme Court  
of Ontario.*

—  
Exhibits.  
Ex. 111

Letter,  
La Roche Mines  
Limited to  
Northern  
Ontario Power  
Company  
Limited,  
23rd March,  
1935.

—continued

We want now to give you formal notice that the contract is at an end. The contract provided that the power should be used only by La Roche Mines Limited. Being no longer owners of the property we cannot use it. We are not operating nor do we own or control any property in the Porcupine district.

We presume that as a result, the right to receive rebates and other rights that we had "during the continuance of the contract" are ended, but we gave to Delnite Mines Limited the right to take the contract over if it wanted to, and it knows that we are giving this notice of ending of the contract.

Yours truly,

LA ROCHE MINES LIMITED,

per "JAMES E. DAY,"  
President.

10

JED:K.

---

**Exhibit 11m**

(Defendants' Exhibit)

**Letter, Northern Ontario Power Company, Limited to  
La Roche Mines Limited**

NORTHERN ONTARIO POWER COMPANY LIMITED

New Liskeard, Ont.,

March 27th, 1935. 20

Messrs. La Roche Mines, Limited,  
1120 Federal Building,  
TORONTO, Ontario.

Dear Sirs:

We have for acknowledgment your letter of the 23rd instant and contents of same noted.

Our contract, as therein provided and to which we would refer you, has to do with the life of the Mine, as you know, and in any event is an agreement between two parties which can only be cancelled by mutual agreement, and so far there has been no proposition placed before us whereby there would be any reason for us to consent to your demand. 30

The contract speaks for itself and we would accordingly refer you to same.

Yours very truly,

NORTHERN ONTARIO POWER COMPANY, LIMITED

"W. F. B. CADMAN,"  
Commercial Manager.

WFBC:MM.

---

Exhibits.  
Ex. 11m.  
Letter,  
Northern  
Ontario Power  
Company  
Limited to  
La Roche Mines  
Limited,  
27th March,  
1935.

**Exhibit 11n**

(Defendants' Exhibit)

**Letter, La Roche Mines Limited to Northern Ontario  
Power Company, Limited****LA ROCHE MINES LIMITED****(No Personal Liability)**

Mine Office:  
Reed Block,  
TIMMINS, Ontario.

Head Office:  
1120 Federal Building,  
TORONTO, Ontario.

March 29th, 1935.

10

Northern Ontario Power Co., Ltd.,  
NEW LISKEARD, Ontario.

Dear Sirs:

We have yours of the 27th. We are not asking for any consent, but simply advising you that a contract which provided for our Company using power on a property has now become impossible of further fulfillment, as we do not own the property.

We asked you some time ago if we owed you any money, and were advised that we did not, so we will now go ahead and surrender our charter.

20

Inasmuch as Delnite Mines, the wholly owned subsidiary of Sylvanite, will be operating and using power, one would have thought that you would be trying to have the relations between you and all parties concerned in such friendly shape that people would like to deal with you. However that is your concern.

Yours truly,

LA ROCHE MINES LIMITED,

per "J. E. DAY,"  
President.

JED/K.

*In the  
Supreme Court  
of Ontario.*

Exhibits.  
Ex. 11n.

Letter,  
La Roche Mines  
Limited to  
Northern  
Ontario Power  
Company  
Limited,  
29th March,  
1935.

*In the  
Supreme Court  
of Ontario.*

Exhibits.  
Ex. 11o.  
Letter,  
Northern  
Ontario Power  
Company  
Limited to  
La Roche Mines  
Limited,  
3rd April, 1935.

**Exhibit 11o**

(Defendants' Exhibit)

**Letter, Northern Ontario Power Company, Limited to  
La Roche Mines Limited**

NORTHERN ONTARIO POWER COMPANY LIMITED

New Liskeard, Ont.,

April 3rd, 1935.

Messrs. La Roche Mines Limited,  
1120 Federal Building,  
TORONTO, Ontario.

10

Dear Sirs:

We have for acknowledgment your letter of the 29th ultimo and contents of same noted.

The correspondence exchanged with you since July, 1934, undoubtedly covers the situation in this matter very fully and we have no doubt that you are well aware of the present standing of same.

Insofar as our supplying power at the present time under the terms of our contract with your Company is concerned, we would refer you particularly to your own letter of August 15th, 1934.

Power is presently being used at the property covered by our life of mine contract herein, and monthly statements are rendered regularly and paid promptly, so that the terms of the contract are carried out. 20

We note that you now propose to go ahead and surrender your charter, and if this is carried out, we presume that we shall be officially notified by the Department of the Provincial Secretary where notice of our existing contract has been given, and when such official notice is received, we intend to oppose your application until such time as you have made satisfactory arrangements for a disposition of you contract.

Yours very truly,

NORTHERN ONTARIO POWER COMPANY, LIMITED

30

"W. F. B. CADMAN,"  
Commercial Manager.

WFBC:MM.

**Exhibit 3e**

(Plaintiff's Exhibit)

**Letter, President of La Roche Mines Limited to the  
Directors of the Company**

October 11th, 1935.

To the Directors,  
La Roche Mines Limited,

Dear Sirs,

The question of how far the Northern Power Company has a claim on  
10 La Roche Mines has got to be definitely settled. We cannot surrender our  
Charter until our debts and obligations are provided for, and the Power  
Company have given the Provincial Secretary notice that they have this claim  
against us.

A long time ago I notified the Power Company that the contract was  
at an end. It was a contract for the delivery of power to La Roche Mines  
(not to anybody else) on the premises, and for the life of our mine. When  
La Roche sold the property the La Roche had no further right to mine on  
the property, and even though this situation was brought about by the act of  
La Roche in selling the property, the contract became impossible of perform-  
20 ance and was ended.

I asked that the Power Company tell us what damages they have sus-  
tained and that they tell us what their claim was. The Power Company  
will not bring any suit. They say they are still supplying power under the  
contract, although we have told them they are not to supply power under  
the contract, and they cannot supply power under the contract, without our  
consent.

I have had some long discussions with the Sylvania over this. I had  
hoped that they would have taken over the contract and ended the matter.  
They think that it is very much in the interest of the new Company that it  
30 should not be bound up by this contract.

As a result it has been decided, subject to the approval of the directors,  
that in order to bring the matter to a head the La Roche Company will go  
into voluntary liquidation. The Liquidator will advertise for claims. If the  
Power Company does not put in a claim we are all right, and the Liquidator  
will distribute the stock. If the Power Company puts in a claim, the  
Liquidator will refuse to allow it, and the question as to whether they have  
any claim would be settled there and then.

We were not quite decided just how we would work out the distribution,  
it can be done in several ways. A Company can surrender its charter, which  
40 costs something or it can go into voluntary liquidation, which in some ways is  
the quickest way of getting rid of its charter. To go into liquidation re-  
quired a shareholders' meeting to pass the resolution that the affairs of the  
Company should be wound up, and to appoint a Liquidator of the Company  
to do that.

*In the  
Supreme Court  
of Ontario.*

Exhibits.  
Ex. 3e.

Letter,  
President of  
La Roche Mines  
Limited to the  
Directors of the  
Company,  
11th October,  
1935.

*In the  
Supreme Court  
of Ontario.*

—  
Exhibits.  
Ex. 3e.  
Letter,  
President of  
La Roche Mines  
Limited to the  
Directors of the  
Company,  
11th October,  
1935.

—continued

Afterwards the Liquidator has to call another meeting to receive his report showing what he has done with the Estate.

It is not expensive to call these meetings.

I want to get at this at once, and propose therefore to send out a Notice to the shareholders that in order to facilitate the distribution of the Delnite stock among our shareholders a meeting will be held to wind up the Company.

Please let me know at once if you have any objection. The President has power to call a shareholders' meeting and there is no need of going to the expense of calling a directors' meeting if you agree.

10

Yours truly,

LA ROCHE MINES LIMITED,

JED/K.

per

President

La Roche Mines Limited,

Oct. 11th, 1935.

James Savage, Esq.,  
J. E. McMahon, Esq.,  
F. L. Cohen, Esq.,  
James C. Roche, Esq.

---

**Exhibit 11p**

20

(Defendants' Exhibit)

**Letter, Messrs. Day, Ferguson & Co., to Northern  
Ontario Power Company, Limited**

DAY, FERGUSON, WILSON & KELLY,  
Barristers, Solicitors, &c.,  
Federal Building,  
85 Richmond Street West,  
Toronto, 2, Canada.

November 19th, 1935.

The Northern Ontario Power Co.,  
NEW LISKEARD, Ontario.

30

Dear Sirs:

*Re: La Roche Mines Limited in Liquidation.*

Enclosed find copy of resolution passed for the winding up of the Company, which has been filed with the Provincial Secretary of Ontario. The Company is now in liquidation.

Enclosed also please find Notice to Creditors, copy of which has been sent to the Northern Miner for insertion.

We are acting for the Liquidator. The Liquidator has been advised that you notified the Provincial Secretary that you had some claim against the Company, but that no detailed claim has ever been filed.

On behalf of the Liquidator you are hereby called on to file your claim, if you have any, and notified that in default of such claim being filed the assets will be distributed without any further reference to you.

Yours truly,

DAY, FERGUSON, WILSON & KELLY.

e/K  
Encl.

*In the  
Supreme Court  
of Ontario.*

Exhibits.  
Ex. 11p.  
Letter, Messrs.  
Day, Ferguson  
& Co. to  
Northern  
Ontario Power  
Company  
Limited,  
19th November,

—continued

10

**Exhibit 11q**

(Defendants' Exhibit)

**Letter, Northern Ontario Power Company, Limited to  
Mrs. F. L. Heard, Liquidator**

Office of the Vice-President and General Manager,

NORTHERN ONTARIO POWER COMPANY LIMITED

New Liskeard, Ont.,

December 16th, 1935.

Exhibits.  
Ex. 11q.

Letter,  
Northern  
Ontario Power  
Company  
Limited to Mrs.  
F. L. Heard,  
Liquidator,  
16th December,  
1935.

Mrs. F. L. Heard,  
Liquidator,

20 La Roche Mines Limited,  
c/o Day, Ferguson, Wilson & Kelly,  
Solicitors for the Liquidator,  
1116 Federal Building,  
85 Richmond St. West,  
TORONTO 2, Ont.

Dear Madam:

As requested in your letter of November 19th, we are enclosing here-with our claim against the La Roche Mines, Limited.

Yours very truly,

30

NORTHERN ONTARIO POWER COMPANY, LIMITED,

"B. V. HARRISON,"

Vice-President and General Manager.

BVR:S  
Enc.  
(reg'd Mail)

*In the  
Supreme Court  
of Ontario.*

Exhibits.  
Ex. 11r.  
Letter,  
La Roche Mines  
Limited (in  
liquidation) to  
Northern  
Ontario Power  
Company  
Limited,  
19th December,  
1935.

**Exhibit 11r**

(Defendants' Exhibit)

**Letter, La Roche Mines Limited (in liquidation) to  
Northern Ontario Power Company, Limited**

LA ROCHE MINES LIMITED  
(No Personal Liability)  
In Liquidation

Mine Office:  
Reed Block,  
TIMMINS, Ontario.

Head Office:  
1120 Federal Building,  
TORONTO, Ontario. 10

December 19th, 1935.

Dear Sirs:

I acknowledge receipt of your letter of December 16th enclosing Declaration of Mr. Harrison re your claim against La Roche Mines Limited.

I note that your claim is for "damages claimed". You did not allege any "damages suffered". Will you be good enough to notify me of the amount of your claim. It is hard to deal with one where you do not allege that you have suffered anything, nor claim any amount.

It will facilitate adjustment of the matter if you will let me know if it is the case that by making this claim against La Roche Mines for breach of contract, you are admitting that the Delnite Company is not under any obligation to take power from you. 20

Yours truly,

LA ROCHE MINES LIMITED IN LIQUIDATION,

per "F. L. HEARD,"  
Liquidator.

e-k  
(c. WFBC  
JBW).

**Exhibit 11s**

(Defendants' Exhibit)

**Letter, Northern Ontario Power Company, Limited to  
La Roche Mines Limited (in liquidation)**  
Office of the Vice-President and General Manager,  
NORTHERN ONTARIO POWER COMPANY LIMITED

*Attention F. L. Heard.*

New Liskeard, Ont.,  
December 26, 1935.

*In the  
Supreme Court  
of Ontario.*

Exhibits.  
Ex. 11s.

Letter,  
Northern  
Ontario Power  
Company  
Limited to  
La Roche Mines  
Limited (in  
liquidation),  
26th December,  
1935.

10 Messrs, La Roche Mines Limited in Liquidation,  
1120 Federal Building,  
TORONTO, Ontario.

Dear Sirs:

Your letter of the 19th instant acknowledging receipt of declaration of our Mr. Harrison has been duly received and contents of same carefully noted.

We think you appreciate that our claim is for damages we allege result from the breach of contract of La Roche Mines Limited now in Liquidation. As to the amount that is necessarily a matter of estimation and we shall be glad to discuss the matter with you with a view to agreeing upon a fair and

20 just amount.

As to our relations with Delnite Mines Limited to which we have supplied certain electrical power, we have no formal contract with them. We do not think that we should discuss with you the exact legal effect of these transactions but the making of a formal and definite contract for the supplying of electrical power to the property is a matter that we should be quite willing to consider in any effort that may be made to adjust our claim for damages.

We trust that we may hear from you at your convenience.

Yours truly,

NORTHERN ONTARIO POWER COMPANY, LIMITED,  
per "B. V. HARRISON,"

Vice-President and General Manager.



**Exhibit 21**

(Defendants' Exhibit)

In the  
Supreme Court  
of Ontario.

Exhibits.  
Ex. 21.

Accounts  
rendered by  
Northern  
Ontario Power  
Company  
Limited to  
Noranda Mines  
Limited,  
2nd June, 1933,  
3rd July, 1933.

**Accounts rendered by Northern Ontario Power Company, Limited  
to Noranda Mines Limited**

TIMMINS, Ontario, June 2, 1933.

Noranda Mines Limited,  
NORANDA, Que.

IN ACCOUNT WITH:

NORTHERN ONTARIO POWER COMPANY, LIMITED

*La Roche Property.*

To: Electric current supplied from May 10 to May 31st, 1933.

Meter reads 200 x 600—120.00 K.W.

Peak load 120.00 K.W.—160.86 H.P. at \$4.63 per

H.P. per month..... \$528.55

Meter rent from May 10 to May 31, 1933..... 3.55

\$532.10

If paid within the discount period the amount of this

account will be ..... \$478.89

10

TIMMINS, Ontario, July 3, 1933.

Noranda Mines Limited,

NORANDA, Quebec.

IN ACCOUNT WITH:

NORTHERN ONTARIO POWER COMPANY, LIMITED

*La Roche Property.*

To: Electric current supplied during month of June, 1933.

Meter reads 165 x 600—99.00 K.W.

Peak load 99.00 K.W.—132.71 H.P. at \$4.63 per

H.P. per month..... \$614.45

CREDIT: Power off ..... .14

\$614.31

Meter rent for June, 1933..... 5.00

\$619.31

If paid within the discount period the amount of this

account will be ..... \$557.38

20

30

**Exhibit 20**

(Defendants' Exhibit)

**Agreement between The Hydro-Electric Power Commission  
of Ontario and Canada Northern Power Corporation,  
Limited**

3310171-H

*In the  
Supreme Court  
of Ontario.*

—  
Exhibits.  
Ex. 20.

Agreement  
between the  
Hydro-Electric  
Power Commis-  
sion of Ontario  
and Canada  
Northern  
Power Corpora-  
tion Limited,  
7th November,  
1933.

10 THIS INDENTURE made in quadruplicate this 7th day of November,  
A.D. 1933.

BETWEEN :

THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO, hereinafter called  
the "Commission"

*Of the First Part,*

and

20 CANADA NORTHERN POWER CORPORATION, LIMITED, and its subsidiaries,  
NORTHERN ONTARIO POWER COMPANY, LIMITED and NORTHERN QUE-  
BEC POWER COMPANY, LIMITED all three jointly and severally, all being  
hereinafter called the "Company"

*Of the Second Part,*

and

NORTHERN ONTARIO POWER COMPANY, LIMITED and NORTHERN QUEBEC  
POWER COMPANY, LIMITED hereinafter called the "Intervenants"

*Of the Third Part.*

30 WHEREAS, the Commission, acting under the Power Commission Act,  
R.S.O. 1927, Chapter 57 and Amendments thereto is authorized to enter into  
an agreement for the supply of power on the terms and conditions herein  
contained :

AND WHEREAS the Company is duly incorporated under the laws of  
the Dominion of Canada, with its Head Office in the City of Montreal, in  
the Province of Quebec, and is the owner of the controlling interest of  
Northern Ontario Power Company, Limited, which is duly incorporated  
under the laws of the Province of Ontario, with its Head Office in New  
Liskeard, in the Province of Ontario, and is carrying on the business of pro-  
duction and sale of power in the Province of Ontario; and is the owner of  
the controlling interest of Northern Quebec Power Company Limited, which  
40 is duly incorporated under the laws of the Province of Quebec, with its Head  
Office in Montreal, in the Province of Quebec, and in carrying on the business  
of production and sale of power in the the Province of Quebec :

AND WHEREAS the Company has applied to the Commission for a supply  
of electrical power to be used by the said subsidiaries Northern Ontario  
Power Company Limited and Northern Quebec Power Company Limited :—

NOW THEREFORE THIS INDENTURE WITNESSETH that for the considera-  
tion herein contained the parties hereto covenant, promise and agree as  
follows :—

1 (a). The Company agrees to buy from the Commission, and the Com-  
mission agrees to sell to the Company, power as herein provided, commencing

*In the  
Supreme Court  
of Ontario.*

—  
Exhibits.  
Ex. 20.

Agreement  
between the  
Hydro-Electric  
Power Commis-  
sion of Ontario  
and Canada  
Northern  
Power Corpora-  
tion Limited,  
7th November,  
1933.

*continued*

on the First day of January, 1934, or as soon thereafter as the Commission can make delivery of the power and continuing while this agreement remains in force; "power" shall mean electrical power and shall also mean and include energy, except where the context requires a different meaning:

1 (b). The Company shall buy from the Commission all those amounts of power which shall be equal to all power used by the Company's system for load growth called "Growth Power".

1 (c). In this agreement unless the contrary intention appears the following terms shall have the meaning given them in this clause:

GROWTH POWER shall be determined each month and shall each month be the increase in kilowatts of the total load of the Company's system during the month over the base load both calculated at Eighty-five Per Cent (85%) monthly load factor;

GROWTH POWER BLOCK shall be a block of Fifteen Thousand horsepower (15,000 H.P.) of Growth Power.

BASE LOAD shall be the actual amount of power used by the Company's system in the year 1933 unless delivery by the Commission under this agreement is delayed beyond the First of February, 1934, in which case the twelve (12) month period used to determine the base load shall be advanced one month for each month's delay in commencing delivery after the said First of February, 1934, and it is agreed and determined that this base load shall be the kilowatts obtained by dividing the total kilowatt hours used by the Company's System in the said twelve month period by Eighty-five per cent (85%) of the total hours in the said twelve month period and that the meters used to measure the same shall be subject to test and correction as provided in Clause 4:

TOTAL LOAD OF THE COMPANY'S SYSTEM for the purposes of determining growth power shall in any month be the kilowatts obtained by dividing the total kilowatt hours used by the Company's system in the month by Eighty-five per cent (85%) of the total hours in the month:

POWER USED BY THE COMPANY'S SYSTEM whether kilowatts or kilowatt hours shall include all power generated or received by the Company's system whether in the Province of Ontario or the Province of Quebec and whether received from the Commission or from other sources, all irrespective of where or how the power may be disposed of or utilized and all power used on the Company's system for "service" shall continue to be treated in the same manner in computing the power used by the Company's system as it was in the determination of the base load:

COMPANY'S SYSTEM shall include all power works of the Company and of every electrically connected subsidiary of the Company and all power works of every corporation allied with the Company, whether through common ownership or otherwise, to the extent that such works are electrically connected with or form part of the electrical system served by the Company or to the extent that such works supply power in or serve the territory on either side of the boundary between the Provinces of Ontario and Quebec and popularly known as the "Mining District" which is defined for the purposes

of this agreement as the area included within a radius of One Hundred (100) miles of Kirkland Lake, and this shall include at all times any such works within the said definition at any time while this agreement continues in force:

For the purposes of this agreement power used by the Company's system shall be deemed Company Power and customers taking power from the Company's System shall be deemed customers of the company:

INSTALL when referring to works to be installed shall also mean "provide";

1 (d). In addition to the growth power, the Company may from time  
10 to time buy from the Commission such supplementary power as the Commission may deem to be available;

2 (a). The Commission shall deliver to the Company the growth power covered by this agreement when and as required by the Company and if available as aforesaid, the supplementary power, and with the said exception the said power shall be commercially continuous Twenty-four (24) hour power every day in the year subject always to clauses 5 (b) and 5 (c):

2 (b). The Company shall give to the Commission as soon as it can, as  
20 full information as possible as to any change in the Company's expected takings, both as to kilowatt hours and as to kilowatt demand and shall cooperate with the Commission in the closest possible manner in regard to the taking of power so as to ensure satisfactory and efficient operation of the respective systems of the Commissions and the Company.

2 (c). For any increase in the amount or growth power required by  
30 the Company, the Commission upon written request from the Company shall give to the Company information as to capacity available to deliver such increase and for this purpose, capacity shall include works for generation, transformation and transmission to the point or points of delivery; If at any time the Company require such increase and the Commission has not capacity available without installing additional works, the Commission shall within a reasonable time install the additional works as hereinafter mentioned and shall not be bound to deliver any part of the increase before the said time except such part, if any, which it can supply from its then available capacity:

2 (d). If the Company has reason to believe that the Commission is not  
40 proceeding with the installation of the said additional works with sufficient speed to complete the same within the said reasonable time and gives to the Commission written notice thereof and then the Commission fail to complete as aforesaid within the said reasonable time, thereupon, the Company to the extent that the Commission has failed may, without prejudice to any other recourse which the Company may have, be at liberty to acquire such power from other sources or to supply the same from its own system; to the said extent that the Company has committed itself such power shall be excluded from the growth power for the period such commitment maintains; The Commission shall not be deemed to have failed if prevented by causes mentioned in clause 5 (b):

Provided always that the Commission shall maintain a reserve capacity of at least Twelve Thousand Kilowatts (12,000 kw.) of power available for

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the Company, until such time as it gives the Company notice in writing that it has Twelve Thousand kilowatts (12,000 kw.) available reserve capacity and no more, and for this purpose, capacity may include undeveloped water power capacity in addition to capacity in completed works for the generation, transformation and transmission of power to the point of delivery; upon the Commission giving the Company the said notice in writing that its reserve capacity of power available for the Company is limited to Twelve Thousand kilowatts (12,000 kw.) then, the obligation of the Commission to sell additional power will be limited to the additional Twelve Thousand kilowatts, (12,000 kw.) and the obligation of the Company to purchase additional power will be limited to the additional Twelve Thousand kilowatts, (12,000 kw.) and thereupon the Company will be at liberty to acquire any power it may require from other sources, or can supply same from its own system, and to the said extent such power as the Company may require shall be excluded from the growth power: 10

2 (e). The Commission shall use at all times first-class modern, standard, commercial apparatus and plant and shall exercise all due skill and diligence so that the service rendered to the Company shall be in accordance with the best commercial standards for the power under this agreement:

2 (f). The power covered by this agreement shall be delivered at one or more points of delivery as in this clause specified: The number of points of delivery shall be determined on the basis of the segregation of the growth power in blocks of Fifteen Thousand horsepower (15,000 H.P.) each, which blocks are hereinafter called "Growth Power Blocks"; more than one Growth Power Block may be delivered at one point of delivery but there shall be only one point of delivery for any one Growth Power Block subject to clause 2 (h):— 20

Each point of delivery shall be in Ontario and shall be located at one of the following delivery locations:

- (a) a delivery location at or near Kirkland Lake; 30
- (b) a delivery location at or near Schumacher;
- (c) a delivery location at the interprovincial boundary between the Provinces of Ontario and Quebec which said location shall be situated between the South limit of the Township of Dokis and the North limit of the Township of Adair;
- (d) other delivery locations none of which shall be more than Fifty (50) miles from the Commission's high tension system as it existed on the first day of October, 1933, and each of which shall be on the Company's system, except that locations which are for the sole purpose of delivering power in the Province of Quebec need not be on the Company's system as aforesaid. 40

The Company and the Commission shall co-operate in choosing the delivery locations for each Growth Power Block with due regard to the then existing facilities and requirements of the respective systems of the Company and the Commission and subject to such co-operation the Company shall have the final decision:

At the Kirkland Lake delivery location and the Schumacher delivery location, mentioned above, the Commission shall not be obliged to establish an additional point of delivery except adjoining an existing point of delivery.

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The points of delivery for power delivered at the Kirkland Lake delivery location and at the Schumacher delivery location shall be on the Company's side of such voltage regulating or transforming equipment as may be installed by the Commission under the provisions of clause 2 (h), if there be any such equipment; if there be no such equipment at those locations, and at all other locations, the point of delivery shall in each case be on the Commission's high tension transmission line at the point where connection is made to the Company's system;

Supplementary power shall be delivered only at an existing point of delivery:

The first Growth Power Block shall be ready for delivery at the time fixed in Clause 1 (a) for the commencement of delivery of power; The Commission shall supply additional Growth Power Blocks at the following times: When the rate of increase in Growth Power indicates or when information as to prospective increases in Growth Power indicates that the Amount of Growth Power to be delivered by the Commission for the existing Growth Power Blocks would exceed the amount which would equal a total of Fifteen Thousand horsepower (15,000 H.P.) for each existing Growth Power Block by the time the Commission could supply another Growth Power Block, the Company shall advise the Commission in writing of the necessity for an additional Growth Power Block and the Company and the Commission shall co-operate in the study of the existing facilities and the prospective requirements so that the additional Growth Power Block shall be ready for delivery by the time the increase in the amount Growth Power warrants; Subject to this co-operation the Commission shall proceed without delay to provide for the additional Growth Power Blocks; the intent of this paragraph is that additional Growth Power Blocks will be ready for delivery reasonably in advance of requirements but not unduly so.

If the Company desire power in excess of the then existing Growth Power Block or Blocks at any point of delivery, the Commission shall deliver the same up to the capacity of the Commission's then existing works at the said point of delivery which may be available from time to time for such delivery and such delivery shall not be deemed the establishment of an additional Growth Power Block or require payment by the Company of minimum as provided in clause 3 (c); if subsequently the Commission requires the works thus used for delivering the said excess to the Company or any part thereof in order to meet its own requirements, the Company shall reduce its taking power at such point of delivery within the limits of the Growth Power Blocks there established and such remaining excess, if any, which the Commission may be able to deliver, or in the alternative the Company shall establish an additional Growth Power Block at the said point of delivery; Subject to the foregoing limitations in this paragraph set out, the Company

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may from time to time divert power from one to another existing point of delivery;

2 (g). The Commission shall install the works for delivery of power up to the point of delivery; these works shall be sufficient to deliver Fifteen Thousand Horsepower (15,000 H.P.) for each Growth Power Block; there shall be no obligation on the Commission to install works for more than Fifteen Thousand horsepower (15,000 h.p.) for any Growth Power Block; the said works shall not include more than transmission line except for the addition at Kirkland Lake and Schumacher of such equipment as may be required under Clause 2 (h); subject to the other provisions of this clause, the transmission line to be installed by the Commission for any one delivery location need not be more than a single circuit high voltage line, all subject to clause 4 (b):

2 (h). All power delivered hereunder at each point of delivery shall be alternating, three-phase, having a controlled average frequency of twenty-five (25) cycles per second, subject to normal variations of not more than Two Per Cent (2%) and having a voltage between phases such as may exist on the Commission's high voltage system at the point of delivery, which voltage shall however be subject to the following limitations; a nominal maximum voltage shall be selected by the Commission at the time any point of delivery is decided upon and thereafter a normal operating voltage may be selected by the Commission from time to time within a range not exceeding Twenty Per Cent (20%) below the said maximum voltage, which normal operating voltage shall at all time be subject to normal variations of plus and minus Five Per Cent (5%); any and all equipment which may be required to adjust or control the voltage as supplied from the Commission's system so as to permit operation in parallel therewith of the Company's system shall be installed at the sole and only cost of the Company, excepting only as follows:—

For delivery of all power for use with the now existing facilities of the Company at Kirkland Lake and Schumacher to the extent of the capacity of the said facilities respectively and to that extent for use with replacements thereof and for these purposes only, the Commission agrees to maintain at the point or points of delivery, a voltage or voltages which shall be subject to normal variations of not more than Five Per Cent (5%) plus and minus from an adjusted voltage or voltages which in magnitude only is or are commercially suitable for the operation in parallel of the Company's system with that of the Commission, and to this end agrees to install at its sole cost and expense such voltage regulating or transforming equipment as may be mutually agreed upon as necessary with the assistance of any and all existing facilities of the Company to perform this service, provided that the Commission shall not be required to install more equipment than would be required to perform the following functions:—

- (a) For all said power delivered at Kirkland Lake, the Commission shall only be required to maintain one voltage suitable for parallel operation through the said Company facilities at that delivery location.

- (b) For all said power delivered at Schumacher, the Commission may be required to maintain not more than two voltages suitable for simultaneous parallel operation through the said Company facilities at that delivery location.
- (c) The Commission shall not be required to install equipment to provide for adjustment in the voltage or voltages at **Kirkland Lake and Schumacher** in excess of a total range or ranges of **Twenty Per Cent (20%)** below the maximum voltage.
- 10 (d) The above adjustment of voltage shall be carried out in steps of approximately **Five Per Cent (5%)** but the equipment provided shall be such that adjustment may be effected without limiting the capacity available and without interruptions in supply.

The intent of this clause is that for the utilization by the Company on its system of the said power taken through its said now existing facilities and replacements thereof at Kirkland Lake and Schumacher, respectively, the Company shall not be put to any expense to install equipment for the said adjustment of voltage as to magnitude only;

20 2 (i). Since the Company's system includes generating plants which will be operated in parallel with the Commission's system supplying power under this agreement, the Company shall regulate and control the total amount of power taken from the Commission; and since the power taken from the Commission may be taken at a number of points of delivery interconnected through the Company's system, which interconnections materially affect the divisions of the total power taken at the various points of delivery, the Company shall also regulate the amount of power taken at each point of delivery; the said regulation of total takings of power and the regulation of the amount of power taken at each point of delivery shall be such as to ensure operation satisfactory to the Commission in parallel with the Commission's system, and the Company agrees to operate its system so as to

30 maintain power factor and other power characteristics within limits for satisfactory operation in parallel with the Commission's system;

2 (j). The Company agrees so long as may be required by the Commission to operate at its own expense any commission owned stations which may be established at any of the said delivery locations for the purpose of supplying the Company with power under this agreement; provided that the Commission shall maintain all such stations, and provided also, that the Company shall not be liable for loss or damage which the said Commission equipment may sustain by reason of Company operations;

40 2 (k). For use with Commission works at delivery locations where power is being delivered to the Company, the Company, if it has the same available, shall afford to the Commission when required and without cost to the Commission, the benefit of the Company's auxiliary services including power for station service at any suitable voltage which the Company has available and equipment for cooling the Commission's transformers and other apparatus together with water therefor, the Commission, at its sole expense, shall install all piping, wiring and other works necessary for the Commission

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to obtain from the Company's then existing facilities the said benefit of Company auxiliary services, and the Company shall not be obliged to instal any such works or bear the expense of such installation; the said power for station service shall be deducted from the power delivered by the Commission to the Company;

2 (1). Because of the fact that the high voltage circuits involved in this agreement will be physically connected and operated in parallel with those from other power sources, and because of the magnitude and nature of the system involved, it is necessary that the Commission and the Company co-operate.

The Commission and the Company will co-operate in respect of all matters of common interest, including without limiting the generality of the foregoing, design of transmission lines and other works and design of control, protective, communication and other equipment for supply of power under this agreement commencing from the Commission's said sources of supply, if such works or equipment necessitate similar or co-ordinated equipment;

For the said works and equipment the Commission and the Company shall instal only first-class, modern, equipment, of such characteristics and type as are best suited for the service intended and shall from time to time make such commercially reasonable changes in, or additions to said equipment (other than major equipment) as will best serve to maintain the system as a whole, in accordance with good practice in the art as developed from time to time;

For such purpose the Commission and the Company shall each be entitled to the final decision in respect of the design of its own plant and property, other than such features thereof as necessitate similar or co-ordinated equipment at the plant of each party as aforesaid; in the event of the Commission or the Company exercising such right of final decision, then the Commission or the Company, as the case may be, shall be responsible for the suitability for the purpose intended of plant or equipment constructed according to the design selected by it;

The Commission and the Company shall exercise all due skill and diligence so as to secure the satisfactory operation as a system of the plant, apparatus and property of both the Commission and the Company, including without limiting the generality of the foregoing, parallel operation voltage, power factor and any problems which may arise in connection with the supply of power under this agreement;

3 (a). The Company shall pay to the Commission for all power under this agreement in monthly payments at Toronto in lawful money of Canada at the following schedule of rates:

Thirty-two Dollars and Fifty Cents (\$32.50) per horsepower per year for all power up to Five Thousand horsepower (5,000 H.P.).

Twenty-two Dollars and Fifty Cents (\$22.50) per horsepower per year for all power over Five Thousand horsepower (5,000 H.P.) and up to Ten Thousand horsepower (10,000 H.P.).

Seventeen Dollars and Fifty Cents (\$17.50) per horsepower per year for

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all power over Ten Thousand horsepower (10,000 H.P.) and up to Twenty Thousand horsepower (20,000 H.P.).  
 Twenty-two Dollars and Fifty Cents (\$22.50) per horsepower per year for all power over Twenty Thousand horsepower (20,000 H.P.).

which said, monthly payments shall be based on the monthly demand as determined in the next following paragraph subject always to the minimum of growth power provided below in this clause and the minimum provided in clause 3 (c);

10 The monthly demand shall include all power delivered by the Commission under this agreement and shall be the greater of (a) the Eighty-five Per Cent (85%) load factor demand, and (b) the twenty minute maximum demand, each determined as follows:—the Eighty-five Per Cent (85%) load factor demand shall be the kilowatts obtained when the total kilowatt hours taken from the Commission during the month are divided by Eighty-five Per Cent (85%) of the hours in the month; the twenty minute maximum demand shall be the maximum average or integrated demand over any twenty consecutive minutes during the month as shown on the Commission's meters, and shall be the co-incident maximum for all points of delivery at which power is then being delivered by the Commission to the Company;

20 In any event the Company shall pay to the Commission as a minimum for the growth power as defined in clause 2:

Provided that whenever at any time while this agreement remains in force the Commission sells or contracts to sell power from its Abitibi Canyon Development directly or indirectly to any person, firm, or corporation in the said mining district, other than the Company, at a lower rate or rates, thereupon the Company shall be entitled to receive a corresponding benefit in the reduction of the corresponding rate or rates to be paid by the Company to the Commission in respect to the period during which the Commission sells or contracts to sell power to such other customer at such lower rate or rates as

30 aforesaid; a lower rate or rates to another Customer as aforesaid shall be determined as follows:—

(i) Where the Commission delivers power to such other Customer at a nominal voltage of Twenty-six Thousand volts (26,000 Vs.) or higher, the comparison shall be governed by the schedule of Company rates above set out in this clause;

(ii) Where the Commission delivers power to such other Customer at a nominal voltage lower than Twenty-six Thousand volts (26,000 Vs.) then except as provided in paragraph (iii) below the comparison shall be governed by the following schedule of augmented rates, namely—

40 Thirty-five Dollars (\$35.00) per horsepower per year for all power up to Five Thousand horsepower (5,000 H.P.);

Twenty-four Dollars (\$24.00) per horsepower per year for all power over Five Thousand horsepower (5,000 H.P.) and up to Ten Thousand horsepower (10,000 H.P.);

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Nineteen Dollars (\$19.00) per horsepower per year for all power over Ten Thousand horsepower (10,000 H.P.) and up to Twenty Thousand horsepower (20,000 H.P.);

Twenty-four Dollars (\$24.00) per horsepower per year for all power over Twenty Thousand horsepower (20,000 H.P.).

- (iii) Where the Commission delivers power to the Company at any delivery location at a nominal voltage lower than Twenty six Thousand volts (26,000 Vs.) then for all power from the said delivery location to such other Customer at the same nominal voltage as to the Company or higher the comparison shall be governed by the said schedule of Company rates during the period of one year after the commencement of delivery of power to such other customer and thereafter the comparison shall be governed by the said schedule of augmented rates; 10

This proviso shall not apply in respect of rates fixed under the contract dated First of October, 1931, for sale of power by the Commission to Abitibi Electrical Development Company Limited or the contract dated Eighteenth of August, 1930, for sale of power to Abitibi Power and Paper Company Limited by Ontario Power Service Corporation Limited whose rights and obligations therein are now vested in the Commission; nor shall it apply to surplus or secondary power for other than ordinary mining, commercial or domestic purposes nor shall it apply to power for production of steam or of heat, or for smelting, or for pulp or paper mills or for railroad electrification; nor shall it apply to rural consumers in rural power districts when the rate is affected by Government bonus; 20

3 (b). The Company at all times shall take and use the power in such a manner that the ratio of the kilowatts to the kilovolt amperes (read simultaneously) shall be as near as practicable to unity; the Company shall regulate its taking of power from the Commission at each point of delivery so that the power factor thereof shall not at any time be less than the power factor at that time of the total load of the Company's system; the maximum amount of kilovolt amperes which the Commission at any time shall be required to supply for the Company at any point of delivery shall not exceed One Hundred Eighty-fifths (100/85) of the kilowatts of the twenty (20) minute maximum demand for that month for that point of delivery; 30

3 (c). As compensation to the Commission for idle equipment the Company shall pay to the Commission as a minimum for Two Thousand horsepower (2,000 H.P.) in respect of each Growth Power Block; provided that the said minimum shall not apply in respect of the first Growth Power Block at the first point of delivery until after one year from the date when the Commission is ready to deliver power to the Company at the said point of delivery; the Growth Power Block in respect of which the Company shall pay on the said minimum in any month shall be determined as follows:—the amount of power in horsepower for which the Company pays the Commission in any month shall be allocated in hypothetical blocks of Fifteen Thousand horsepower (15,000 H.P.) each to the said Growth Power Blocks in the order 40

in which power was first taken by the Company in each Growth Power Block and if, upon such allocation, there be any Growth Power Block or Blocks to which less than Two Thousand horsepower (2,000 H.P.) be so allocated the Company shall pay to the Commission in respect thereof for that month for a minimum of Two Thousand horsepower (2,000 H.P.): the intent of this clause is that the Company shall pay the minimum to cover costs in respect of equipment that remains idle or non-productive on account of failure of the Company to take power;

10 3 (d). Bills shall be rendered by the Commission to the Company on or before the Tenth day of the month and paid by the Company on or before the Twentieth day of each calendar month; if any bill remains unpaid for Thirty days (30) after the said Twentieth day, the Commission may, in addition to all other remedies and without notice, discontinue the supply of power to the Company until the said bill is paid and no such discontinuance by the Commission shall relieve the Company from the performance of the covenants, provisoes and conditions herein contained; All payments in arrears shall bear interest at the rate of six per cent (6%) per annum;

20 3 (e). The Company shall provide suitable transmission lines and all control protective and other electrical equipment from the points of delivery and use at all times first-class, modern, standard, commercial equipment all subject to the approval of the Commission and shall construct, install, maintain and operate the same in a manner satisfactory to the Commission;

30 3 (f). The Company shall grant and upon request convey to the Commission the right, license and easement to enter upon, occupy and use at all times free of cost so much of the Company's land and premises as may be necessary or expedient for the supply of power to the Company under this agreement, and without limiting the generality of the foregoing, the right to construct, maintain, operate, repair, replace and remove apparatus, equipment and works for the said supply of power during the period of this agreement and every extension and renewal thereof and thereafter until three months written notice from the Company shall have been given and shall have expired.

3 (g). The Company shall take and use the power and energy covered by this agreement subject to the provisions and limits herein contained; so long as the Commission be ready to deliver the power required by the Company in accordance with this agreement the Company shall purchase from the Commission all growth power and shall not purchase power from any other person, firm or corporation.

40 4 (a). Measurement of the power covered by this agreement shall be made by means of suitable polyphase recording demand meters and integrating kilowatt hour meters so arranged as to measure and record the power with commercial accuracy all satisfactory to both parties;

4 (b). The Commission shall provide such demand meters and kilowatt hour meters to measure the power for each point of delivery and with the exception of the said meters the kilowatt hour meters to measure other power used by the Company's system shall be provided by the Company; In every

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case there shall be provided along with the meters the necessary current and potential transformers, all referred to as "measuring equipment"; In every case, all the measuring equipment shall be installed and maintained commercially accurate by the party providing the same and satisfactory to both parties;

4 (c). The amount of power delivered at each Commission point of delivery and the demand in kilowatts at such point shall be determined from readings of the said Commission meters; the greatest average or integrated power demand or the amount of power taken by the Company over any Twenty consecutive minutes in any month, as determined from coincident readings of the said Commission meters, shall be the maximum demand for that month used as one of the means in determining the monthly demand for purposes of billing and paying for power taken by the Company during the month. 10

Readings from the said kilowatt hour meters both of the Commission and the Company shall be taken daily at the same hour and shall be used as the basis for ascertaining the monthly taking of energy;

Records from the Company's kilowatt hour meters shall be recorded by the Company on forms approved by the Commission and dated and forwarded promptly by the Company to the Commission; such records, together with records from the Commission's meters, shall be kept on file by the Commission and shall be available to the Company at all reasonable times for inspection and for taking information therefrom; 20

4 (d). The kilowatts, kilovolts, amperes, kilowatt hours and all other factors and quantities or any of them, shall be determined directly or indirectly from the measuring equipment provided for in this clause 4, and the standards of the University of Toronto or of the recognized national authority, if there be such generally accepted, shall be used as the final reference as to the accuracy of the measuring equipment.

4 (e). The points for measuring on the Commission's meters the power delivered at each point of delivery shall be as near as practicable to the point of delivery aforesaid, and the points for measuring on the Company's kilowatt hour meters the power used by the Company's system shall be at all points of generation and of sources of supply other than the Commission for power for the Company's system at locations convenient to the Company and approved by the Commission; 30

4 (f). Whenever the Commission measuring instruments are connected at other than the point of delivery or measure power at other than the voltage of the power delivered at the point of delivery, their readings shall be subject to a correction and shall be corrected to give results such as would be obtained by instruments connected at such points of delivery and such voltage; similar corrections shall be made for Company meters; such corrections shall be based upon tests or calculations satisfactory to both parties; 40

4 (g). The Commission agrees to test each meter installed by it to measure the power under this agreement at such time as may be agreed upon from time to time in order to ensure commercial accuracy of the meters; The

Company shall be advised at least Five (5) days before the day of the test so it may, if it so desires, have a representative present to witness and verify such test; if at any time the Company notifies the Commission that it believes that such meters or any of them are not within the closest practicable agreement with perfect accuracy, such meter or meters shall be jointly tested within Ten (10) days of the receipt by the Commission of the said notice; the Company shall pay for tests of Commission meters thus demanded by the Company;

10 If any meter shall be found on regular or special test to be inaccurate it shall be properly adjusted and the records of its readings taken during the preceding three months or since the last prior test if within the said three months and all bills thereby affected shall be corrected; The Commission shall repair and replace or retest defective meters or measuring equipment within a reasonable time; If in course of repair, replacement or retest there is no meter in service it shall be assumed that the power and energy delivered by the Commission or taken by the Company is the same as for the other days of the same month on which a similar load existed;

The Company shall be under similar obligations and the Commission shall have similar rights in regard to Company meters;

20 4 (h). Each party may from time to time at its option instal duplicate measuring equipment including current and potential transformers at the points of measurement for the purpose of checking records obtained from the measuring equipment of the other party;

4 (i). If the measuring instruments of either party be located on the premises of the other party, the other party shall provide free of charge a safe and suitable location approved by the owner of the measuring instruments for the installation of such measuring instruments and no rental or other charge or claim shall be made to the said owners for the location of the said measuring instruments on the premises of the other party;

30 4 (j). Access to measuring equipment of one party on the premises of the other shall be free to the owner of such measuring equipment at any and all times and the owner may test, calibrate, adjust, remove or change the said measuring equipment at any reasonable time but when possible the other party shall be advised at least three (3) days in advance of the owner's intention to test, calibrate, adjust, remove or change the said measuring equipment;

40 5 (a). The maintenance by the Commission of approximately the agreed voltage at approximately the agreed frequency at the points of delivery shall constitute the supply of power to be delivered under this agreement and a fulfillment of all the operating obligations hereunder, and when the voltage and the frequency are so maintained, the amount of power, its fluctuation, load factor, power factor, distribution as to phases and all other characteristics and qualities are hereby agreed to be solely under the control of the Company and its employees, agents and system;

5 (b). In case the Commission at any time or times be prevented from delivering or the Company be prevented from receiving the power under this agreement or any part thereof, by strike, lockout, riot, fire, hurricane,

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flood, invasion, explosion, act of God, the King's enemies or any other cause or causes reasonably beyond the control of the party prevented as aforesaid, then the Commission shall not be bound to deliver and the Company shall not be bound to pay for the power thus prevented from delivery or reception during the time of such prevention; provided that in the construction of this clause the rule of construction "ejusdem generis" shall not apply;

Each party shall be prompt and diligent in removing the cause of such interruption or prevention and as soon as such cause is removed then, without any delay, the Commission shall deliver and the Company shall take and pay for the said power all in accordance with this agreement;

5 (c). The Commission shall have the right at reasonable times and when possible after reasonable notice has been given to the Company to discontinue or reduce to the extent necessary the supply of power to the Company for the purpose of safeguarding life or property or for the purpose of operation, maintenance, replacement or extension of the apparatus, equipment or other works of the Commission but all such interruptions shall be of minimum duration and when possible arranged for at a time least objectionable to the Company; The Company shall not be required to pay for power interrupted under this subclause but the Company shall not otherwise be released from any obligation under this agreement;

5 (d). Access to lines, apparatus, equipment and other works belonging to the Commission and on the property of the Company shall be free to the Commission at any and all times and the Commission may inspect, operate, test, adjust, repair, alter, reconstruct, replace and remove them or any of them; provided that in so using the property of the Company the Commission shall not damage the said property and shall leave it at all times in a reasonably clean and safe condition;

5 (e). The Company shall assume all risk of and liability for and be responsible for any and all injury, damage, and loss to property of the Commission on the premises of the Company furnished for the purpose of supply or measurement of power under this agreement which may originate from a source external to the said property of the Commission and which is not due to any defect in the property of the Commission and also, for any and all injury, damage and loss to the property or premises of the Company or to any other property on the said premises or to any person or persons (including loss of life) on the said premises other than employees of the Commission which shall have been due to property of the Commission on the premises of the Company unless the said injury, damage, or loss shall have been due to or occasioned by the acts or omissions of the Commission or its employees; The Company shall indemnify the Commission and save it harmless from all such injury, damage and loss under this clause and all actions, suits, claims, costs, charges and expense in connection therewith; fire and lightning shall always be excepted from this clause;

6. One or more representatives or engineers of the Commission designated for this purpose may, at any reasonable time during the continuance of this agreement, have access to the property and premises of the Company for

the purpose of inspecting the premises, apparatus, plants, property and records, both electrical and hydraulic of the Company concerned with the power under this agreement and also may take and obtain records therefrom; representatives of the Company shall have similar rights in respect to the premises, apparatus, plants, property and records both electrical and hydraulic of the Commission concerned with the power under this agreement;

7. In case any disagreement, dispute, difference or question shall, at any time hereafter, arise between the Commission and the Company in respect to the construction of this agreement or concerning anything herein contained or hereby provided for or arising thereout, or as to the rights, liabilities or duties of the Commission and the Company or either of them the same shall forthwith be referred to a single arbitrator in case the parties can agree upon one, otherwise to three arbitrators, one to be appointed by each party to the difference and the third by those two or in case they cannot agree, then by a Judge of the Supreme Court of Ontario, and in either case in accordance with and subject to the Provisions of the Arbitration Act of the Province of Ontario, Revised Statutes of Ontario, 1927, Chapter 97, or any statutory modification or re-enactment thereof for the time being in force, and shall be determined in accordance with the laws of the Province of Ontario; the findings of the arbitrator or arbitrators shall be final and binding upon the Commission and the Company respectively, except that either may appeal from, or move to set aside, vary, or refer back an award as provided in the said Arbitration Act, and except that the right to appeal to the Supreme Court of Canada and to the Privy Council, or either of them shall not be limited;

8. This Contract shall be binding upon both parties hereto upon its execution and shall continue in force for a period of Ten (10) years from the First day of January, 1934, and thereafter until cancelled as hereinafter provided; either party may at any time after the Thirtieth day of December, 1941, give Three (3) years' prior notice in writing of cancellation and the said cancellation shall take effect at the end of the calendar month expiring on or next after the expiry of the said Three (3) years.

9. The rates to be paid and the payments to be made to the Commission for Power as set forth in Clause 3, shall subject to the provisions of this clause, include all compensation to the Commission for all taxes, levies, rentals, royalties, licenses, fees, and charges that may be levied, assessed or imposed by Dominion, Provincial or Municipal or any other authority for or during the term of this agreement or any part thereof to the extent now existing, nevertheless, (a) if any Dominion, Provincial or Municipal taxes or other similar levies not now existing be created or any now existing be increased or, (b) if any rentals, royalties, licenses, fees, or other charges whether for the use of water or otherwise and whether assessed or imposed by any Dominion, Provincial, Municipal or other authority or body, not now existing be created or any now existing be increased in such a manner as to increase the cost to the Commission of delivering power under this agreement:—Then, in each and every such case an increase shall be made in the payments to the Commission by the Company under this agreement which

*In the  
Supreme Court  
of Ontario.*

—  
Exhibits.  
Ex. 20.

Agreement  
between the  
Hydro-Electric  
Power Commis-  
sion of Ontario  
and Canada  
Northern  
Power Corpora-  
tion Limited,  
7th November,  
1933.

—continued



*In the  
Supreme Court  
of Ontario.*

—  
Exhibits.  
Ex. 20.

Agreement  
between the  
Hydro-Electric  
Power Commis-  
sion of Ontario  
and Canada  
Northern  
Power Corpora-  
tion Limited,  
7th November,  
1933.

—continued

shall, after crediting any reduction in any such items, compensate the Commission for the increase thereby occasioned in the cost to the Commission of delivering power under this agreement.

Provided that Workmen's Compensation and any rates or charges in respect thereof shall not be deemed a tax for the purposes of this clause and the liabilities and obligations of the Company under this agreement shall not be in any way increased thereby but the same shall be borne by the Commission;

Provided always that the Company shall not be required to make any increased payments to the Commission under this clause by reason of any of the foregoing items unless such increase is general and then only to the extent of the same percentage by which it is general as applying in the mining district to all the Customers of the Commission or other users supplied from Power generated at the Abitibi Canyon plant but excepting from the said application the two contracts mentioned in clause 3 (a) with Abitibi Electrical Development Company Limited and Abitibi Power and Paper Company, Limited;

10. The Commission shall be entitled at any time prior to the expiration of three Month's notice in writing from the Company delivered after the termination of this agreement and the last extension thereof, to remove from the premises of the Company any and all plant or equipment which may have been installed by the Commission for the supply or measurement of power hereunder; The Company shall have similar rights in respect to its property, if any, on premises of the Commission;

11. All written notices which are required to be sent hereunder by either party to the other shall be sent by registered letter to such address or addresses as each party may from time to time file with the other; the parties agree each to maintain its address on file with the other;

12. This agreement shall extend to, be binding upon and enure to the benefit of the successors and assigns of the parties hereto;

13. The Company covenants and agrees with the Commission that no part of the Company's system belonging to the Company or any subsidiary Company shall be sold, other than parts of its physical property which are not necessary or useful in connection with the business or undertaking of the Company, or which have become worn out or damaged or otherwise unsuitable for its purposes, except to a purchaser who shall have covenanted and agreed with the Commission to assume and perform the obligations of the Company in this agreement contained and in all respects succeed to the position of the Company hereunder;

The Company further covenants and agrees with the Commission that if at any time hereafter during the continuance of this agreement, the Company or a subsidiary Company should mortgage, hypothecate or charge any of its rights or immovable property which are part of the Company's system or any part of such rights or property to secure bonds or debentures or other securities of like nature, other than is required or permitted under the terms of any existing trust deeds securing the bonds of the Company or any of its

10 subsidiaries, then, any such mortgage, hypothecation or charge shall be expressly made subject to all covenants, agreements and obligations on the part of the Company in this agreement contained and shall provide that any sale of the rights or property so mortgaged or any part thereof under the provisions of such mortgage shall be made subject to the obligations of the Company in this agreement contained and that the mortgaged premises shall not be sold except to a purchaser who shall covenant and agree with the Commission to assume and perform the obligations of the Company in this agreement contained and in all respects succeed to the position of the Company hereunder; and it is agreed that the said provisions shall be conditions of every contract, mortgaging, hypothecating or charging the rights or immovable property aforesaid or any part therefor and shall be expressed therein as stipulations in favour and for the benefit of the Commission;

14. And the Intervenants, having taken communication of the foregoing, hereby approve the same, and jointly and severally with the Canada Northern Power Corporation Limited and with each other undertake and agree to perform the same under the terms and conditions herein set forth;

20 IN WITNESS WHEREOF the Commission, the Company and the Intervenants have caused this agreement to be executed under their respective corporate seals and the hands of their proper officers duly authorized thereto:

SIGNED, SEALED AND DELIVERED  
In the presence of:

30 (Sgd.) S. J. Atchison,  
Commissioner of the Superior Court.

(Sgd.) S. J. Atchison,  
Commissioner of the Superior Court.

40 (Sgd.) S. J. Atchison,  
Commissioner of the Superior Court.

THE HYDRO ELECTIC POWER COM-  
MISSION OF ONTARIO,  
(Sgd.) J. R. Cooke, Chairman.  
(CORPORATE SEAL)  
(Sgd.) W. W. Roper,  
Secretary.

CANADA NORTHERN POWER COR-  
PORATION LIMITED,  
(Sgd.) J. B. Woodyatt,  
Vice-President.  
(CORPORATE SEAL)  
(Sgd.) L. C. Haskell,  
Secretary.

NORTHERN ONTARIO POWER COM-  
PANY LIMITED,  
(Sgd.) J. B. Woodyatt,  
Vice-President.  
(CORPORATE SEAL)  
(Sgd.) L. C. Haskell,  
Secretary.

NORTHERN QUEBEC POWER COM-  
PANY LIMITED,  
(Sgd.) J. B. Woodyatt,  
President.  
(CORPORATE SEAL)  
(Sgd.) L. C. Haskell,  
Secretary.

*In the  
Supreme Court  
of Ontario.*

—  
Exhibits.  
Ex. 20.  
Agreement  
between the  
Hydro-Electric  
Power Commis-  
sion of Ontario  
and Canada  
Northern  
Power Corpora-  
tion Limited,  
7th November,  
1933.

—continued

*In the  
Supreme Court  
of Ontario.*

Exhibits.  
Ex. 20.  
Agreement  
between the  
Hydro-Electric  
Power Commis-  
sion of Ontario  
and Canada  
Northern  
Power Corpora-  
tion Limited,  
7th November,  
1933.

—continued

ONTARIO.

EXECUTIVE COUNCIL OFFICE.

Copy of an Order-in-Council approved by the Honourable, The Lieutenant-Governor, dated the 3rd day of November, A.D. 1933.

Upon consideration of the Application of the Hydro-Electric Power Commission of Ontario, and upon the recommendation of the Honourable the Prime Minister, the Committee of Council advise that under and by virtue of the Power Commission Act, R.S.O. 1927, Chapter 57 and amendments thereto, the said Commission be authorized to enter into a contract with Canada Northern Power Corporation Limited and its subsidiaries—Northern Ontario Power Company, Limited, and Northern Quebec Power Company, Limited, for sale of electrical power and energy by the Commission to the said Companies in the form of the draft contract attached hereto and that the said contract be and the same is hereby approved.

10

Certified.

(Sgd.) C. F. Bulmer,  
Clerk, Executive Council.

Excerpt from Minutes of the Meeting of The Hydro-Electric Power Commission of Ontario held on Wednesday the 25th day of October, A.D. 1933.

20

The Chief Engineer reported that pursuant to the instructions of the Commission, negotiations had been carried on with Canada Northern Power Corporation Limited for sale of electrical power and energy from the Abitibi Canyon Development to this Company and its two subsidiaries—Northern Ontario Power Company, Limited, and Northern Quebec Power Company Limited. He presented a form of contract which had been prepared and was accepted by these companies.

The form of contract submitted by the chief engineer was fully discussed. It was decided to submit the contract with the Commission's recommendation to the Lieutenant-Governor in Council for approval and authority to execute. The Secretary was directed to forward the Commission's application. It was further decided that upon receipt of such Order-in-Council the contract be executed by the Chairman and Secretary under the Seal of the Commission.

30

Certified true copy.

(Sgd.) W. W. Roper,  
Secretary.

**Exhibit 8**

(Plaintiff's Exhibit)

*In the  
Supreme Court  
of Ontario.*

Exhibits.  
Ex. 8.  
Agreement  
between  
La Roche Mines  
Limited,  
H. Emerson  
Martin, Sylvan-  
ite Gold Mines  
Limited, and  
James E. Day,  
18th June, 1934.

**Agreement between La Roche Mines Limited, H. Emerson Martin,  
Sylvanite Gold Mines Limited, and James E. Day**

THIS AGREEMENT made the 18th day of June, A.D. 1934,

BETWEEN :

LA ROCHE MINES LIMITED (No Personal Liability) a Corporation duly in-  
corporated under the Laws of the Province of Ontario, and having its  
head office at Toronto, in the said Province.

10 Hereinafter called La Roche,

*Of the First Part,*

and

H. EMERSON MARTIN, of Toronto, aforesaid, Barrister-at-Law,  
Hereinafter called Martin,

*Of the Second Part,*

and

SYLVANITE GOLD MINES LIMITED (No Personal Liability) a corporation duly  
incorporated under the Laws of the Province of Ontario, and having its  
head office at Kirkland Lake, Ontario,

20 Hereinafter called Sylvanite,

*Of the Third Part,*

and

JAMES E. DAY, of the said City of Toronto, King's Counsel,  
Hereinafter called the Trustee,

*Of the Fourth Part :*

30 WHEREAS, La Roche represents that it is the owner free of encumbrance  
of patented Mining Claims Numbers H. R. 1001 and H.R. 1002 in the  
Township of Deloro, in the District of Cochrane, Ontario, on which it has  
buildings, plant and equipment, and on which a shaft has been sunk to a depth  
of One Hundred and twenty-five feet (125') and considerable underground  
development work has been done;

AND WHEREAS Martin represents that he is the owner free of encum-  
brances of patented Mining Claim Number H.R. 944 in the said Township  
of Deloro, lying to the North of and adjoining the said Mining Claim of La  
Roche:

AND WHEREAS La Roche being desirous of financing the further de-  
velopment of its properties has negotiated with Sylvanite, as a result of which  
it has been decided to make this agreement:

40 NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration  
of the premises, and the sum of One Dollar (\$1.00) now paid by each of  
the parties to each of the others, the receipt whereof is hereby acknowledged,

*In the  
Supreme Court  
of Ontario.*

—  
Exhibits.  
Ex. 8.  
Agreement  
between  
La Roche Mines  
Limited,  
H. Emerson  
Martin, Sylvan-  
ite Gold Mines  
Limited, and  
James E. Day,  
18th June, 1934.

—continued

and of the mutual covenants and agreements contained herein, the parties hereto have agreed as follows:

1. La Roche hereby grants to Sylvanite the right to enter on and have exclusive possession and control of its property until October 31st, 1934, and to carry on mining and exploration operations thereon during such period, and Sylvanite covenants that it will expend on or in connection with said mining property at least Fifteen Thousand Dollars (\$15,000.00) in mining, prospecting, exploring and developing the said property or for buildings, equipment or plant therefor (including Workmen's Compensation assessments and travelling expenses and reasonable office and supervision charges), during such period ending October 31, 1934. 10

2. La Roche further agrees that Sylvanite may, at any time after the execution of this agreement, and prior to October 31st, 1934, make application for the formation of a mining company with an Ontario charter, and with an authorized capitalization of three million (3,000,000) shares of the par value of One Dollar (\$1.00) each, and with the right to sell said shares at a discount from the par value, on complying with the requirements of the Ontario Companies Act, or make application for the formation of a mining Company with a Dominion Charter of the like capitalization except that the stock shall be no par value. If such application is made then Sylvanite shall proceed with all reasonable dispatch with the formation of such company. 20

3. La Roche agrees, subject to the approval of its shareholders, to sell to such new company if requested so to do by Sylvanite, its properties, including all plant and equipment, for eight hundred and forty thousand (840,000) shares of the capital stock of the new Company, each to be fully paid up and non-assessable, and subject to restriction on voting rights as is hereinafter provided. Said shares, subject to such restriction, to be issued either to La Roche or to its shareholders, as La Roche may direct and La Roche hereby authorizes Sylvanite, on its behalf, and as its agent, to make an offer to such new Company to sell such properties, equipment, etc., to it for such number of shares. 30

4. La Roche agrees that so long as the said option is in force Sylvanite shall have the right to control the election of directors and to vote as proxy for the owners of same on sufficient of the said 840,000 shares as shall, together with the shares owned by Sylvanite give to Sylvanite a 60% vote, and/or that at any meeting of the Company, if so requested by Sylvanite, the said 840,000 shares shall not be voted at all, or no more of them voted than an amount equal to 40% of the shares which Sylvanite has in the Company; and/or that it will at the expense of the new Company, cause sufficient of said 840,000 shares to be deposited with and put in the name of voting trustees, to be named by Sylvanite, and retained by them as may be necessary to ensure that the vote cast by such voting trustees, together with the vote cast by Sylvanite, shall be a 60% vote of all the shares represented at any meeting; and further that without being limited in any way to or by the above methods of ensuring same, that while said option is in force Sylvanite shall have complete voting control at all meetings of the Company. And to ensure 40

this, it shall be a term of the offer to sell said properties to the new Company, that the shares so to go to La Roche, or to its shareholders, shall be subject to such restriction on its voting rights as may be necessary, or as the directors may deem expedient for the purpose of ensuring to Sylvanite such right.

5. La Roche agrees to forthwith call a meeting of its shareholders for the purpose of authorizing said sale, and if said authorization is refused, then this agreement shall be null and void.

6. La Roche agrees that the new Company shall give to Sylvanite an  
 10 option to purchase all or any part of one million two hundred and sixty thousand (1,260,000) shares of its capital stock, for Three Hundred and Fifty-nine Thousand, Two Hundred Dollars (\$359,200.00) and with the condition that as and when any payment is made by Sylvanite there shall be delivered to Sylvanite shares at the rate of one share for every twenty-eight and one-half cents (28½c) paid. Said option shall provide, that in order to keep same alive Sylvanite shall in addition to the \$15,000.00 mentioned in paragraph number 1, have to make payments thereunder to the amount of at least Fifteen Thousand Dollars (\$15,000.00) in each period of three months, after November 1st, 1934, but shall be entitled to credit against any subsequent  
 20 quarterly payment or payments, any surplus that may have been previously paid in excess of the amount by this agreement required either before or after October 31, 1934, and so on from time to time.

7. Sylvanite agrees that it will use its voting power to appoint two nominees of La Roche to the board of Directors of the new Company, the total number of directors of which is to be seven, and that if its option is ended for default, then, on demand of La Roche or of the Trustee, or of either of the Directors representing the La Roche interest, it will procure the resignation of such directors as are its nominee. In such event, if Sylvanite so requests, La Roche shall procure the resignation of its nominees, and a new  
 30 election of directors shall be held immediately.

8. The expense of the incorporation and formation of the new Company shall be borne in the first instance by Sylvanite, but shall be repaid to it by the new Company, and on the formation of the new Company Sylvanite, out of the 1,260,000 shares mentioned in Paragraph 6 shall be entitled to receive stock at the rate of 28½c per share to cover any moneys expended by it under that part of this agreement which provides that \$15,000.00 shall be expended before October 31st, 1934.

9. It is agreed that such part of the authorized capital of the Company, (exclusive of the 840,000 shares to be paid for the La Roche property, and  
 40 the 1,260,000 shares to be issued or optioned to Sylvanite as hereinbefore provided) as the directors may deem fair, may be used from time to time for the purchase of adjoining claims, or claims in the immediate neighbourhood, which in the judgment of the directors it may seem desirable for the Company to obtain, including the issue of 52,500 shares for the Martin Property, as hereinafter mentioned. Apart, however, from such purchases of property, none of the authorized capital left after issuing the 840,000 shares for the La Roche

*In the  
 Supreme Court  
 of Ontario.*

—  
 Exhibits.  
 Ex. 8.

Agreement  
 between  
 La Roche Mines  
 Limited,  
 H. Emerson  
 Martin, Sylvan-  
 ite Gold Mines  
 Limited, and  
 James E. Day,  
 18th June, 1934.

—continued

*In the  
Supreme Court  
of Ontario.*

—  
Exhibits.  
Ex. 8.  
Agreement  
between  
La Roche Mines  
Limited,  
H. Emerson  
Martin, Sylvan-  
ite Gold Mines  
Limited, and  
James E. Day,  
18th June, 1934.

—continued

property and the 1,260,000 shares to be covered by the option shall be sold or optioned, or the proceeds therefrom used for the purposes of the Company, until after Sylvanite has paid in full \$359,200. under its option, and Sylvanite agrees that if after the expenditure by it of such \$359,200, it should happen that further money is needed for the purpose of the Company, that every shareholder of the Company shall have the right to participate in any financing pro rata to his holdings in the Company, such right to be forfeited unless exercised within such reasonable time and on such reasonable terms as the directors may decide.

10. In order that the rights of the shareholders of La Roche may be preserved, even though said Company surrenders its charter or goes out of existence, Sylvanite covenants with the Party of the Fourth Part, as Trustee for the present and future shareholders of La Roche mines that it will comply with all the terms of this agreement. 10

11. Excepting any details herein specifically provided for, all the details of incorporation and organization of the new Company shall be determined by Sylvanite, whose decision regarding same shall be final and binding.

12. On formation of the new Company, as aforesaid, La Roche agrees, on demand of Sylvanite, to transfer and convey by good and sufficient transfers under the Land Titles Act, its properties to the new Company free of encumbrance for shares as above, and Martin agrees, on demand of Sylvanite, to so transfer his said property free of encumbrance to the new Company for the consideration of Fifty-two Thousand Five Hundred (52,500) shares to be issued to him, or to whom he may direct. 20

13. Sylvanite covenants with all and each of the other parties that unless the consent of La Roche is obtained, if La Roche is still in existence, or the consent of the Party of the Fourth Part, in case La Roche is not in existence, the new Company will not:

Grant any extension of the times of payment under or agree to any variation of the other terms of the stock option in paragraph 6 mentioned; 30  
or

Make any profit on sale of any land to the new Company; or

Until the full \$359,200. is paid under the said stock option, make any increase or decrease of authorized capital, sale of mining property or other change in its capital structure, except as herein otherwise provided.

14. Sylvanite agrees that until the new Company is formed and the La Roche property turned over to it, it will give to La Roche full information as to all work done, and copies of all reports made to the directors of Sylvanite and will produce for examination full vouchers covering the expenditures of the \$15,000.00 mentioned in paragraph number 1. And Sylvanite agrees that whether the law gives them the right to same or not, the two directors in the new Company who are to be appointed to represent La Roche, or La Roche shareholders, shall be entitled to have full information as to all work done, discoveries made, reports, and generally full information as to the mining details, and this whether the work is carried on by or the information 40

is obtained by the new Company itself or by Sylvanite.

15. This contract may be assigned by Sylvanite to its wholly owned subsidiary ERIE CANADIAN MINES, LTD.

16. Each party agrees with each of the others to execute and deliver any and all transfers, assignments or any other documents that may be necessary for the full and effectual carrying out of this agreement.

10 IN WITNESS WHEREOF the said Corporations have caused their corporate seals to be hereto affixed duly attested by the hands of their proper officers, and the Parties of the Second and Fourth Parts have hereunto set their hands and seals.

SIGNED, SEALED AND DELIVERED  
in the presence of:

LA ROCHE MINES LIMITED  
(No Personal Liability)

JAMES E. DAY, President.

F. L. KING, Secretary.

(CORPORATE SEAL)

JAMES E. DAY (SEAL)

SYLVANITE GOLD MINES LIMITED  
(No Personal Liability)

EDWARD L. LOONS, President.

WILLIS V. MOOT, Asst. Secretary.

H. E. MARTIN per his attorney.

JAMES E. DAY (SEAL)

*In the  
Supreme Court  
of Ontario.*

—  
Exhibits.  
Ex. 8.  
Agreement  
between  
La Roche Mines  
Limited,  
H. Emerson  
Martin, Sylvan-  
ite Gold Mines  
Limited, and  
James E. Day,  
18th June, 1934.

*—continued*





In the  
Supreme Court  
of Ontario.

Exhibits.  
Ex. 9.  
Supplementary  
Agreement  
between  
La Roche Mines  
Limited,  
H. Emerson  
Martin, Erie  
Canadian Mines  
Limited, and  
James E. Day,  
12th October,  
1934.

**Exhibit 9**

(Plaintiff's Exhibit)

**Supplementary Agreement between La Roche Mines Limited,  
H. Emerson Martin, Erie Canadian Mines Limited,  
and James E. Day**

THIS AGREEMENT made this 12th day of October A.D. 1934,

BETWEEN :

LA ROCHE MINES LIMITED (No Personal Liability), a corporation duly incorporated under the laws of the Province of Ontario, having its Head Office at Toronto, in the said Province, hereinafter called "LA ROCHE," 10  
*Of the First Part;*

and

H. EMERSON MARTIN of Toronto aforesaid, Barrister-at-Law, hereinafter called "MARTIN," 10  
*Of the Second Part;*

and

ERIE CANADIAN MINES, LIMITED (No Personal Liability), a Corporation duly incorporated under the Laws of the Province of Ontario, having its Head Office at Kirkland Lake, Ontario, hereinafter called "ERIE CANADIAN," 20

and

JAMES E. DAY, of the City of Toronto aforesaid, King's Counsel, hereinafter called "DAY," 20  
*Of the Third Part;*

*Of the Fourth Part.*

WHEREAS by agreement in writing under seal dated June 18th, 1934, made between La Roche of the First Part, Martin of the Second Part, Sylvanite Gold Mines, Limited (No Personal Liability) (therein and herein referred to as "SYLVANITE") of the Third Part, and Day of the Fourth Part, Sylvanite acquired the right to exclusive possession and control until October 31st, 1934, of the property of La Roche comprising Patented Mining Claims Numbers H.R. 1001 and H.R. 1002, in the Township of Deloro, in the District of Cochrane, with buildings, plant and equipment and the right to carry on mining and exploration operations thereon during such period, Sylvanite agreeing to expend on or in connection with said mining property at least Fifteen Thousand Dollars (\$15,000.00) during such period, in the manner set forth in said Agreement, which also provided among other things that Sylvanite should have the right at any time prior to October 31st, 1934, to cause to be incorporated a new company for the purpose of acquiring said mining property of La Roche and Patented Mining Claim Number H.R. 944, in the said Township, belonging to said Martin, for the consideration therein mentioned and that Sylvanite should have the option of purchasing certain Treasury shares of the new Company, the whole upon and subject to the 30  
40

terms and conditions set forth in said Agreement, and

WHEREAS by Indenture in writing under seal dated August 25th, 1934, Sylvanite has assigned, transferred, conveyed and set over unto Erie Canadian said Agreement of June 18th, 1934, and all the right title and interest of Sylvanite in, to and under the said Agreement and in and to said properties and shares in the new company; and

WHEREAS the Shareholders of La Roche at a meeting duly called for that purpose authorized the sale of its property on the terms set forth in said Agreement of June 18th, 1934, and authorized the Directors of La Roche to  
10 make any alteration in such terms, which they might consider advisable; and

WHEREAS pursuant to said Agreement Erie Canadian has conducted mining and exploration operations on the said property of La Roche and has expended thereon a substantial amount; and

WHEREAS Erie Canadian has indicated its intention of immediately proceeding with the incorporation of the new Company to acquire the said properties of La Roche and Martin pursuant to the said Agreement and has requested that the said Agreement of June 18th, 1934, may be varied so that instead of Erie Canadian being required to expend the said sum of \$15,000.00 on or in connection with said property of La Roche on or before October 31st,  
20 1934, any balance of the Fifteen Thousand Dollars (\$15,000.00) which may not be so expended may be paid by Erie Canadian to the new company on or before October 31st, 1934, and the other Parties have agreed to consent to the said Agreement being varied in such manner on the terms hereinafter set forth:

NOW, THEREFORE, THIS AGREEMENT WITNESSETH that in consideration of the premises and the sum of One Dollar (\$1.00) now paid by each of the Parties to each of the others (the receipt whereof is hereby acknowledged) and of the mutual covenants and agreements herein contained the Parties hereto have agreed as follows:

30 1. IN place of expending the minimum sum of Fifteen Thousand Dollars (\$15,000.00) on or in connection with the mining property of La Roche in the manner set forth in paragraph One (1) of said Agreement of June 18th, 1934, Erie Canadian shall have the right to pay to the new company when formed to acquire the properties of La Roche and Martin as provided in said Agreement, an amount which added to the amounts expended by Erie Canadian and Sylvanite on or in connection with said mining property of La Roche, will equal Fifteen Thousand Dollars (\$15,000.00) and such payment shall be made on or before October 31st, 1934, and shall constitute a performance of the covenant contained in clause one (1) of the said agreement of June 18th,  
40 1934, Erie Canadian shall, of course, be entitled to receive shares of the new company for moneys expended by Erie Canadian and Sylvanite on or in connection with said property and for any amount paid to the new company under the provisions of this clause at the rate of Twenty-eight and one-half cents (28 $\frac{1}{2}$ c) per share.

2. PROVIDED, however, that in respect of any sum paid to the new company under the provisions of Clause One (1) of this Supplementary

*In the  
Supreme Court  
of Ontario.*

—  
Exhibits.  
Ex. 9.  
Supplementary  
Agreement  
between  
La Roche Mines  
Limited,  
H. Emerson  
Martin, Erie  
Canadian Mines  
Limited, and  
James E. Day,  
12th October,  
1934.

—continued

*In the  
Supreme Court  
of Ontario.*

—  
Exhibits.  
Ex. 9.  
Supplementary  
Agreement  
between  
La Roche Mines  
Limited,  
H. Emerson  
Martin, Erie  
Canadian Mines  
Limited, and  
James E. Day,  
12th October,  
1934.

—continued

Agreement Erie Canadian as controller of the new Company warrants and undertakes that the amount so paid by it to the new company will be expended by the new company on or in connection with the property acquired by the new company from La Roche in the manner set forth in clause Number One (1) of the Agreement of June 18th, 1934, within sixty days from the date of the Charter of the new company.

3. THE said Agreement of June 18th, 1934, shall be deemed amended and revised to give effect to the provisions of this Supplementary Agreement.

4. THIS Agreement shall enure to the benefit of and be binding on the heirs, executors, administrators, successors and assigns of the parties hereto. 10

IN WITNESS WHEREOF the said Corporations have caused their Corporate Seals to be hereto affixed duly attested by the hands of their proper Officers in that capacity duly authorized, and the Parties of the Second and Fourth Parts have hereunto set their hands and seals, as of the day and year first written above.

SIGNED, SEALED AND DELIVERED  
In the Presence of:

“D. M. Durnford,”

As to signatures of James E. Day,  
La Roche Mines, Ltd., H. E.  
Martin, F. L. King.

As to the signatures of Edward L.  
Koons and Willis V. Moot,  
“A. W. Parkinson.”

“D. M. Durnford.”

LA ROCHE MINES LIMITED  
(No Personal Liability)  
(CORPORATE SEAL)

by “James E. Day,” President,  
and “F. L. King,” Secretary, 20  
“H. E. Martin” (Seal)

ERIE CANADIAN MINES LIMITED  
(No Personal Liability)  
(CORPORATE SEAL)

by “Edward L. Koons,” President,  
and “Willis V. Moot,”  
Managing Director.  
“James E. Day” (Seal)

**Exhibit 10**

(Plaintiff's Exhibit)

**Copy of Agreement between Delnite Mines, Limited, La Roche Mines Limited, Erie Canadian Mines Limited, James E. Day and H. Emerson Martin**

THIS AGREEMENT made (in triplicate) the 31st day of October, 1934.

BETWEEN :

10 DELNITE MINES, LIMITED (No Personal Liability) a Corporation duly incorporated under the Laws of the Province of Ontario, and having the head office at the City of Toronto, in the said Province, hereinafter called "DELNITE,"

*Of the First Part;*

and

LA ROCHE MINES LIMITED (No Personal Liability) a Corporation duly incorporated under the Laws of the Province of Ontario, having its head office at the City of Toronto in the said Province, hereinafter called "LA ROCHE,"

*Of the Second Part;*

and

20 ERIE CANADIAN MINES LIMITED (No Personal Liability) a Corporation duly incorporated under the Laws of the Province of Ontario, having its head office at Kirkland Lake, in the said Province, hereinafter called "ERIE CANADIAN,"

*Of the Third Part;*

and

JAMES E. DAY of the said City of Toronto, King's Counsel, hereinafter called "DAY,"

*Of the Fourth Part;*

and

30 H. EMERSON MARTIN of the said City of Toronto, Barrister-at-law, hereinafter called "MARTIN,"

*Of the Fifth Part.*

WHEREAS by Agreement in writing under seal dated June 18th, 1934, made between LA ROCHE MINES LIMITED (No Personal Liability) of the First Part, H. EMERSON MARTIN, of the Second Part, SYLVANITE GOLD MINES, LIMITED (No Personal Liability) of the Third Part, and JAMES E. DAY of the Fourth Part, SYLVANITE GOLD MINES, LIMITED (No Personal Liability) acquired the right to exclusive possession and control until October 31st, 1934, of the property of LA ROCHE comprising patented mining claims 40 H.R. 1001 and H.R. 1002 in the Township of Deloro in the District of Cochrane, with the buildings, plant and equipment thereon and the right to carry on mining, exploration and development work thereon during such

*In the  
Supreme Court  
of Ontario.*

Exhibits.  
Ex. 10.  
Copy of Agree-  
ment between  
Delnite Mines  
Limited, La  
Roche Mines  
Limited, Erie  
Canadian Mines  
Limited, James  
E. Day, and  
H. Emerson  
Martin,  
31st October,  
1934.

*In the  
Supreme Court  
of Ontario.*

Exhibits.  
Ex. 10.

Copy of Agree-  
ment between  
Delnite Mines  
Limited, La  
Roche Mines  
Limited, Erie  
Canadian Mines  
Limited, James  
E. Day, and  
H. Emerson  
Martin,  
31st October,  
1934.

—continued

period, for the consideration and on the terms therein set out and such agree-  
ment also provided that SYLVANITE should have the right at any time prior  
to October 31st, 1934, to cause to be incorporated a new company for the pur-  
pose of acquiring said mining property of LA ROCHE MINES LIMITED and  
patented mining claim H.R. 944 in the said Township belonging to said  
MARTIN for the consideration therein mentioned and that SYLVANITE should  
have the option of purchasing certain Treasury shares of the new Company  
the whole upon and subject to the terms and conditions set forth in the said  
agreement, and

WHEREAS by assignment in writing dated August 25th, 1934, SYLVANITE  
has transferred assigned and set over all its rights under the said Agreement 10  
to ERIE CANADIAN and

WHEREAS by agreement in writing under seal dated the 12th day of  
October, 1934, made between LA ROCHE, H. EMERSON MARTIN, ERIE CAN-  
ADIAN and JAMES E. DAY the terms of said agreement of June 18th, 1934,  
were modified as therein set out, and

WHEREAS DELNITE has been incorporated pursuant to the provisions of  
the said agreement dated 18th June, 1934, to acquire said properties.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of  
the premises and the sum of One Dollar now paid by each of the parties  
hereto to each of the others (the receipt whereof is hereby acknowledged) 20  
and of the mutual covenants and agreements contained herein the parties  
hereto have agreed as follows:—

1. LA ROCHE agrees to sell assign transfer and set over unto DELNITE  
and DELNITE agrees to purchase from LA ROCHE free from encumbrance the  
said mining claims H.R. 1001 and H.R. 1002 together with all buildings,  
machinery, equipment tools, implements and utensils, broken ore and rock and  
chattels on the said lands for the consideration hereinafter stated.

2. In consideration of the transfer to it of said property DELNITE  
Agrees:

(a) To allot and issue to LA ROCHE or its nominees Eight Hundred and 30  
Forty Thousand (840,000) shares of the capital stock of DELNITE to be issued  
as fully paid and non-assessable shares, but subject to the restrictions on voting  
rights as hereinafter and in the said agreement of June 18th, 1934, provided.

(b) To allot and issue to ERIE CANADIAN shares of its capital stock as  
fully paid and non-assessable shares at the rate of twenty-eight and one-half  
cents (28½c) per share to a total amount equivalent to the amount expended  
by SYLVANITE and/or ERIE CANADIAN up to and including October 31st, 1934,  
on or in connection with said property of LA ROCHE under the said agreement  
dated June 18th, 1934.

3. Pursuant to the terms of the agreement dated October 12th, 1934, 40  
DELNITE agrees to sell to ERIE CANADIAN and ERIE CANADIAN agrees to sub-  
scribe for and purchase from DELNITE shares of the par value of One Dollar  
each of the capital stock of DELNITE at the price of twenty-eight and one-  
half cents (28½c) per share to an aggregate amount equivalent to the  
difference between Fifteen Thousand Dollars (\$15,000.00) and the amount  
expended as aforesaid on or in connection with the LA ROCHE property by

SYLVANITE and/or ERIE CANADIAN up to and including October 31st, 1934, the said shares to be paid for on or before the 31st day of October, 1934, and certificates for said shares to be issued to ERIE CANADIAN forthwith.

4. DELNITE agrees to repay and reimburse ERIE CANADIAN all amounts advanced by ERIE CANADIAN on account of the expenses of incorporation and organization of DELNITE and the transfer to it of the properties.

5. In order to more effectually carry out the provisions of the said agreement of June 18th, 1934, and to ensure the control of Delnite by ERIE CANADIAN so long as a certain option agreement between DELNITE and ERIE CANADIAN bearing even date herewith and entered into pursuant to the terms of said agreement of June 18th, 1934, shall be in force, LA ROCHE, MARTIN and DAY agree that DELNITE may take the necessary procedure for converting Ten (10) of the shares of the authorized capital stock of DELNITE into preference shares, the holders of which for a period of five years from the date hereof or for such lesser period as the said holders may agree to, shall have the sole right to vote at any meeting of the shareholders of DELNITE for all purposes whether for electing Directors of the Company or otherwise howsoever. Such preference shares shall be allotted and issued to ERIE CANADIAN or its nominees at par and shall be voted in accordance with the terms and subject to the conditions of said agreement dated June 18th, 1934, during the period during which the said option agreement shall be in force and on the termination or cancellation of said option agreement shall be converted into common shares. Thereafter all shares shall have equal voting rights.

6. For the purpose of assuring to ERIE CANADIAN Sixty per cent (60%) of the outstanding capital stock of DELNITE providing all shares under option in the said option agreement are taken up pursuant thereto DELNITE does hereby give and grant to ERIE CANADIAN the sole and exclusive option to purchase from DELNITE all or any part of an additional Thirty-one Thousand Five Hundred (31,500) shares of the par value of One Dollar (\$1.00) each of the capital stock of DELNITE over and above the shares covered by said option agreement at the price of twenty-eight and one-half cents (.28½c) per share at any time during the currency of the said option agreement.

7. MARTIN and DAY each consents to and approves of all the terms and conditions herein set out.

8. LA ROCHE hereby covenants with DELNITE that it will upon demand make, do, execute or deliver or cause to be made, done, executed or delivered such acts, deeds, conveyances and assurances as may be necessary for the more perfectly assuring the above mentioned property unto DELNITE and for carrying out the provisions of said agreement of June 18th, 1934, and of this agreement.

9. THIS agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF the said Corporations have caused their Corporate Seals to be hereto affixed duly attested by their proper officers in that behalf and the Parties of the Fourth and Fifth Parts have hereunto set their hands and seals.

*In the  
Supreme Court  
of Ontario.*

—  
Exhibits.  
Ex. 10.

Copy of Agreement between Delnite Mines Limited, La Roche Mines Limited, Erie Canadian Mines Limited, James E. Day, and H. Emerson Martin, 31st October, 1934.

—continued

*In the  
Supreme Court  
of Ontario.*

SIGNED, SEALED AND DELIVERED  
In the Presence of:

Exhibits.  
Ex. 10.  
Copy of Agree-  
ment between  
Delnite Mines  
Limited, La  
Roche Mines  
Limited, Erie  
Canadian Mines  
Limited, James  
E. Day, and  
H. Emerson  
Martin,  
31st October,  
1934.

*—continued*

DELNITE MINES, LIMITED,  
(No Personal Liability)  
By: .....  
President  
and .....  
Secretary

LA ROCHE MINES, LIMITED  
(No Personal Liability)  
By: .....  
President 10  
and .....  
Secretary

ERIE CANADIAN MINES, LIMITED  
(No Personal Liability)  
By: .....  
President  
and .....  
Secretary  
.....  
..... 20

---

**Part Exhibit 4**

(Plaintiff's Exhibit)

**Notice of Liquidation**

Notice is hereby given that at a Special General meeting of the share-  
holders of

LA ROCHE MINES LIMITED (No Personal Liability) held 13th Novem-  
ber, 1935, the following resolutions were passed:

“That this meeting of Shareholders of La Roche Mines Limited requires  
the Corporation to be wound up,” and

That the Company go into voluntary liquidation and be wound up and 30  
that F. L. Heard be appointed Liquidator.

1116 Federal Bldg., Toronto,  
14th November, 1935.

F. L. HEARD,  
Liquidator.

The above notice was published in the Ontario Gazette of November  
23, 1935, and was filed with the Provincial Secretary Nov. 16, 1935.

“F. L. KING,”  
Sec.

**Part Exhibit 4**

(Plaintiff's Exhibit)

**Notice to Creditors**

**NOTICE TO CREDITORS**

**IN THE MATTER OF LA ROCHE MINES LIMITED (No Personal Liability)  
in Liquidation.**

*In the  
Supreme Court  
of Ontario.*

Exhibits.  
Part Ex. 4.  
Notice to  
Creditors,  
15th November,  
1935.

10 NOTICE is hereby given that pursuant to resolution of shareholders, the above Company was put into liquidation 13th November, 1935, and the undersigned appointed Liquidator.

All persons having any claims against said Company are required to send particulars thereof to the undersigned Liquidator at the address below, on or before December 19th, 1935, after which date the assets of the said Company will be distributed, having regard only to claims of which the Liquidator shall then have notice.

DATED at Toronto November 15th, 1935.

F. L. HEARD,  
Liquidator,  
1116 Federal Bldg., Toronto.

20

DAY, FERGUSON, WILSON & KELLY,  
Solicitors for the Liquidator,  
85 Richmond Street West, Toronto.

The above notice was published in the Northern Miner, Issues of Nov. 21st, 28th, Dec. 5th and Dec. 12th, 1935.

"F. L. KING,"  
Sec.

This is page 197 of the Minute Book of La Roche Mines Limited.

.....  
Secretary.

30



*In the  
Supreme Court  
of Ontario.*

Exhibits.  
Part Ex. 4.  
Letter from  
Assistant Provincial  
Secretary  
to Messrs. Day,  
Ferguson & Co.,  
16th November,  
1935.

**Part Exhibit 4**

(Plaintiff's Exhibit)

**Letter from Assistant Provincial Secretary to Messrs.  
Day, Ferguson & Co.**

COAT-OF-ARMS  
Ontario

Assistant Provincial Secretary's Office

Toronto, November 16, 1935.

Dear Sirs:

*Re: La Roche Mines, Limited.*

10

I have your letter of the 15th instant enclosing Notice of resolution of voluntary winding up of the above Company and the sum of \$2.00 to cover fee for filing, receipt of which is enclosed.

I beg to advise that such Notice is filed in this office as of the 16th instant.

It is noted that Mr. F. L. Heard has been appointed Liquidator for the purpose of winding up the affairs of the Company and I should be pleased to receive his Final Return under section 229 (2) of The Companies Act as soon as possible, together with the prescribed filing fee of \$2.00.

When the winding up has been completed, the original Letters Patent of the Company should be returned to this office.

20

Yours truly,

F. V. JOHNS,

Assistant Provincial Secretary.

Messrs. Day, Ferguson & Co.,  
Barristers,  
85 Richmond St. W.,  
TORONTO 2, Ont.

---

**Exhibit 5**  
(Plaintiff's Exhibit)

*In the  
Supreme Court  
of Ontario.*

Exhibits.  
Ex. 5.  
Declaration  
of Bailey V.  
Harrison,  
16th December,  
1935.

**Declaration of Bailey V. Harrison**

IN THE MATTER OF THE Liquidation Act, R.S.O. 1927, Chapter 218.  
AND IN THE MATTER OF La Roche Mines Limited, of the City of Toronto in  
the Province of Ontario.

AND IN THE MATTER OF Northern Ontario Power Company  
Limited,

*Creditor,*

10 I, BAILEY V. HARRISON, of the town of New Liskeard in the Province of Ontario, do solemnly declare and say:—

1. That I am Vice-President and General Manager of the above-named creditor and have knowledge of all circumstances connected with the claim hereinafter referred to.

2. That the said La Roche Mines Limited was at the date of passing of winding-up resolution herein, namely on the 13th day of November, 1935, and still is justly and truly liable and responsible to the Northern Ontario Power Company Limited in a very considerable amount in the matter following:—

20 Damages claimed for breach of contract for the supply of electric energy by Northern Ontario Power Company Limited to the transformer house formerly owned by the La Roche Mines Limited located on mining claim HR1001 under and pursuant to a contract dated December 30th, 1931. The term of the said contract is for the mining life of the properties then or thereafter operated or owned or controlled by La Roche Mines Limited in the Porcupine District.

3. That the said Northern Ontario Power Company Limited has not nor has any person by its order to my knowledge or belief for its use had or received any manner of satisfaction or security whatsoever.

30 AND I make this solemn Declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath, and by virtue of "The Canada Evidence Act."

DECLARED before me at the town of  
New Liskeard in the District of  
Temiskaming this 16th day of De-  
cember, A.D. 1935.

"W. H. WALTER,"

A Commissioner, etc.

"B. V. HARRISON,"  
Vice-President and General  
Manager,  
NORTHERN ONTARIO POWER COM-  
PANY LIMITED.

*In the  
Supreme Court  
of Ontario.*

Exhibits.  
Ex. 6.  
Notice of  
Contestation,  
24th December,  
1935.

## Exhibit 6

(Plaintiff's Exhibit)

### Notice of Contestation

IN THE MATTER OF The Companies Act, being Chapter 218 of the Revised Statutes of Ontario, 1927;

AND IN THE MATTER OF La Roche Mines Limited (No Personal Liability), of the City of Toronto in the County of York;

AND IN THE MATTER OF Northern Ontario Power Company Limited, Creditor;

The Liquidator of La Roche Mines Limited (No Personal Liability) 10 hereby gives you notice, pursuant to Section 212, The Ontario Companies Act and Section 26 of The Assignments and Preferences Acts, being chapter 162 of the Revised Statutes of Ontario, 1927, that it contests the claim made by you against the said La Roche Mines Limited (No Personal Liability) in whole.

Within thirty days after the receipt of this notice or such further time as the Judge may allow, you may bring an action against the Liquidator to establish your claim and a copy of the Writ in the action shall thereupon be served on the Liquidator; in default of such action being brought and the Writ of Summons served within the time above limited, your claim to rank as a creditor of La Roche Mines Limited, (No Personal Liability) shall be forever barred. 20

Service of any Writ of Summons you may cause to be issued may be served upon Messrs. Day, Ferguson, Wilson & Kelly, 1116 Federal Building, Toronto, Solicitors for the Liquidator, and service upon them shall be deemed sufficient service.

DATED at Toronto this 24th day of December, 1935.

"F. L. HEARD,  
Liquidator of La Roche Mines Limited  
(No Personal Liability). 30

To:  
Northern Ontario Power Co. Limited.

---

**Exhibit 7**

(Plaintiff's Exhibit)

**Order of J. A. McEvoy, J.**

IN THE SUPREME COURT OF ONTARIO.

THE HONOURABLE  
MR. JUSTICE J. A. McEVOY  
IN CHAMBERS.

Friday, the 17th day  
of January, A.D. 1936.

*In the  
Supreme Court  
of Ontario.*

—  
Exhibits.  
Ex. 7.  
Order of J. A.  
McEvoy, J.,  
17th January,  
1936.

In the matter of a proposed action

BETWEEN:

10 NORTHERN ONTARIO POWER COMPANY LIMITED,

*Plaintiff;*

and

LA ROCHE MINES LIMITED, (No Personal Liability) in Liquidation,  
*Defendant.*

UPON THE APPLICATION of the proposed Plaintiff for leave to issue a Writ of Summons against the Defendant notwithstanding notice of Winding-up proceedings of the Defendant Company and upon reading the Affidavit of Bailey V. Harrison filed, the exhibits therein mentioned and upon hearing what was alleged by counsel for the said alleged plaintiff.

20 1. IT IS ORDERED that the Plaintiff be at liberty to issue a Writ of Summons against La Roche Mines Limited to establish its claim to rank as a creditor of said Company and to proceed with the said action according to the practice of this Court and that the Plaintiff, if so advised, may join F. L. Heard, Liquidator of La Roche Mines Limited as a Defendant in said action.

2. IT IS FURTHER ORDERED that copy of this Order be served on the Defendant with the Writ of Summons.

3. AND IT IS FURTHER ORDERED that the costs of this application shall be costs in the cause.

"D'ARCY HINDS,"

30

Registrar,  
S.C.O.

"J.A.M." J.  
Entered O. B. 153, pages: 458-9.  
January 17, 1936.  
"H. F."

---

In the  
Supreme Court  
of Ontario.

Exhibits.  
Ex. 23.  
Annual  
Statement  
of Northern  
Ontario Power  
Company Limited for 1935.  
24th February,  
1936.

**Exhibit 23**

(Defendants' Exhibit)

**Annual Statement of Northern Ontario Power Company, Limited,  
for 1935**

NORTHERN ONTARIO POWER COMPANY LIMITED

BALANCE SHEET AS AT 31ST DECEMBER, 1935.

*Assets*

## Plant Investment:

Properties, Plant and Equipment, Franchises, Organization, etc., at cost.....	\$30,564,476.29	10
Cash on Hand and in Banks.....	347,636.97	
Marketable Securities, less Reserve (Market value \$437,070.00) .....	420,089.75	
Accounts Receivable, including Accrued Revenue.....	362,258.64	
Notes Receivable .....	252,090.07	
Merchandise and Maintenance Supplies .....	173,776.16	
Inventories as shown by book records, valued at cost as certified to by responsible officers of the Company. Book records adjusted periodically to agree with Physical Inventories.		
Prepaid and Deferred Expenses .....	15,026.38	20
Discount on Debenture Notes .....	400,000.00	
	<u>\$32,535,354.26</u>	

## AUDITORS' REPORT.

24th February, 1936.

Northern Ontario Power Company Limited,  
Montreal.

We have made an examination of the books of account of Northern Ontario Power Company Limited for the year ended 31st December, 1935, and have obtained all the information and explanations which we have required. 30

In our opinion the attached Balance Sheet and relative Statements of Income and Expenditure and Earned Surplus Accounts set forth correctly the financial position of the Company at 31st December, 1935, and the results from operations for the year ended 31st December, 1935, according to the information and explanations received by us and as shown by the books of the Company.

(Sgd.) P. S. ROSS & SONS,  
Chartered Accountants. 40

NORTHERN ONTARIO POWER COMPANY LIMITED  
BALANCE SHEET AS AT 31ST DECEMBER, 1935.

*Liabilities.*

6%	Debenture Notes—due 1953 .....	\$11,265,000.00	
	Less: Redeemed to date .....	840,000.00	\$10,425,000.00
	Accounts Payable and Accrued Liabilities.....		132,304.64
	Provision for Taxes .....		187,576.74
	Dividend on Preferred Stock payable 25th January, 1936...		37,489.50
	Dividend on Common Stock, payable 25th January, 1936...		420,024.50
10	Debenture Interest Accrued .....		104,250.00
	Customers' Deposits, including Interest.....		120,428.76
			<hr/>
			\$11,427,074.14
	To the Shareholders:		
	Capital Stock—		
	6% Cumulative Convertible Preferred Shares of \$100.00		
	each (redeemable at \$110.00 and Accrued Dividend		
	after 60 days' notice).		
	Authorized, 25,000 shares		
20	Issued 24,993 shares .....		2,499,300.00
	Common Shares of No Par Value:		
	Authorized, 500,000 shares		
	Issued 240,014 shares .....		11,091,326.90
	Reserves—Depreciation .....		
			6,826,837.96
	—Bad Debts .....		159,943.04
	—Miscellaneous .....		14,950.86
	Earned Surplus—Balance 31st December, 1935 .....		515,921.36
			<hr/>
			<u>\$32,535,354.26</u>

*In the  
Supreme Court  
of Ontario.*

*Exhibits.  
Ex. 23.*

*Annual  
Statement  
of Northern  
Ontario Power  
Company Limited  
for 1935,  
24th February,  
1936.*

*—continued*

30 Examined and Certified in accordance with our attached report.

Montreal, 24th February, 1936.

(Sgd.) P. S. ROSS & SONS,  
Chartered Accountants.

In the  
Supreme Court  
of Ontario.

Exhibits.  
Ex. 23.

Annual  
Statement  
of Northern  
Ontario Power  
Company Limited  
for 1935,  
24th February,  
1936.

—continued

NORTHERN ONTARIO POWER COMPANY LIMITED  
STATEMENT OF INCOME AND EXPENDITURE ACCOUNT  
FOR THE YEAR ENDED 31ST DECEMBER, 1935.

Gross Earnings from Operations .....		\$3,409,534.73	
Deduct: Operating Expenses .....	\$1,215,408.54		
Directors' Fees .....	3,550.00		
Executive Officers' Salaries .....	24,290.00		
Legal Fees .....	2,721.91		
Provisions for Bad Debts .....	2,342.71		
		1,249,313.16	10
Net Operating Profit before Interest, Depreciation and In- come Taxes .....		2,160,221.57	
Income from Investments .....		11,686.08	
		<u>\$2,171,907.65</u>	
Deduct:			
Interest on Debentures .....	\$625,728.50		
Interest on Customers' Deposit .....	4,855.06		
Provision for Depreciation .....	528,000.00		
Provision for Income Taxes .....	135,998.24		
		1,294,581.80	20
Net Profit for the year transferred to Earned Surplus Ac- count .....		\$ 877,325.85	

STATEMENT OF EARNED SURPLUS ACCOUNT  
FOR THE YEAR ENDED 31ST DECEMBER, 1935.

Balance at Credit—31st December, 1934.....		\$ 754,462.22	
Deduct: Adjustment of Income Taxes of Prior Years.....		5,852.71	
		<u>\$ 748,609.51</u>	
Add:			30
Net Profit for the year transferred from Income and Ex- penditure Account .....		877,325.85	
		<u>\$1,625,935.36</u>	
Deduct: Dividends on 6% Cumulative Pre- ferred Stock .....	\$149,958.00		
Common Stock .....	960,056.00		
		<u>1,110,014.00</u>	
Balance at Credit 31st December, 1934.....		<u>\$ 515,921.36</u>	40

Examined and Certified in accordance with our attached Report.

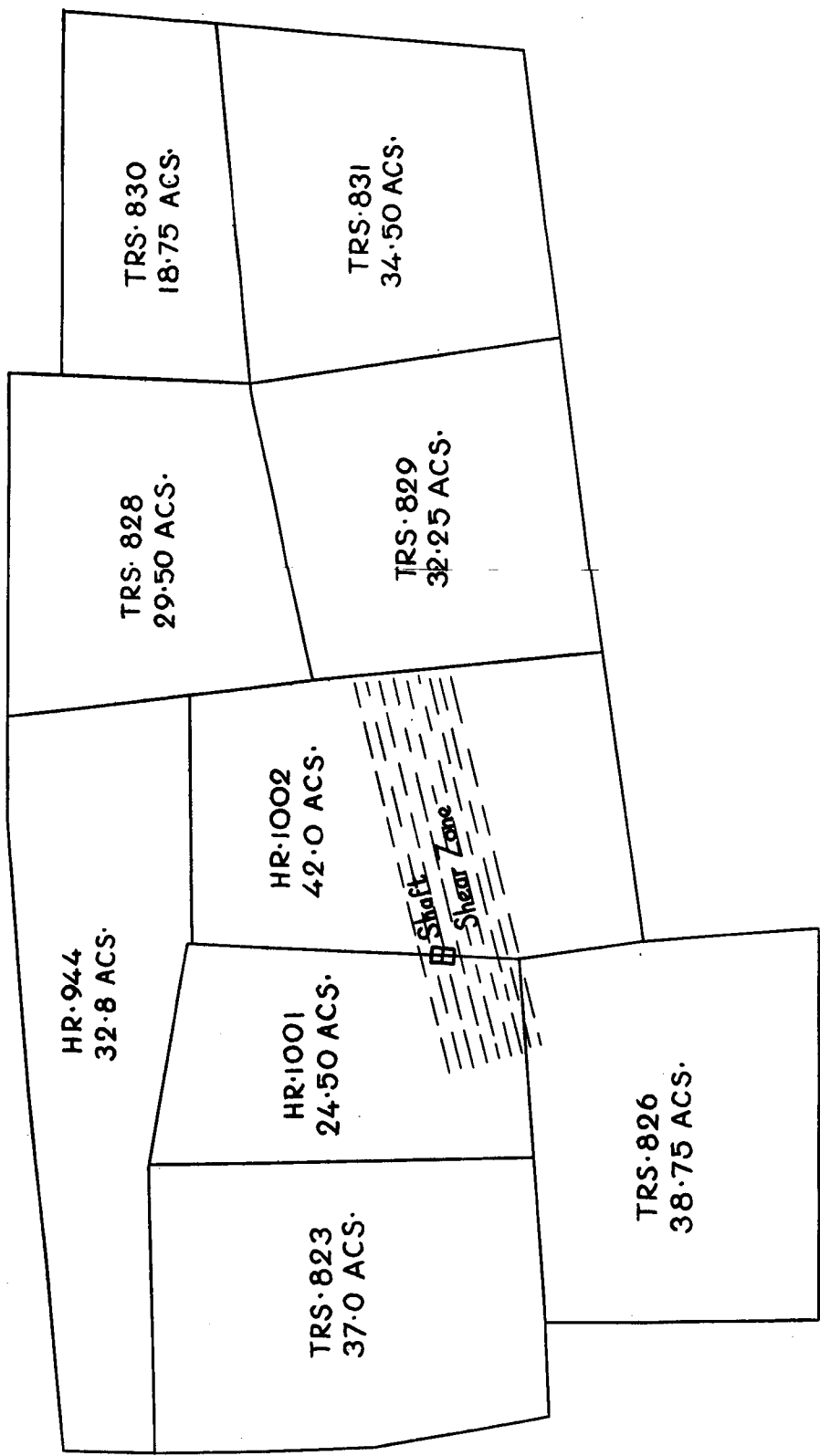
Montreal, 24th February, 1936.

(Sgd.) P. S. ROSS & SONS,  
Chartered Accountants.

57, 1938

### EXHIBIT 25 (Defendants' Exhibit)

Sketch of Part of Deloro Township showing Properties of La Roche Mines Limited



TRS 830	18.75 ACRES
TRS 831	34.50 "
TRS 829	32.25 "
TRS 828	29.50 " E
TRS 826	38.75 "
TRS 823	37.00 "
NORANDA	190.75 "
HR 1001	24.50
HR 1002	42.00 66.50 ACS.
257.25	
HR 944	32.80 ACRES
290.05	