

9, 1938

14-OF-1938

In the Privy Council

No. of 1937.

ON APPEAL FROM THE COURT OF KING'S BENCH FOR THE
PROVINCE OF QUEBEC (APPEAL SIDE)
CANADA

BETWEEN

Clifford Sifton et al.,

Clifford Sifton, Barrister, and W. Victor Sifton, Director, both of the Township of North York in the County of York, in the Province of Ontario, in their capacity of the only remaining testamentary executors of the Estate of the late Clifford Winfield Burrows Sifton, in his lifetime of Assinaboine Lodge in the County of Leeds, in the Province of Ontario, Solicitor.

(Plaintiffs in the Superior Court and Respondents in the Court of King's Bench)

APPELLANTS,

and

Robert Oliver Sweezey,

Robert Oliver Sweezey, Consulting Engineer, of the City and District of Montreal,

(Defendant in the Superior Court and Appellant in the Court of King's Bench)

RESPONDENT.

RECORD OF PROCEEDINGS

CHARLES RUSSELL & CO.,
37 Norfolk Street,
London, W.C. 2, England.
Solicitors for Appellants.

Solicitors for Respondent.

C. A. MARCHAND, PRINTER, MONTREAL.

RECORD OF PROCEEDINGS.

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RESPONDENT.

RECORD OF PROCEEDINGS

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PART I — PLEADINGS IN CASE No. 998

In the
Superior
Court
District of
Montreal.

No. 1
Plaintiffs'
Declaration,
12 Jan. 1934

Canada
Province of Quebec
District of Montreal
No. A-126082
King's Bench, Appeal Side

SUPERIOR COURT

HENRY A. SIFTON, et al, es qual.,

10

Plaintiffs.

— vs —

ROBERT OLIVER SWEEZEY,

Defendant.

No. 1

PLAINTIFF'S DECLARATION.

1. Clifford Winfield Burrows Sifton of the County of
Leeds, Ont., Solicitor, died at his domicile in the Province of
Ontario on the 13th of June, 1928, leaving a last Will and
20 Testament executed on the 20th of July, 1926, which was duly
probated on the 10th of August, 1928, by which he appointed his
brothers, the Plaintiffs in the present case, and John W. Sifton,
Publisher, of the City of Winnipeg another brother, who has
since died, his testamentary executors, the whole as appears by
a duly certified copy of the said Will and probate, filed here-
with to form part hereof as Plaintiffs' Exhibit No. P-1.

2. During the course of the months of September and
October, 1927, the Defendant retained the services of the said
30 late C. Winfield B. Sifton to help him have certain plans for
the development of a proposed hydro-power development by
means of a canal to be built from Lake St. Francis to Lake St.
Louis in the Province of Quebec approved by the Canadian
Federal Government, for which services the Defendant agreed
inter alia to pay the said late C. Winfield B. Sifton a retainer
of \$5,000., (which was duly paid about the time the contract was
entered into) and a further sum of \$50,000. when the said plans
had been passed and approved by the Dominion Government, the
40 said agreement being set out and contained in the following letters
exchanged between the said late C. Winfield B. Sifton and the
Defendant, copies of which are filed herewith to form part here-
of as Plaintiffs' exhibits, to wit:—

- Letter from the Defendant to the said late
C. Winfield B. Sifton, dated 6th
September, 1927,..... Exhibit No. P-2.
- Letter from the Defendant to the said late,
C. Winfield B. Sifton, dated 28th
September, 1927..... Exhibit No. P-3.
- Letter from the said Defendant to the said
late C. Winfield B. Sifton, dated 15th
October, 1927 Exhibit No. P-4.

- Letter from the said late C. Winfield B. Sifton to the Defendant, dated 17th October, 1927 Exhibit No. P-5.
- Letter from the Defendant to the said C. Winfield B. Sifton, dated 19th October, 1927 Exhibit No. P-6.
- 10 Letter from the said C. Winfield B. Sifton to the Defendant, dated 23rd October 1927 Exhibit No. P-7.

3. The said C. Winfield B. Sifton rendered the services he was called upon to render under the terms of the said agreement before his death and the said plans were approved by the Dominion Government by two Orders-in-Council, the first, Order-in-Council P. C. 422 passed on or about the 8th March, 1929 and the other, Order-in-Council P. C. 1081 passed on or about the 22nd June, 1929.

20 4. The Defendant, having been requested and duly put in default by the Plaintiffs of paying the said amount of \$50,000. due to the Estate of the said late C. Winfield B. Sifton recognized to owe the same and on the 11th of June, 1932, requested a delay of six months to pay the said amount, which said delay was granted him on condition that he give them a written acknowledgment of his indebtedness, which he did by letter bearing the said date addressed to one of the Plaintiffs, the said Clifford Sifton, as appears by copy of the said letter filed herewith to form part hereof as Plaintiffs' Exhibit
30 No. P-8.

5. The said six months' delay so granted by the Plaintiffs to the Defendant has now expired but the Defendant still neglects to pay the said amount of \$50,000., although duly bound so to do.

40 6. The Plaintiffs are entitled to claim from the Defendant interest at the rate of 5% per annum since the 11th of June, 1932, date on which, having been put in default of paying the said amount by the Plaintiffs, the Defendant acknowledged the debt and requested a delay to pay the same as evidenced by Plaintiffs' Exhibit No. P-8, the said interest at the present date amounting to \$3,972.61, which together with the capital forms a total sum of \$53,972.61.

WHEREFORE the Plaintiffs prays for judgment against the Defendant for the said sum of \$53,972.61 with interest thereon from the present date and costs.

Montreal, 12th January, 1934.

Casgrain, Weldon Demers & Lynch-Staunton,
Attorneys for Plaintiffs.

No. 2

DEFENDANT'S PLEA

In the
Superior Court
District of
Montreal.

No. 2
Defendant's
Plea
15 March 1934

For Plea to the action herein, the Defendant says :

10 1. That he is ignorant of the matters set forth and alleged in paragraph 1 thereof.

20 2. As to paragraph 2 of the said action, the Defendant says that he never personally assumed or entered into any undertaking or obligation whatsoever in favour of the said late C. Winfield B. Sifton. As to the letters in the said paragraph referred to and produced as exhibits number P.2, P.3, P.4, P.5, P.6 and P.7 the Defendant says that they will speak for themselves and subject to the foregoing the said paragraph and any inference or conclusion drawn from the said exhibits is denied.

3. Paragraph 3 of the said action is denied. The Defendant, however, admits the passing of the two Orders-in-Council therein referred to, but avers that the same were later by statute annulled and set aside.

30 4. Paragraph 4 of the said action is denied. The Defendant admits having signed the letter therein referred to as Exhibits P.8, which will speak for itself but denies having by virtue of the said letter or the matters set forth in the said paragraph assumed or entered into any undertaking or obligation whatsoever in favour of the said late C. Winfield B. Sifton.

5. Paragraph 5 of the said action is denied. The Defendant, however, admits denying to owe and declining to pay the Plaintiffs the sum of Fifty Thousand Dollars (\$50,000.00) or any other sum.

40 6. Paragraph 6 of the said action is denied. The Defendant is not in default of paying the Plaintiffs the sum above referred to or any other sum, whether in capital or interest, because he is not indebted to the Plaintiffs in any sum whatsoever.

AND FOR FURTHER PLEA, DEFENDANT SAYS:

7. That the said late C. Winfield B. Clifton at all times during his relationship and correspondence with the Defendant knew as a fact that the Defendant was acting solely as the representative and as one of the managers of a syndicate called the Beauharnois Syndicate which had been formed (and in the

formation and organization of which the said late C. Winfield B. Sifton had participated and assisted) for the purpose of framing, developing and carrying out the hydro-electric power development referred to in paragraph 2 of the declaration.

10 8. That the said late C. Winfield B. Sifton at all times during the said relationship and correspondence was aware that a corporation known as the Marquette Investment Corporation had been appointed and was acting as Trustee Depositary for the said syndicate and all payments made to the said late C. Winfield B. Sifton including the sum of \$5,000.00 referred to in Exhibits P.3 and P.4 were so made to him in the form of cheques of the said Marquette Investment Corporation, which the said late C. Winfield B. Sifton accepted knowing that the said payments were from the funds of the said Beauharnois Syndicate and that he never at any time looked upon the Defendant as personally involved or bound towards him in any manner, but on 20 the contrary fully and at all times distinctly acknowledged and agreed that he looked for payment of all monies, fees or emoluments due him under any agreement made with the Defendant from the said syndicate or its successors and ayant cause and out of their monies alone.

30 9. That the said Beauharnois Syndicate was originally organized about the 12th of May 1927, that it was reorganized on or about the 14th of April 1928 by the creation of the Beauharnois Power Syndicate which assumed all its rights and obligations and which ultimately were transferred to and taken over by the Defendant-in-Warranty herein, the Beauharnois Power Corporation Limited, and the Defendant specially and expressly pleads and avers that, if by reason of his dealings with the said late C. Winfield B. Sifton and the matters alleged in the action and the exhibits produced in support thereof, any rights were created in favour of the said late C. Winfield B. Sifton (which however Defendant denies), such rights never produced any corresponding obligations on the part of the Defendant personally but were and 40 are enforceable only and solely against the Beauharnois Syndicate and/or the Beauharnois Power Syndicate and/or the Beauharnois Power Corporation Limited.

10. That consequently there was no lien de droit or valid obligation between the said late C. Winfield B. Sifton and the Defendant personally and as a consequence the said late C. Winfield B. Sifton's executors, the present Plaintiffs, have no right of action against the Defendant.

In the
Superior
Court
District of
Montreal.
—
No. 2
Defendant's
Plea
15 March 1934
(Continued)

11. That furthermore the said late C. Winfield B. Sifton died long before the plans of the said syndicate or its successors had been passed or approved, the Orders-in-Council referred to in the action not having adopted until nine months and one year respectively after his death and it was not therefore due to his efforts that the Federal Government's approval was obtained at all and furthermore the plans referred to in paragraph 3 of the declaration were never definitely approved by the Government of the Dominion of Canada and the said Orders-in-Council were subsequently by statute avoided and set aside as hereinabove set forth.

12. That the Defendant by his letter of June 11th, 1932, Exhibit P.8, referred to in paragraph 4 of the declaration did not assume any obligation of a personal kind or on his own behalf and could not create any obligation or give any valid undertaking on behalf of the Beauharnois Syndicate, the Beauharnois Power Syndicate or the Beauharnois Power Corporation inasmuch as he was no longer connected with the Beauharnois enterprise nor had he been for a long time previous and was without power whatsoever to act on behalf of the said syndicate or corporation.

13. That the said letter, Exhibit P.8, by its very context shows that it was only written in order to obtain a delay and on its face implies no personal undertaking on behalf of the Defendant whatsoever.

14. That the Will of the said late C. Winfield B. Sifton as shown by Exhibit P.1 appears to have been probated on the 10th of August 1928; that no effort to enforce any claim of the nature set forth in the action appears to have been made for nearly four years from the date of the said probate and that the action now taken is an afterthought and unfounded.

15. That the Plaintiff's action is unfounded in fact and in law.

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

Montreal, March 15th, 1934.

E. Languedoc,
Attorney for Defendant.

PLAINTIFFS ANSWER TO DEFENDANT'S PLEA

1. The Plaintiffs pray acte of the admission contained
in Paragraph 2 of the Defendant's Plea, but deny the facts there-
10 in alleged.

2. In answer to Paragraph 3 of the Defendant's Plea the
Plaintiffs allege that the facts therein mentioned are irrelevant
to the present issue and add that once the said plans had been
approved the Plaintiffs were entitled to be paid the amount due
the said W.B. Sifton, that in any case, independently of the annulment
of the said Orders-in-Council the plans for the develop-
ment of the said proposed hydraulic power were approved
the works were started and the said canal and hydraulic plant
20 are in operation today and were in operation long before the in-
stitution of the present action, so that the annulment of the first
Orders-in-Council can have no effect upon the Plaintiffs' rights.

3. The Plaintiffs prays acte of the admissions contained
in Paragraphs 4 and 5 of the Defendant's Plea, but deny all the
facts therein alleged.

4. The Plaintiffs deny paragraph 6 of the Defendant's
30 Plea.

5. The Plaintiffs deny the facts alleged in Paragraph 7
of the Defendant's Plea and add that even if the said facts were
true they would not in law affect the Defendant's responsibility.

6. The Plaintiffs deny the facts alleged in Paragraph 8
of the Defendant's Plea and add that in any event the said facts
are irrelevant to the present issue and that none of them can
affect the Defendant's responsibility towards the Plaintiffs.

40 7. In answer to Paragraph 9 of the Defendant's Plea,
the Plaintiffs declare that they are ignorant of the organization
and re-organization of the syndicates therein mentioned and the
transfer of the rights and obligations of the said syndicates to
the Beauharnois Power Corporation Limited and deny the other
facts alleged in the said paragraph.

8. The Plaintiffs deny Paragraph 10 of the Defendant's
Plea.

9. In answer to Paragraph 11 of the Defendant's Plea the Plaintiffs say that at the time of the death of the said W. B. Sifton he had rendered all the services he could render and was called upon to render under the terms of his said agreement with the Defendant and that under the terms of the said agreement it was specifically provided that he would not be called upon to establish in any way that the approval of the Federal Government was obtained through his efforts; moreover that not only were the plans for the said development finally approved by the Government, but the plant and canal comprising the said development have been built and the said development is today in operation and was so at the time of the institution of the present action, and the Plaintiffs deny all the other facts alleged in the said paragraph of the Defendant's Plea.

10 20 Plea. 10. The Plaintiffs deny Paragraph 12 of the Defendant's

11. In answer to Paragraph 13 of the Defendant's Plea the Plaintiffs say that Exhibit No P-8 therein referred to was given by the Defendant to the Plaintiffs on the Defendant's representations that he was unable at that time to meet his liability to them, which he thereby recognized, on account of the condition of his personal affairs and that he would be in a position to pay and would pay the amount of his indebtedness within the delay therein mentioned, and the Plaintiffs deny the remainder of the said paragraph.

12. The Plaintiffs deny Paragraphs 14 and 15 of the Defendant's Plea.

WHEREFORE the Plaintiffs pray for the dismissal of the Defendant's Plea with costs.

Montreal, 23rd April, 1934.

40 Casgrain, Weldon, Demers & Lynch-Staunton,
Attorneys for Plaintiffs.

DEFENDANT'S REPLY TO PLAINTIFFS' ANSWER

1. He joins issue with the denial contained in paragraph 1 thereof.

10 2. He joins issue with the Plaintiffs with regard to the allegation as to relevancy set forth in paragraph 2 thereof. He denies that the Plaintiffs or the late C. Winfield B. Sifton were at any time entitled to any rights other than those created by the bargain or agreement evidenced by exhibits P.3, P.4, P.5 and P.6. He denies that the services thereby retained were ever rendered; that the conditions of the agreement were ever complied with; or that the remuneration provided for was ever earned. It is quite irrelevant to say as stated in the said paragraph that the plans had been approved or that the canal and hydraulic plant referred to were in operation upon the institution of the action as the only point at issue is as to whether in accordance with the agreement entered into the late C. Winfield B. Sifton before his death had earned the remuneration in question or not.

3. The Defendant joins issue with the Plaintiffs on the denial contained in paragraphs 3 and 4 thereof.

30 4. The Defendant joins issue with the Plaintiffs on the denial contained in paragraph 5 and denies the remainder of the said paragraph.

5. The Defendant joins issue with the Plaintiffs on the denial contained in paragraph 6 and denies the remainder of the said paragraph.

6. The Defendant joins issue with the Plaintiffs on the denial contained in paragraphs 7 and 8 thereof.

40 7. The Defendant denies the averment in paragraph 9 that at the time of his death the late C. Winfield B. Sifton had fulfilled his mandate or office under the agreement entered into between him and the Defendant acting as already described; the said agreement speaks for itself. It is besides the point, irrelevant and illegal to say that the plans have been approved and the plant and canal are today in operation and were so at the time of the institution of the action, for the reasons already hereinabove stated, and the Defendant joins issue with Plaintiffs on the denial concluding the said paragraph.

~~11~~

In the
Superior
Court
District of
Montreal.

No. 4
Defendant's
Reply to
Plaintiffs'
Answer
30 April 1934
(Continued)

8. The Defendant joins issue with the Plaintiffs on the denial contained in paragraph 10.

9. Paragraph 11 of the said Answer is illegal and is denied. Exhibit P.8 speaks for itself and beyond its context the Plaintiffs cannot go. The Defendant reiterates the allegations of paragraph 13 of his Plea and adds that by the said Exhibit —P.8—he assumed no personal obligation and when he wrote the said letter he had retired from office and had no authority to act on behalf of those whom he had formerly represented in dealing with the said late C. Winfield B. Sifton.

WHEREFORE the Defendant prays for the dismissal of the Plaintiffs' Answer to Plea with costs.

Montreal, April 30, 1934.

20

E. Languedoc,
Attorney for Defendant.

No. 5

PLAINTIFFS' REPLICATION TO DEFENDANT'S REPLY

No. 5
Plaintiffs'
Replication to
Defendant's
Reply
2 May 1934

1. Plaintiffs join issue on paragraphs 4 and 5 of Defendant's Reply.

30

2. Plaintiffs deny each and every allegation contained in paragraphs 7 and 9 save in so far as such allegations agree with those contained in Plaintiffs' Declaration and Answer, and they allege that the allegations so denied are irrelevant and illegal.

WHEREFORE Plaintiffs, persisting in the conclusions of their Declaration and Answer, pray for the dismissal of said Reply with costs.

40

Montreal, May 2nd, 1934.

Weldon, Demers & Lynch-Staunton,
Attorneys for Plaintiffs.

No. 6

In the
Superior Court
District of
Montreal.

No. 6
Amendment
to
Defendant's
Plea
26 Oct. 1934

AMENDMENT TO DEFENDANT'S PLEA

10 The Defendant hereby amends his Plea by adding there-
to immediately after paragraph 11 thereof the following para-
graph:—

11a. THAT, even if by reason of the facts alleged in the
declaration any contract was ever entered into for the retaining
of the late C. Winfield B. Sifton's services by the Defendant on
behalf of the said Beauharnois Syndicate or otherwise (which
is denied), the contractual relationship thereby created was ter-
minated at and by the death of the said Sifton without his having
performed or discharged his undertaking or obligations there-
under and without the reward referred to or any part of it ever
20 becoming due or payable to him or his successors.

Montreal, October 26th, 1934.

E. Languedoc,
Attorney for Defendant.

**PLAINTIFFS' ANSWER TO DEFENDANT'S
AMENDMENT**

No. 7

No. 7
Plaintiffs'
Answer to
Defendant's
Amendment

30

9a. Plaintiffs deny each and every allegation in paragraph
11a. of Defendant's Amended Plea and allege that said amount
was payable to the late W. B. Sifton at the time of his death,
subject only to the approval referred to in said Declaration, and
that said approval was afterwards obtained, the whole as ad-
mitted by Defendant in his letter, Exhibit P-1. and verbally to
Plaintiff Clifford Sifton in a conversation at Defendant's of-
fice in Montreal, on or about the 11th day of June, 1932.

40

No. 8

JUDGMENT GRANTING MOTION BY
DEFENDANT TO UNITE CASES

In the
Superior
Court
District of
Montreal.
—
No. 8
Judgment of
the Superior
Court
rendered by
Mr. Justice
Jos.
Archambault
4 Sept. 1934

10 Province of Quebec,
District of Montreal,
No. 126082.

SUPERIOR COURT.

ON THIS 4th day of September 1934.

PRESENT:— The Hon. Mr. Justice ARCHAMBAULT.

20 HENRY A. SIFTON ET AL ES QUAL.,
Plaintiffs,
—vs.—

ROBERT OLIVER SWEEZEY,
Defendant,
—&.—

30 THE SAID ROBERT OLIVER SWEEZEY,
Plaintiff-in-Warranty,
—vs.—

BEAUHARNOIS POWER CORPORATION LIMITED,
Defendant-in-Warranty.

40 THE COURT, having heard the parties by counsel on
the motion for Defendant and Plaintiff-in-Warranty and pray-
ing that the principal action and the action in warranty herein
be joined for the purposes of enquete and merits and be tried at
the same time and decided on the same evidence;

DOTH GRANT the said motion as prayed, costs to follow.

J.A./TG

Jos. Archambault,
J. C. S.

ROBERT O. SWEEZEY (for Plaintiff on Discovery)
Examination in chief.

Plaintiff's Evidence on Discovery

In the
Superior
Court
District of
Montreal.
—
No. 9
Plaintiffs'
Evidence
—
Deposition
of Robert
O. Sweezy
on Discovery

No. 9.

10 DEPOSITION OF ROBERT O. SWEEZEY,

A witness examined on behalf of Plaintiffs on Discovery.

On this twenty sixth day of October, in the year of Our Lord, one thousand nine hundred and thirty four, personally came and appeared Robert O. Sweezy, of the City and District of Montreal, the Defendant in this Action, a witness produced and examined on behalf of the Plaintiffs on Discovery, who, being
20 duly sworn, deposes as follows:

Examined by Mr. Weldon, K. C., of Counsel for Plaintiffs:—

Q.—You are the Defendant in this Action?

A.—Yes.

Q.—In 1927 were you carrying on business in a firm of investment bankers?

A.—Yes.

30 Q.—Were you also a promotor of hydro-electric power developments?

A.—Yes.

Q.—You knew the late Mr. C. W. B. Sifton some time before that?

A.—Yes.

Q.—In the letter filed as Exhibit P-2, from yourself to Mr. C. W. B. Sifton, dated September 6th, 1927, you refer to a Mr. Griffith. Mr. Griffith was then your partner?

40 A.—Not in the strict sense of a partnership. He was a member of the Syndicate.

Q.—A member of the Syndicate, with you?

A.—A member of the Power Syndicate. Mr. Griffith was a partner in the Power Syndicate, but he was simply a shareholder in Newman, Sweezy & Company, which, strictly speaking, was not a partnership.

Q.—But, you regarded him as a partner in your firm?

A.—Yes.

Q.—He was afterwards Secretary of the Beauharnois Power Corporation, Limited?

A.—He was Secretary of the Corporation after it was formed.

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Q.—At that time, September, 1927, you were interested in having certain plans of the development of the St. Lawrence River approved by the Dominion Government?

10 A.—I, personally, and my Syndicate, were.

Q.—You, personally, and your Syndicate, were all interested.

A.—Yes.

Q.—Plans of this development were afterwards submitted to the Dominion Government, were they not?

A.—Yes.

Q.—And, the plans submitted to the Dominion Government were approved by the Government, were they not?

20 A.—They were approved in one sense, and yet, to my knowledge, never approved in another sense, in detail.

Q.—When you say they were not approved in another sense in detail, do you mean that generally they were approved?

A.—There was an approval by Order in Council, but the construction to be based on that approval was subject to other approvals which were given from time to time. As a matter of fact, some of them were not given.

Q.—Later approvals were given on details of construction. Is that what you mean?

30 A.—Yes.; and those which were given were never completed until we got into trouble with the subsequent Government.

Q.—The subsequent Government did subsequently approve the plans for development, did they not?

A.—I do not know. The confusion became so great then that we did things which really could not afford to wait for approvals, and we had to go ahead with some details without approval.

40 Q.—As a matter of fact some plans were approved, and construction begun, and construction completed, of the power development?

A.—Not completed, but carried on.

Q.—And, power has been developed, and is being developed on that site now?

A.—Yes.

Q.—And was before the institution of this Action, in January last?

A.—Yes.

Q.—Do you remember how soon the general plans were submitted for general approval to the Dominion Government? Would it be in 1928?

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A.—I do not recall exactly, but it was approximately some time early in 1928, I think.

Q.—And, I think you plead they were not approved by the Government until after the death of Mr. Sifton?

10 A.—There was certainly no approval during Mr. Sifton's lifetime. It was certainly after his death.

Q.—You are aware Mr. Sifton died in June, 1928?

A.—Yes.

Q.—Between September 6th, 1927, and the death of Mr. C. W. B. Sifton, in June, 1928, he did work to have those plans approved by the Dominion Government, did he not?

A.—He did preliminary work, but there was no direct application for the approval of plans.

20 Q.—But, work was done by him with respect to having them approved?

A.—Yes, he did work leading up to the approval, undoubtedly.

Q.—He did hard and effective work to get them approved, did he not?

A.—That is a matter of opinion.

Q.—It is not your opinion he did hard and effective work to have them approved?

30 A.—I do not know I would express it that way. He worked incessantly at the idea; trying to overcome obstacles of which there were many.

Q.—In the letter of October 15th, 1927, from yourself to Mr. C. W. B. Sifton, filed as Exhibit P-4, I find the following:—

“It is further agreed between us that when our plans have been passed and approved by the Dominion Government.....” etc.

You had in mind the general approval, did you not?

40 Mr. Languedoc:—It is understood that this evidence is being made subject to a general objection to reference to copies of those letters until they are proved.

The objection is reserved by consent of Counsel in the absence of a Judge.

A.—I do not know that I had anything special in mind. I was under the impression that one snap approval was all that was needed, but I afterwards found there were numerous formalities necessary in the way of approvals.

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By Mr. Weldon, continuing:—

Q.—You found that out after Mr. Sifton's death?

A.—Yes.

10 Q.—Did you have an interview with Mr. Clifford Sifton, one of the Executors of Mr. C. W. B. Sifton, and one of the Plaintiffs, about June 11th, 1933?

A.—I could not remember the date, but I have had two or three interviews with him.

Q.—About fifteen or eighteen months ago?

A.—Yes.

Q.—Did you not discuss with him at that time the approval you had in mind when that letter was written in October, 1927?

20 A.—I really do not recall what I may have discussed with him. I know he was anxious to have his brother's estate settled up, and he wanted to know where he stood with this \$50,000 affair.

Q.—At that time did you not tell him your understood the approval to mean the first general approval of the plans by the Dominion Government?

30 Mr. Languedoc, K. C., of Counsel for Defendant, objects to the question as illegal.

The objection is reserved by consent of Counsel in the absence of a Judge.

A.—I do not know. I do not recall.

Q.—Did you have an interview with Mr. Victor Sifton, one of the Executors, and one of the Plaintiffs in this case?

40 A.—I do not recall whether I did. Of course, I knew him, and I met him from time to time; but it is so long since I have seen him that I do not know whether I had any discussion with him on this case or not.

Q.—I show you a letter, purporting to be written by you to Mr. Victor Sifton, dated July 14th, 1928; and I ask you if you wrote that letter, and if it is signed by you?

A.—This is my writing, but I do not recall what the reference is.

Q.—And, it bears your signature?

A.—Yes.

Q.—Will you file this letter as Exhibit P-9?

A.—Yes.

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Q.—The pencil marks and letters were not on the letter when you wrote it?

A.—No.

10 Q.—I show you the letters attached to an original Act of Deposit signed, sealed and certified by Ed. Cholette, Notary, of Montreal, dated January 13th, 1934, under his notarial No. 29670, as follows:—

A letter purporting to be written and signed by R. O. Sweezy, addressed to W. B. Sifton, Mallorytown, Ontario, dated Montreal, September 6th, 1927;

20 Was that letter signed by you, and sent to Mr. W. B. Sifton?

A.—That is my signature.

Q.—Attached to the same notarial Act of Deposit is a letter dated September 28th, 1927, purporting to be signed by you, and addressed to W. B. Sifton. Was that letter signed by you?

A.—Yes.

30 Q.—Attached to the same Act of Deposit is a letter dated October 15th, 1927, purporting to be signed by you, and addressed to W. B. Sifton. Did you sign that letter?

A.—Yes.

Q.—Attached to the same Act of Deposit is a letter purporting to be signed by you, addressed to W. B. Sifton, dated October 19th, 1927. Was that signed by you?

A.—Yes.

40 Q.—On the last letter, dated October 19th, 1927, is a memorandum dated October 25th, 1927, beginning “Dear Bob”, and signed “W. B. S.” Did you receive that letter back with that memorandum on it?

A.—I do not recall now.

Q.—Do you know whether the initials “W. B. S.” are those of the late Mr. W. B. Sifton?

A.—I do not recall that letter having been sent to me. That may be a copy of a letter he sent to me, he retaining the original. I do not recall having received this back. He may have written a separate letter, and this may be a copy for his own files.

Q.—Attached to the same Act of Deposit is a letter in handwriting, purporting to be addressed to Mr. Clifford Sifton,

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and to be signed by you, dated June 11th, 1932. Did you write and sign that letter?

A.—Yes.

10 Q.—The memorandum in ink on the margin of the first page of the letter, of course, was not on the letter when you wrote it?

A.—No.

Q.—Did you receive from Mr. W. B. Sifton a letter dated October 17th, 1927, in reply to your letter of October 15th, already referred to?

20 A.—I have a very faint recollection of this, and apparently it was sent to me. I have a faint memory of it. I presume the original must be somewhere. Whether it agrees accurately with the copy or not, I do not know.

Q.—You cannot verify the copy, but you did receive a letter about that date, in the substance of this letter?

A.—I have a recollection of the substance of that letter. That is all I can say.

Q.—Have you seen the copies of letters already filed as Plaintiffs' Exhibits P-2 to P-8 inclusively?

A.—I cannot identify them, because I have not got them.

30 Mr. Weldon:—I have no further questions.

Mr. Languedoc:—I have no cross-examination.

(And further Deponent saith not).

J. H. Kenehan,
Official Court Reporter.

ROBERT O. SWEEZEY (for Plaintiff) Examination in chief.

Plaintiff's Evidence at Enquete

No. 10

In the
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District of
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—
No. 10
Plaintiff's
Evidence
—
Deposition of
Robert Oliver
Sweezy
Examination

10 DEPOSITION OF ROBERT OLIVER SWEEZEY,

A witness examined on behalf of the Plaintiffs.

On this fourteenth day of November, in the year of Our Lord, one thousand nine hundred and thirty four, personally came and appeared Robert Oliver Sweezy, of the City and District of Montreal, Civil Engineer, aged 50 years, a witness produced and examined on behalf of the Plaintiffs, who, being
20 duly sworn, deposes as follows:

Examined by Mr. Weldon, K.C., of Counsel for Plaintiffs:—

Q.—At your examination on discovery, some few weeks ago, you identified a letter signed by yourself, dated July 14th, 1928, beginning: "Dear Victor". This letter was produced as Exhibit P-9. Was that letter sent by you to Mr. Victor Sifton, one of the Plaintiffs in this Action?

30 A.—Yes.

Q.—In the correspondence between yourself and the late Winfield Sifton there is a letter of September 28th, 1927 (Exhibit P-3), in which you state: "I am just sending you the cheque for \$5000. in the meantime for your retaining services". That cheque was paid by you out of your own funds, to the late Mr. Sifton, was it not?

A.—I do not recall. I remember the incident of sending the cheque, but I do not recall whether it was my own, or Syndicate, money.

40 Q.—Did you see a Statement filed by the Secretary of the Defendant in Warranty at his examination on discovery a short time ago, which Statement was filed as Exhibit P-W-9 ?

A.—I remember seeing this first Statement, yes. I do not remember seeing the second one.

Q.—The second page is part of the same Exhibit, and purports to set out a voucher, No. 191, for a payment made to R. O. Sweezy to reimburse him for payment made to W. B. Sifton. The payment in question is April 28th, 1928; Marquette

ROBERT O. SWEEZEY (for Plaintiff) Examination in chief.

Investment voucher No. 191, \$5000. Does not that refresh your memory?

A.—It would indicate to me that I must have paid him the \$5000 out of my own funds, and been reimbursed by the Marquette Investment Company.

10

The subsequent payments, I take it, were all made by the Syndicate.

Q.—The Syndicate or the Company?

A.—Yes.

Q.—That is, by the Syndicate, or by various Companies?

A.—Yes.

20 Q.—You had a discussion with the Plaintiff, Clifford Sifton, in June, 1932, about the time you signed the letter which we have filed as Plaintiff's Exhibit P-8, did you not?

A.—Yes.

Q.—When I examined you on Discovery I referred to that date as June 11th, 1933. The date should have been June 11th, 1932.

A.—Yes.

30 Q.—With that correction of date, do you now recall that you discussed with Mr. Clifford Sifton the terms of the proposed letters Exhibits P-5, P-6, and P-7; and, particularly, the meaning of the expression "Approval of plans"?

A.—I do not recall anything in particular, but I do recall having discussed it.

Q.—Do you remember that Mr. Sifton asked you at that time whether, in fact, the plans had not been approved?

40 Mr. Tyndale:—The Defendant in Warranty objects to any verbal evidence, in so far as it may effect the position of the Defendant in Warranty. The witness is the Defendant in the Principal Action, and I think we should enter our objection inasmuch as the proof is common

Mr. Languedoc:—It seems hardly regular to ask a witness about a conversation appertaining to a letter, without him being given communication of the letter. He cannot be expected to remember what has been written, among the mass of correspondence.

When the letter is handed to the witness, and submitted to the Court, if it is found it is complete in its context, this line of examination would be illegal.

ROBERT O. SWEEZEY (for Plaintiff) Examination in chief.

His Lordship:—The witness is certainly entitled to communication of the letter.

As to the other objection, I will take the evidence under
10 reserve of it. There are so many documents in the record.

Mr. Weldon:—There were seven letters, on which the Action was based, which were handed to Mr. Cholette, Notary, by Act of Deposit, and I now have a certified copy of the Act of Deposit. Mr. Sweezy was interrogated on the letters, and, on the objection of my learned friend, I had the Notary's original Minute produced, and the original letters as attached to the Act of Deposit shown to Mr. Sweezy on Discovery. Mr. Sweezy identified and admitted signing all the letters which purported
20 to be signed by him, and I now produce the Notary's certified copy of his Act of Deposit.

Mr. Languedoc:—Even though the witness has been examined on Discovery and has admitted he wrote the letters he cannot be asked again to re-admit the fact. Let my learned friend file the examination on discovery if he wishes to do so.

Mr. Weldon:—I am simply showing the witness a copy of the letter he has already admitted, and questioning him as to
30 whether there was any discussion as to the meaning of "approval".

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

Mr.—Languedoc:—I would like to associate myself with my friend's objection on behalf of the Defendant in Warranty.

40 By Mr. Weldon, continuing:—

Q.—Do you remember that Mr. Sifton asked you at that time whether, in fact, the plans had not been approved? And I show you a notarial copy of the letter of June 11th, 1932, which has been produced as Exhibit P-8.

A.—I am not just clear as to exactly what the question means.

Q.—Do you remember that Mr. Sifton asked you at that time whether, in fact, the plans had not been approved? And

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ROBERT O. SWEEZEY (for Plaintiff) Examination in chief.

I show you a notarial copy of the letter of June 11th, 1932, which has been produced as Exhibit P-8?

10 A.—Mr. Sifton did ask me at the time whether, in my opinion, the plans had been approved, but I was unable to give him an opinion that was worth anything, because I did not know. I proceeded to explain what had occurred — in that the plans had been approved only after Mr. Sifton's death, and that there was a complication that had arisen due to the cancellation of the Order in Council. I further pointed out that I knew nothing about the legalities of it.

Q.—Did you not also tell Mr. Sifton that the approval in question that letter was the general approval that had been obtained from the Government?

20 A.—I do not recall that. I recall saying that the question was one which really rested with the Legal Department of the Beauharnois Company.

His Lordship:—What do you mean by “general approval”, Mr. Weldon?

Mr. Weldon:—Apparently there is a general approval of plans, subject to detail approval as regards locks, and bridges, or other possible changes in matters of detail of the construction.

30 Our point is as to whether or not Mr. Sweezy told Mr. Sifton it was a general approval.

His Lordship:—What was the date of this conversation?

Mr. Weldon:—June 11th, 1932; the day on which Exhibit P-8 was written.

40 Mr. Languedoc:—It seems to me quite outside of the rules of evidence and examination to present a witness with a letter which is perfectly plain, and ask him “What did you say three or four or five years afterwards with regard to the meaning of a certain word?” The witness cannot qualify the letter long after the death of the man to whom it was written.

His Lordship:—The witness is your client. I think the evidence is legal.

By Mr. Weldon, continuing:—

ROBERT O. SWEEZEY (for Plaintiff) Examination in chief.

Q.—Did you not also tell Mr. Sifton that the approval in question in that letter was the general approval that had been obtained from the Government?

10 A.—I do not recall what I said on that score. We had a lot of conversation, discussing what constituted an approval, and I do not recall the precise tenor of my ideas at the time.

Q.—You will not admit, or deny, that you said it?

A.—No.

Q.—Have you the original of the letter from the late W. B. Sifton to yourself, dated October 17th, 1927?

A.—No.

20 I am a little confused as to what the letter actually is. If I had the letter I think Mr. Languedoc would have it now. I do not carry it with me at all.

Q.—Can you answer or not you received the original of the letter of October 17th, 1927, copy of which is produced as Exhibit P-7?

A.—I have a recollection of a letter along those lines, yes; but I am not saying whether or not this is it.

Q.—Have you any doubt this is a true copy of the original letter?

A.—No, I have not.

30 Mr. Languedoc:—It has not been proved the original is destroyed or lost. If the original is in existence, and available, it should be produced.

Mr. Weldon:—And, I have asked for it.

Mr. Languedoc:—Mr. Sweezy has not the original. It was turned over to the Beauharnois Corporation.

40 Mr. Weldon:—I have served notice to produce it, and if it is not produced I should be allowed to make secondary evidence.

His Lordship:—As I understand it, it is not in the possession of the person to whom it was sent?

Mr. Languedoc:—My learned friend would have to show it was in our possession, or had been lost or destroyed. We know where it is, and, as a matter of fact, I can tell your Lordship it is in this Court room.

His Lordship:—Then, why not produce it?

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Mr. Languedoc:—It has been produced, and it is in the record. It is amongst the papers produced with Mr. Christie's examination on discovery.

10 By Mr. Weldon, continuing:—

Q.—Pending search for the missing letter: have you the letter from the late W. B. Sifton to yourself, dated October 23rd, 1927?

A.—I remember seeing this letter, but I assume all those documents having been turned over to Mr. Languedoc are in Court. I do not carry them with me.

Q.—Have you any doubt the copy I show you is a true copy of the original letter you received on or about October 23rd, 1927?

20 A.—I have no reason to doubt it.

Q.—To obviate the necessity of filing two or three copies of the same thing: the copies of letters I have just shown you, of October 17th, 1927, and October 23rd, 1927, are in the same terms as the letters of those dates attached to a certified copy of the Act of Deposit of Mr. Edward Cholette, Notary?

A.—I have no reason to doubt those are all copies of the same letters.

30 Q.—The originals of the two letters of October 17th, 1927, and October 23rd, 1927, are already filed as Exhibit P-W-10?

Mr. Tyndale:—Perhaps it would be more accurate to say Exhibit P-W-10 is a file of correspondence produced by the Defendant in Warranty at the request of the Plaintiff in Warranty.

By Mr. Weldon continuing:—

Q.—They are included in the file of correspondence already produced as Exhibit P-W-10?

40 Mr. Languedoc:—Yes, they are.

By Mr. Weldon, continuing:—

Q.—Have you in your possession a letter from Mr. Clifford Sifton, one of the Plaintiffs, dated April 16th, 1932?

A.—I do not know. If I have it it is in the file which is now in Court.

Mr. Languedoc:—I have the letter.

ROBERT O. SWEEZEY (for Plaintiff) Examination in chief.

By Mr. Weldon, continuing:—

Q.—Will you produce it as Exhibit P-10?

A.—Yes.

10 23rd, 1932?

A.—Yes.

By Mr. Languedoc:—

Q.—Did you underline any parts of it in red?

A.—No.

By Mr. Weldon, continuing:—

20 sent it?

A.—No.

Q.—Will you file this letter as Exhibit P-11?

A.—Yes.

Q.—Did you receive from Mr. Clifford Sifton a letter dated April 27th, 1932, and, if so, will you produce it as Exhibit P-12?

Mr. Languedoc:—I do not really see what this letter has to do with the case. It is a claim by Mr. Sifton against Mr. Swezey.

30 Witness:—I cannot say I recall this letter. If I have it it would be among those produced with Mr. Languedoc.

Mr. Languedoc:—I have not the letter.

Witness:—There is another letter, written by me subsequently to that date.

By Mr. Languedoc:—

Q.—What is the date of it?

40 files. A.—May 2nd, 1932. That would be in the Beauharnois files. It would not be in my personal file.

By Mr. Weldon, continuing:—

Q.—Do you say you received the original of the letter of April 27th, 1932?

A.—I do not recall. If I did it would be in the files of the Beauharnois Company, I should judge; seeing that the answer was written on the letterhead of the Beauharnois Company.

Q.—You wrote Mr. Sifton, on May 2nd, 1932, acknow-

ROBERT O. SWEEZEY (for Plaintiff) Examination in chief.

ledging "A recent letter". Does not that indicate that the original of the letter of April 27th, 1932, was received from Mr. Sifton?

A.—It would appear so.

10 Q.—Will you file it as Exhibit P-12?

A.—Yes.

I do not know if I received it or not. If it came it probably would be in the files of the Beauharnois Company.

Q.—I thought you said just now you have no doubt you received the original.

A.—I do not want to put it as emphatic as that.

20 Mr. Tyndale:—Does my friend want to produce the letter of May 2nd, 1932? There is no proof, so far, of the letter of April 27th, 1932.

By Mr. Weldon, continuing:—

Q.—Did you write to Mr. Clifford Sifton the letter of April 27th, 1932, and, if so, will you produce it as Exhibit P-13?

Mr. Tyndale:—I object, inasmuch as the document shown the witness is only a copy, and the witness has not recognized it as a copy of the original.

30 His Lordship:—He says he does not remember if he received it. That is not sufficiently definite proof of the document to allow it in the record.

Mr. Weldon:—Then, Exhibit P12 is withdrawn.

By Mr. Weldon, continuing:—

Q.—Did you write this letter of May 2nd, 1932?

Mr. Languedoc:—I ask my learned friend what is the purpose of this question.

40 Mr. Weldon:—I am entitled to file all the correspondence referring to the claim.

His Lordship:—Counsel is entitled to file the letter, as part of the correspondence between the parties. Its relevancy may be dealt with afterwards.

By Mr. Weldon, continuing:—

Q.—Did you write this letter of May 2nd, 1932?

A.—Yes.

ROBERT O. SWEEZEY (*for Plaintiff*) Examination in chief.

Q.—Will you file it as Exhibit P-12 ?

A.—Yes.

Q.—Have you a letter from Mr. Sifton dated May 12th,
1932 ?

10 Mr. Languedoc:—I have a letter of May 12th, 1932.

By Mr. Weldon, continuing:—

Q.—Will you produce this letter as Exhibit P-13 ?

A.—Yes.

Q.—Did you write to Mr. Sifton the letter of May 13th,
1932, and, if so, will you produce it as Exhibit P-14 ?

A.—Yes.

Q.—Did you receive from Mr. Sifton the letter dated
20 June 13th, 1932, and, if so, will you produce it as Exhibit P-15 ?

Mr. Languedoc:—I do not think we have that letter.

As I understand it, your Lordship is admitting all those letters under reserve of our objections. Here are documents which purport to prove the case ex parte from the point of view of the Plaintiffs, and there are no originals.

Mr. Weldon:—My question to Mr. Swezey is whether he has the letter.

30 Witness:—I have not seen the letter yet.

By Mr. Tyndale:—

Q.—Have you the letter of which this purports to be a
copy ?

Mr. Languedoc:—Even if he had, it would be valueless.

Mr. Weldon:—That is a matter of opinion.

Mr. Languedoc:—In any event, I object to the production
40 of the document.

His Lordship:—I will allow it, under reserve.

Witness:—I do not recall this letter, but apparently, it refers to another.

His Lordship:—Of course, it cannot be allowed in the record until it is proved.

Mr. Weldon:—I am only asking the witness if he has the original letter.

ROBERT O. SWEEZEY (for Plaintiff) Examination in chief.

Witness:—I do not recall it. If there is such a letter, I think it would not be in my personal files.

By Mr. Weldon, continuing:—

10 Q.—Will you please look through the files and see if you can find that letter?

A.—What I suggest is it might be in the Beauharnois files.

Q.—Have you access to the Beauharnois files?

A.—No.

Q.—Are they here in Court ?

A.—I do not know.

20 Mr. Weldon:—Mr. Languedoc, are the Beauharnois files in Court ?

Mr. Languedoc:—I do not know.

Mr. Weldon:—Are the Beauharnois files in Court, Mr. Tyndale ?

Mr. Tyndale:—We have produced everything we have been asked to produce.

Mr. Weldon:—Have you the file of correspondence between Mr. Sweezey and Mr. Sifton?

30 Mr. Tyndale:—Yes. We produced it in the Warranty Action, with the examination on discovery of Mr. Christie. They belong to the Plaintiff in Warranty now.

Mr. Languedoc:—The proof is made common to both cases.

Mr. Tyndale:—The file of correspondence is Exhibit P-W-10.

By Mr. Weldon, continuing:—

40 Q.—I am advised that the letters to which you refer are in an Exhibit already produced by the Defendant in Warranty as P-W-10.

Mr. Tyndale:—Counsel for the Defendant in Warranty declares that, at the request of the Plaintiff in Warranty, all the correspondence in possession of the Defendant in Warranty relating to this matter has been produced as Exhibit P-W-10.

Witness:—The last correspondence here seem to be 1928, and this is 1932. So, it is not there.

ROBERT O. SWEEZEY (for Plaintiff) Examination in chief.

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Evidence

Deposition of
Robert Oliver
Sweezy
Examination
(Continued)

By Mr. Weldon, continuing:—

Q.—Have you the letter from Mr. Clifford Sifton to yourself, dated June 13th, 1932?

10 A.—I do not think so. If we had it we would have brought it to Court. We have searched our files for everything appertaining to this matter, and anything that was there has been handed over to Mr. Languedoc, or to the Company.

Q.—What has become of the letter that you received?

A.—I do not know. I do not say I did not receive it, but I do not recall it.

Q.—Have you the original of the copy of letter I now show you, which purports to be a copy of a letter of June 13th, 1932, addressed to yourself?

20 A.—I have just read it now.

Q.—Does it indicate that you did receive a letter from Mr. Clifford Sifton on or about that date?

A.—It purports to be a letter written to me, but I say I do not recall it.

Q.—Does it indicate that you did receive a letter written by Mr. Sifton about that time?

A.—I do not quite understand your question.

30 His Lordship—The witness says he does not recall the letter.

By Mr. Weldon, continuing:—

Q.—Will you look at the letter I show you, dated June 8th, 1933, and will you state if it was sent by you to Mr. Clifford Sifton?

A.—That is my letter.

Q.—Will you file it as Exhibit P-15?

40 A.—Yes.

Q.—You refer in that letter to a letter received from Mr. Sifton of date June 7th, 1933?

A.—Yes.

Q.—Have you the letter which you received from Mr. Sifton under date June 7th, 1933, and, if so, will you please produce it?

A.—Mr. Languedoc would have it.

Mr. Languedoc:—I have it.

ROBERT O. SWEEZEY (for Plaintiff) Examination in chief.

In the
Superior Court
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Montreal.

No. 10
Plaintiff's
Evidence

Deposition of
Robert Oliver
Swezey
Examination
(Continued)

By Mr. Weldon, continuing:—

Q.—Will you produce it, as Exhibit P-16?

A.—Yes.

10 Q.—Did you receive from Mr. Sifton a letter dated June 9th, 1933, and, if so, will you produce it?

Mr. Languedoc:—Yes, we have the letter, and we will produce it as Exhibit P-17.

By Mr. Weldon, continuing:—

Q.—Did you write Mr. Sifton the letter I now show you, dated June 17th, 1933?

A.—Yes.

20 Q.—Will you produce this letter as Exhibit P-18?

A.—Yes.

Q.—Did you receive a letter from Mr. Sifton, dated June 19th, 1933?

Mr. Languedoc:—I have not it here.

Witness:—I do not recall this.

By Mr. Weldon, continuing:—

30

Q.—You do not know whether or not you received it, and you have not the original among your correspondence?

A.—No.

Q.—Did you receive from Mr. Sifton the letter dated July 27th, 1933, and, if so, will you please produce it?

A.—If I have the letter, it is here. I have a recollection of the substance of this, but I do not recall the letter itself.

40 Q.—You have a recollection you did receive a letter from Messrs. Plaxton, Sifton & Company, dated July 27th, 1933?

A.—I am not sure about the date, but I recollect the substance of that.

Q.—You have no letter on your file, or in your possession, which corresponds with the letter you received about that time?

A.—If it is not in the file, I have not it in my possession.

Q.—But, somebody has to say whether it is or not.

A.—Then I say it is not in the file.

Q.—Therefore, you did receive a letter, but you have not it now?

A.—That would seem to be so.

ROBERT O. SWEEZEY (for Plaintiff) Examination in chief.

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I repeat: I recall the substance of that letter. That is all I can say about it.

No. 10
Plaintiff's
Evidence

Q.—I show you what purports to be a carbon copy of a letter signed by Plaxton Sifton & Company, addressed to R. O. Sweezy, under date July 27th, 1933; and I ask you if you will state whether or not about that time you received the original of which this is a copy?

Deposition of
Robert Oliver
Sweezy
Examination
(Continued)

Mr. Languedoc:—I object to the question. My learned friend cannot prove the original by a copy.

His Lordship:—If the witness admits the copy, that is sufficient proof.

Witness:—I do not recall whether it was this precise letter, but I do recall the substance of this letter.

By Mr. Weldon, continuing:—

Q.—Have you any doubt this is a true copy of the letter you received?

A.—I do not think it is a question of doubt. Not only can I not certify as to the accuracy of it, but the substance of it might have been conveyed to me in some other way.

Q.—As I take it, you say this may not be a true copy of the letter, but you have a recollection of the substance of it?

A.—Yes. I am not suggesting any one manufactured it, or anything of the kind.

Q.—Will you produce the copy as Plaintiff's Exhibit P-19?

His Lordship:—I will not allow it in. It cannot be used as proof of a letter which the witness says he does not recollect receiving, although he may recollect the substance. It might be a copy of a letter written at a particular date, and a subsequent letter may have been written replacing it.

Mr. Tyndale:—I think, to make our position clear, and save repeated objections, if your Lordship will allow me I will make a general objection, on behalf of the Defendant in Warranty, to any correspondence between the parties to the Principal Action, or between the Defendant in the Principal Action and the late Winfield Sifton, in so far as this may purport to affect the position of the Defendant in Warranty.

Mr. Languedoc:—On behalf of the Defendant and Plaintiff in Warranty I would like to associate myself with the objection.

ROBERT O. SWEEZEY (for Plaintiff) Examination in chief.

Mr. Tyndale:—The objection, of course, applies to all evidence, and with this understanding it will not be necessary for me to interrupt continuously.

10 His Lordship:—That will be understood, Mr. Tyndale.

By Mr. Weldon, continuing:—

Q.—Did you say whether or not you did receive a letter from Messrs. Plaxton Sifton & Company, dated July 27th, 1933 ?

A.—I am a bit confused. If that is the one you showed me, I do not think I declared I received it, because I still say I do not know.

Q.—But, you do remember receiving a letter?

20 A.—I cannot say a letter. I remember receiving several letters, but I cannot differentiate between one and the other.

Q.—You have not in your file a letter from Plaxton Sifton & Company dated July 27th, 1933?

A.—No.

Q.—But, you remember receiving a letter somewhat in those terms, about that time?

A.—Some time. I do not know whether it was about that time or not.

Q.—In that period?

30 A.—It was in that period.

Q.—Did you write to Mr. Sifton the letter dated September 5th, 1933, and, if so, will you produce it as Exhibit P-19 ?

A.—Yes.

Q.—Did you receive from Mr. Sifton the letter dated September 6th, 1933 in reply to your letter Exhibit P-19?

Mr. Languedoc:—I have not it.

40 Witness:—As far as I am concerned, if it is in the file, I received it; if it is not there, I did not.

By Mr. Weldon, continuing:—

Q.—But, I want to know whether it is in the file or not. You are the witness, and I am asking you, and I will have to take your answer.

Mr. Languedoc:—I have just looked, and I cannot find it. I will hand the witness the file, for verification.

Witness:—It is not here.

ROBERT O. SWEEZEY (for Plaintiff) Examination in chief.

By Mr. Weldon, continuing:—

Q.—And, you have not it?

A.—No.

10 Q.—Will you look at what purports to be a carbon copy of a letter of that date, from Mr. Clifford Sifton to yourself, and will you state if you received the original thereof?

A.—I remember the substance of that letter. The same argument applies to that.

Q.—Do you know whether this is a true copy of the letter you received?

A.—I do not know whether it is or not.

Q.—Have you any doubt it is an accurate copy of the letter you received on or about that date?

20 A.—I have no doubt in this instance.

Mr. Weldon:—I produce this copy as Exhibit P-20.

By Mr. Weldon, continuing:—

Q.—Did you receive from Mr. Sifton a letter dated September 22nd, 1933?

Mr. Languedoc:—Yes. I have the letter.

By Mr. Weldon, continuing:—

30 Q.—Will you produce it, as Exhibit P-21?

A.—Yes.

Q.—Did you send a reply to Mr. Sifton to the letter Exhibit P-21? And, in this connection I show you a memorandum endorsed on a letter dated September 19th 1933, addressed to yourself, and signed “R. A. C. Henry”, the memorandum at the foot of that letter being apparently in your handwriting, and initialled “R. O. S.” It is addressed “Dear Mr. Sifton”.

40 Will you produce the letter just mentioned, with the memorandum endorsed at the foot thereof, as Exhibit P-22?

A.—Yes.

Q.—Is the memo at the foot written in your handwriting, and initialled by you?

A.—Yes.

Q.—Did you receive from Mr. Sifton a letter dated September 25th, 1933, and, if so, will you file it as Exhibit P-23?

Mr. Languedoc:—Yes.

ROBERT O. SWEEZEY (for Plaintiff) Examination in chief.

In the
Superior
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No. 10
Plaintiff's
Evidence

Deposition of
Robert Oliver
Sweezy
Examination
(Continued)

By Mr. Weldon, continuing:—

Q.—Did you write Mr. Sifton a letter under date October 16th, 1933, and, if so, will you file it as Exhibit P-24?

10 A.—Yes.

Q.—Did you receive from Mr. Sifton a letter dated October 17th, 1933, and, if so, will you file it as Exhibit P-25?

A.—Yes.

Q.—Did you receive from Mr. Sifton a letter dated December 19th 1933?

Mr. Languedoc:—I have not that letter.

20 Witness:—I remember the substance of it all right, but I apparently have not the original.

By Mr. Weldon, continuing:—

Q.—Did you receive the original, or did you receive a letter somewhat in the terms of this, at that time?

A.—Somewhat in the terms of the letter at that time would probably be as closely as I could define it.

Q.—Did you write Mr. Sifton a letter dated December 20th, 1933, and, if so, will you produce it as Exhibit P-26?

30 A.—Yes.

Q.—In the letter Exhibit P-26 you acknowledge receipt of a letter from Mr. Sifton dated December 19th?

A.—Yes. This would apparently connect it up.

Q.—Where is the letter of December 19th?

A.—I have not it in my files, but I would judge this is a copy of it.

40 Q.—If you will admit this is a copy, of it, I have no further questions to ask you in regard to it, but if you have not the letter, where is it, and why do you not produce it?

A.—I do not see any difference in admitting it. I admit the substance of it, and I do not suppose the wording makes any difference, so long as the substance is the same. Does it?

Q.—But, is this a copy of the letter?

A.—That I do not know. I could not be positive.

By the Court:—

Q.—If the letter was received, surely it must have been

*R. O. SWEEZEY (for Plaintiff) Cross-examination
for Defendant in Warranty.*

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for Defendant
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retained seeing that it was received only three weeks before the suit started.

In any event you have not the original?

10

A.—No, your Lordship, I have not.

By Mr. Weldon, continuing:—

Q.—You were shown certain copies of letters this morning, and you could not remember them. Those were copies of letters purporting to have been sent by Mr. Sifton to you, and by Plaxton Sifton & Company to you. You said you could not find them in your file. That indicates your file is not complete, does it not ?

20

A.—Yes, in this instance.

Q.—You said some of your letters were in the files of the Beauharnois Power Company?

A.—Yes.

Q.—Where are the other letters, which are not in the files of that Company?

A.—I do not know. Sometimes I might have a letter in my pocket. I travel around a great deal, and it is possible I might have lost a letter or letters.

30

Q.—So, the letters I asked you about, and of which I showed you what purported to be carbon copies, might have been received by you and lost?

A.—Yes.

Q.—In any event, you have not them; and your files are not complete?

A.—Correct.

Mr. Weldon:—I have no further questions to ask the witness.

40

Mr. Languedoc:—I have no cross-examination.

Cross-examined by Mr. Tyndale, K. C., of Counsel for Defendant in Warranty:—

Q.—You have made some reference to some of your correspondence in your files of the Beauharnois Power Corporation, the Defendant in Warranty. Will you tell His Lordship when you severed your connection with that Corporation?

*R. O. SWEEZEY (for Plaintiff) Cross-examination
for Defendant in Warranty.*

In the
Superior
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No. 10
Plaintiff's
Evidence

Deposition of
Robert Oliver
Sweezy
Cross-
examination
for Defendant
in Warranty
(Continued)

A.—It was about the end of 1931, I think, or perhaps early in 1932.

10 By the Court:—

Q.—Then, those letters you referred to would not be in the possession of the Beauharnois Power Corporation; they would be in your possession?

A.—They might be in the possession of the Beauharnois Company; or, some of them might have been lost.

Q.—After you severed your connection with the Company?

A.—After I severed my connection. I remained there for some time cleaning up one thing and another, without pay —
20 simply completing the details of certain things that had been commenced.

Q.—Did you hand your own letters over to the Corporation?

A.—There might have been some letters that remained there. I am not positive where they would be. Some of them might have remained in files, and not be returned to me.

I am only suggesting that as a possibility as explaining the loss of some of them.
30

By Mr. Tyndale:—

Q.—Would you mind verifying the date you severed your connection with the Beauharnois Power Corporation?

A.—November 19th, 1931.

(And further Deponent saith not).

40

J. H. Kenehan,
Official Court Reporter.

H. B. GRIFFITH (for Plaintiffs) Examination in chief.

No. 11

DEPOSITION OF HUGH B. GRIFFITH,

A witness examined on behalf of the Plaintiffs.

10 On this fourteenth day of November, in the year of Our Lord, one thousand nine hundred and thirty four, personally came and appeared Hugh B. Griffith, of the City and District of Montreal, Security Dealer, aged 41 years, a witness produced and examined on behalf of the Plaintiffs, who, being duly sworn, deposes as follows:

Examined by Mr. Weldon, K. C., of Counsel for Plaintiffs:—

20 Q.—Were you connected with Newman Sweezey & Company, Limited, in June 1928?

A.—I was.

Q.—Newman Sweezey & Company was a firm or company of which the Defendant Robert O. Sweezey was a Director?

A.—Yes.

Q.—Was he the principal partner of the firm?

A.—He was President.

Q.—And, the active head of the firm ?

A.—Yes.

30 Q.—What was your position in that Company?

A.—I was a Director, and Secretary I think.

Q.—Were you associated at that time with Mr. Sweezey in his personal ventures?

A.—Yes.

I doubt if he had any personal ventures apart from Beauharnois.

40 Q.—His business at that time was promoting the Beauharnois development. Were you associated with him?

A.—Yes.

Q.—Will you look at the letter I show you, of June 19th, 1928, purporting to be signed by yourself, H. B. Griffith, addressed to Col. Victor Sifton; and will you state if that was signed by you and sent by you to Mr. Sifton?

Mr. Tyndale:—The general objections recorded in the deposition of Mr. Sweezey will, I take it, be presumed to apply to

In the
Superior
Court
District of
Montreal.

No. 11
Plaintiff's
Evidence

Deposition of
Hugh B.
Griffith
Examination

H. B. GRIFFITH (for Plaintiffs) Cross-examination.

the testimony of the present witness, and the testimony of the subsequent witnesses?

His Lordship:—Yes, it will be so understood.

10

By Mr. Weldon, continuing:—

Q.—At that time were you Secretary of Marquette Investment Corporation?

A.—I was.

Q.—Look at the letter of June 19th, 1928, and say if it is your letter?

A.—Yes.

Q.—Will you produce it as Exhibit P-27?

20

A.—Yes.

Mr. Weldon:—I have no further questions.

Cross-examined by Mr. Languedoc, K. C., of Counsel for Defendant:—

Q.—Do you recognize the handwriting “W. B. Sifton Estate” on this letter?

A.—No, I do not.

30

Q.—You do not know who wrote it?

A.—No.

By Mr. Weldon:—

Q.—The handwriting was not there, of course, when you sent the letter?

A.—No, it was not.

40

(And futher Deponent saith not).

J. H. Kenehan,
Official Court Reporter.

CLIFFORD SIFTON (for Plaintiffs) Examination in chief.

No. 12

DEPOSITION OF CLIFFORD SIFTON,

A witness examined on behalf of the Plaintiffs.

In the
Superior
Court
District of
Montreal.

No. 12
Plaintiffs'
Evidence

Deposition of
Clifford
Sifton
Examination

10 On this fourteenth day of November, in the year of Our Lord, one thousand nine hundred and thirty four, personally came and appeared Clifford Sifton, of the City of Toronto, in the Province of Ontario, Barrister and Solicitor, aged 41 years, a witness produced and examined on behalf of the Plaintiffs, who, being duly sworn, deposes as follows:

Examined by Mr. Weldon, K. C., of Counsel for Plaintiffs:—

20 Q.—Are you a practicing barrister and solicitor of the Province of Ontario?

A.—I am.

Q.—And, you are one of the Plaintiffs in this Action?

A.—Yes.

Q.—And, one of the Executors under the will of your late brother, Mr. W. B. Sifton?

A.—Yes.

Q.—Was your brother known as “Winfield”?

30 A.—Yes, “Winfield” or “Win”. He very seldom used the name “Clifford”, but in his probate papers we used it because it was the name he was christened.

Q.—When did he die?

A.—June 13th, 1928.

Q.—There was another executor, Mr. John W. Sifton, who died before Winfield Sifton, was there not?

A.—No, he died afterwards.

Q.—I thought it was Harry who died afterwards?

40 A.—Both John and Harry died after Win. John died before we instituted this Action, I believe; and Harry died afterwards.

Q.—Are you and your brother, Victor Sifton, continuing to act as executors of the Estate?

A.—Yes. We are the remaining trustees. The four of us were executors. There are two of us left now.

Q.—Were you familiar with the activities of your brother, Winfield Sifton, in the period from September, 1927, to June, 1928?

A.—Yes, quite familiar.

CLIFFORD SIFTON (for Plaintiffs) Examination in chief.

Q.—Was he engaged on work in respect to the Beauharnois development?

A.—Yes, he was exclusively engaged on that work, and very actively engaged.

10 Q.—During what period?

A.—From the early fall — some time in September — 1927, until his death.

Q.—Did he discuss the work with you?

A.—Yes. From time to time, when he was in Toronto, or at times when I was at Brockville, or near Brockville, where he had a country home, Assiniboine Lodge, he discussed matters — particularly those of a legal nature — with me: various suggestions he was making, and various proposals he was considering.

20 Q.—Was he in communication with Mr. Sweezey, the Defendant, during that time?

A.—I am sure he was. He often mentioned Mr. Sweezey.

Q.—Did you have a discussion with Mr. Sweezey on or about June 11th, 1932?

A.—Yes.

Q.—Was that the day you received the letter Exhibit P-8 from him?

30 A.—I think it was. The correspondence is there, and I would like to refresh my memory about the actual date.

I would like to explain the circumstances in which I got this letter.

Mr. Languedoc:—I submit this is not proper evidence. The letter referred to reads:—

“June 11th, 1932.

40 In consideration of the executors undertaking not to press this matter for six months from today I hereby acknowledge I owed Winfield Sifton at his death, subject only to approval of Beauharnois plans at Ottawa, the sum of \$50,000, this being an undertaking I made in connection with Beauharnois Syndicate whose assets and liabilities were assumed by Beauharnois Power Corporation, Limited.”

The letter is absolutely complete in form and sense, and I cannot see what possible right anyone has to explain or add to it, change it, or alter or modify it in any way.

CLIFFORD SIFTON (for Plaintiffs) Examination in chief.

In the
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No. 12
Plaintiffs'
Evidence

Deposition of
Clifford
Sifton
Examination
(Continued)

His Lordship:—But, we have no information as to the nature of the matter that is referred to.

Witness:—There were four of us executors of this Estate.
10 At the beginning my brothers Victor and Harry had the actual day to day conduct of it, although I was present from time to time. Early in 1932 the matter had passed into my hands, and there was an investigation, which your Lordship may remember, in Ottawa, with regard to the Beauharnois Corporation. At that time we expected the records of the Estate might be called for, and I made a search through the records, and I found the letters setting forth what I considered to be very clearly a contract between my late brother and Mr. Sweezey or the Beauharnois Company. I wrote Mr. Sweezey, and asked him
20 about it. I got an answer, which I thought was somewhat evasive, so I wrote Mr. Sweezey again and sent him copies of all those letters, and I said the matter looked abundantly clear to me.

By the Court:—

Q.—Are those letters on record here?

A.—Those are letters which are here, and they are matters within my own knowledge.

30 I pointed out to him that the Estate owed debts

Mr. Languedoc:—(interrupting) I would like to be of record as making a general objection to all this evidence. We are sued on a contract which, it is alleged, was evidenced by certain correspondence which has been produced. We are not sued because we have otherwise than by this letter (if it constitutes an admission) admitted any liability on behalf of Beauharnois or ourselves. This letter purports to be an admission
40 of liability on behalf of Beauharnois, but not on behalf of Mr. Sweezey. Now an effort is being made to bolster up the Action by matters not pleaded, and by oral conversations between the executors and Mr. Sweezey.

His Lordship:—Of course, I will not allow any evidence as to verbal admissions of liability, other than what has been pleaded.

Mr. Weldon:—I think your Lordship will find it covered by Paragraph 9-A of the Answer to Amended Plea, which is to

CLIFFORD SIFTON (for Plaintiffs) Examination in chief.

10 the effect that Plaintiffs deny each and every allegation of Paragraph 11 of Defendant's Amended Plea, and allege that the amount was payable to W. B. Sifton at the time of his death, subject only to the approval of the plans, and the said approval was afterwards obtained: the whole as admitted by the letter of June 11th, 1932.

Mr. Languedoc:—That goes outside the letter. The admission set forth in Paragraph 9-A is of a nature to surprise me. If a verbal admission is to be proved, let it be proved out of the mouth of Mr. Sweezey.

20 Mr. Weldon:—In the first place, there is nothing in the answer Mr. Sifton is making that would in any way modify or amend the letter. In the second place, I can prove an admission by Mr. Sifton, if I have alleged it. If Mr. Sweezey denies it, and if it was made in the presence of someone else, I can prove it. Further, I have a commencement of proof in writing. I examined Mr. Sweezey, and he said "Yes, we have a conversation, and we discussed the questions of approval." He added to that: "I thought the only approval required was a general or snap approval".

30 I submit to your Lordship we have a commencement of proof in writing.

Mr. Languedoc:—The manner in which Paragraph 9-A is drawn simply tends to show that the verbal admission is drawn in confirmation of the text of the letter. The letter speaks for itself, and does not require any confirmation, and I submit it is not permissible to add anything to the letter.

40 Mr. Weldon:—I must say I do not see how the paragraph could have been worded any more clearly.

Mr. Languedoc:—The letter and the conversation go together.

Mr. Weldon:—The letter was to the effect that he owed the money, subject to approval.

Mr. Languedoc:—But, the idea is my friend is either going to have the letter confirmatory of the conversation, or the conversation confirmatory of the letter.

CLIFFORD SIFTON (for Plaintiffs) Examination in chief.

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No. 12
Plaintiffs'
Evidence

Deposition of
Clifford
Sifton
Examination
(Continued)

His Lordship:—I will take the evidence under reserve of the objection. The witness may proceed with his answer.

Witness:—I think I had reached the point where I sent
10 Mr. Sweezey the letters which have been produced, and which, I said, to Mr. Sweezey, appeared to me to indicate clearly there was an obligation owing. I pointed out that, as executors, we required payment.

To this I received word that Mr. Sweezey would rather discuss it with me personally. I understood he would be in Toronto, and we had various abortive attempts to get together. Finally, I was coming to Montreal, and I made an appointment to see Mr. Sweezey. When I went to his office he was busily
20 engaged in a conference, but he did me the favor of coming out from the conference to the side office. I repeated the situation again, and he admitted to me that those letters were proper, and they set forth the arrangement that had been arrived at, and that, as a matter of fact, everything he had expected of my late brother had been done — that he had been largely responsible for framing vitally important parts of the plan, and that the plans had, in fact, been approved by the Government, and he considered that he owed the money, but he pointed out to me
30 that he had not the personal ability to pay.

He expressed the view that the Beauharnois Company, in fact, were responsible for the payment, but that in the condition in which the Company's affairs were at the moment there would be nothing to be gained by pressing the matter immediately. He thought that in the interests of the whole matter it would be advisable to permit a further delay.

I pointed out that, as an executor, and not being familiar
40 with the Quebec law with regard to lapse of time and its effect upon Actions, that I could not take the responsibility of permitting a delay unless it was admitted that the liability was owing, and unless the length of delay that was requested should be made definite.

Mr. Sweezey was still in the side office, and his conference was still awaiting his return. He took two pieces of paper, if I remember correctly, and scribbled down a few words, which have been reproduced in this letter, and which I took at

CLIFFORD SIFTON (for Plaintiffs) Examination in chief.

10 the time to be a satisfactory admission of the facts and the obligations, and a request for delay. I gave him a verbal undertaking to be responsible that Action would not be taken during the delay we had arranged, and when I went home I wrote him confirming the arrangement.

Then we did nothing further until after the time that had been arranged had duly lapsed.

By Mr. Tyndale:—

Q.—The letter you refer to as having been written in the side office by Mr. Sweezey is the letter Exhibit P-8?

A.—It was a handwritten letter, signed by Mr. Sweezey. Mr. Weldon could give you the number of it.

20 Mr. Weldon:—It is Exhibit P-8.

By Mr. Weldon, continuing:—

Q.—You handed me some carbon copies of letters, purporting to have been signed by Mr. R. O. Sweezey, by yourself, or by your firm, bearing dates from April 27th, 1932, to December 19th, 1933. Mr. Sweezey has not been able to find the original letters corresponding to those copies.

30 Will you state whether or not the original letter was mailed by you to Mr. R. O. Sweezey on or about April 27th, 1932, and, if so, whether the carbon copy I show you is a true copy of the letter that was sent?

Mr. Languedoc:—I object to the question; it not having been shown the original has been lost or destroyed.

His Lordship:—I will allow the question, under reserve of the objection.

40 Witness:—Yes, this is a copy of a letter written by myself.

His Lordship:—Those are copies of letters in regard to which Mr. Sweezey said he remembered the substance, but did not remember the actual letters?

Mr. Weldon:—Yes, your Lordship.

Witness:—This is a copy of a letter written by me on April 27th, 1932.

Q.—Will you file it as Exhibit P-28?

A.—Yes.

CLIFFORD SIFTON (for Plaintiffs) Examination in chief.

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Court
District of
Montreal.

No. 12
Plaintiffs'
Evidence

Deposition of
Clifford
Sifton
Examination
(Continued)

Q.—And, the original was mailed by your office to Mr. Sweezy?

10 A.—It was written by me, and duly mailed, and this is a carbon copy that was made at the time, which has been kept in my own file ever since, and was given to my solicitor when the Action was taken.

Mr. Languedoc:—I would ask that my objection should apply to all evidence of this character, and to any further documents of a similar nature.

His Lordship:—It will be so understood.

By Mr. Weldon, continuing:—

20

Q.—Have you a copy of the letter you sent Mr. Sweezy on June 13th, 1932, and, if so, will you produce it as Exhibit P-29?

A.—I produce, as Exhibit P-29, copy of a letter written by me on June 13th, 1932, to Mr. R. O. Sweezy. The original of this was signed by me, and duly mailed.

30 This copy was made at the time, and has been kept in my possession ever since, until I gave it to my solicitor at the commencement of this Action.

Q.—Did your firm write a letter to Mr. Sweezy on July 27th, 1933?

A.—Yes. I wrote this letter. It was signed "Plaxton, Sifton & Co., per C. S." — per myself. This is a letter of July 27th, 1933, addressed to Mr. R. O. Sweezy. The original was duly mailed, and this copy was made at the time and kept under my control until the proceedings were taken.

40 Q.—Will you file this copy as Exhibit P-30?

A.—Yes.

Q.—You were then a member of the firm of Plaxton, Sifton & Company?

A.—I was a partner in the firm of Plaxton, Sifton & Company. I was acting in a kind of dual capacity, as executor, and solicitor, of this Estate.

Q.—Did you write Mr. Sweezy the letter dated December 19th, 1933 — the original of the copy I show you — and, if so, will you produce the copy as Exhibit P-31?

CLIFFORD SIFTON (for Plaintiffs) Examination in chief.

A.—Yes. I produce, as Exhibit P-31, the copy of letter dated December 19th, 1933, written by myself. The original of this was duly mailed, and this copy was made at the time and has been in my possession since, until I handed it over to my solicitors.

10 There is a further letter, written by me on June 19th, 1933, addressed to Mr. R. O. Sweezey, signed by myself. The original was duly mailed, and this copy was made at the time, and has been kept under my control ever since. I produce the copy as Exhibit P-32.

Q.—Will you produce a number of Orders in Council of the Governor General in Council, as follows:—

P.C. 422, adopted March 8th, 1929;

20 P.C. 1081, adopted June 22nd, 1929;

P.C. 1095, adopted September 7th, 1932;

P.C. 729, adopted April 24th, 1933;

P.C. 2042, adopted October 11th, 1933.

To be respectively, Exhibits P-33, P-34, P-35, P-36, and P-37?

A.—Yes.

30 Q.—Will you produce, as Exhibit P-38, certified copy of the Act of Deposit of A. Chase Casgrain, before Edward Cholette, Notary, dated January 13th, 1934, under the Notary's No. 29640 ?

Mr. Languedoc:—I object to the witness producing this. He has no right to produce the Notary's Minutes.

Objection reserved.

Witness:—Yes.

40 By Mr. Weldon, continuing:—

Q.—Mr. A. Chase Casgrain was your solicitor at the time of this deposit?

A.—Yes.

Mr. Weldon:—I have no further questions to put to the witness.

Mr. Languedoc:—I have no cross-examination.

Mr. Tyndale:—I have no cross-examination.

(And further Deponent saith not).

J. H. Kenehan,
Official Court Reporter.

LORING C. CHRISTIE (for Plaintiffs) Examination in chief.

No. 13

DEPOSITION OF LORING C. CHRISTIE,

A witness examined on behalf of the Plaintiffs.

In the
Superior
Court
District of
Montreal.

No. 13
Plaintiff's
Evidence

Deposition of
Loring
C. Christie
Examination

10 On this fourteenth day of November, in the year of Our Lord, one thousand nine hundred and thirty four, personally came and appeared Loring C. Christie, of the City and District of Montreal, Secretary Treasurer Beauharnois Power Corporation, aged 50 years, a witness produced and examined on behalf of the Plaintiff, who, being duly sworn, deposes as follows:—

Examined by Mr. Weldon, K. C., of Counsel for Plaintiffs:—

20 Q.—Are you the Secretary of the Defendant in Warranty?

A.—I am.

Q.—Have you the records of this Company in your possession; also the records of the various Syndicates that were formed prior to the organization of the Company?

A.—Yes.

30 Q.—The order in Council already filed as Exhibit P-34, P. C. 1081, refers to an agreement, or requires that the agreement between Beauharnois Light Heat & Power Company and His Majesty The King should be approved in the form attached, and that the Minister of Public Works was authorized to execute such an agreement. Have you the agreement between His Majesty The King and Beauharnois Light Heat & Power Company which was signed in pursuance of that Order in Council?

A.—Yes.

Q.—What was the date of it?

A.—June 25th, 1929.

40 Q.—Was that executed by His Majesty's Ministers and by the Beauharnois Company's officers?

A.—Yes.

Q.—Will you produce it as Exhibit P-39?

A.—Yes.

This is an agreement between His Majesty The King, represented by the Minister of Public Works, and the Beauharnois Company, dated June 25th, 1929. May I produce a certified copy, or do you insist on the original?

LORING C. CHRISTIE (for Plaintiffs) Examination in chief.

In the
Superior Court
District of
Montreal.

Counsel:—I will be perfectly satisfied with a certified copy.

No. 13
Plaintiff's
Evidence

(By consent of the parties a certified copy is produced in lieu of the original).

Deposition of
Loring
C. Christie
Examination
(Continued)

10

By Mr. Weldon, continuing:—

Q.—Have you a record of when construction work was started at the Beauharnois Development?

A.—Yes. The work was actually begun in August, 1929. August 7th is the date we have. That date was used at the Parliamentary Enquiry in Ottawa in 1931.

Q.—And, construction proceeded more or less constantly for some years?

20 A.—It proceeded continuously, and in fact, it is still going on.

Q.—When was power first generated at the power plant in connection with that development?

A.—In the sense of the generators being turned over, the first power was actually produced, I suppose, on September 19th, 1932, for testing the generators. Most of the generation was eleven days later, October 1st, 1932.

30 Q.—You filed a Statement with your examination on discovery by Counsel for the Plaintiff in Warranty, as Exhibit P-W-9. You also filed some cheques as Exhibit P-W-8. On page 2 of Exhibit P-W-9 there is a record, or entry, of a voucher, No. 191, of a payment made by Marquette Investment Company of \$5000 on April 16th, 1928. To whom was that payment made?

40 Mr. Tyndale:—Of course, the witness can only speak from the records, and such evidence would be useless. The records speak for themselves. I think I should object to any question to the witness as to what any of the records mean, because the witness was not there at the time the records which are now being discussed were created.

By Mr. Weldon, continuing:—

Q.—Have you a record to indicate to whom that payment was made?

A.—The only place I can think of must be in the voucher itself.

LORING C. CHRISTIE (for Plaintiffs) Examination in chief.

In the
Superior
Court
District of
Montreal.

No. 13
Plaintiff's
Evidence

Deposition of
Loring
C. Christie
Examination
(Continued)

His Lordship:—The witness can only testify from the vouchers and records of the Company.

By Mr. Weldon, continuing:—

10 Q.—Have you a record to indicate to whom that payment was made?

A.—I can only speak from the records.

Q.—Will you show me voucher No. 191, and the corresponding cheque for that voucher?

Mr. Tyndale:—The witness cannot say anything beyond what is on the record.

By Mr. Weldon, continuing:—

20 Q.—There is a cheque in Exhibit P-W-10, dated April 16th, 1928, payable to R. O. Sweezey or order, for \$11,484.87, purporting to be drawn by Marquette Investment Corporation, per Hugh B. Griffith and R. O. Sweezey?

A.—Yes.

Q.—Is there a voucher among those papers, or otherwise, showing for what purpose a part of that cheque, namely, \$5000, was paid?

30 A.—There are papers here, but I am afraid I cannot do anything more than produce them and let you draw your own conclusions.

Q.—If you will give me the information, I will draw the conclusion.

A.—I have given you everything there is here.

Q.—Where is voucher No. 191? Is it the whole series of papers you show me?

A.—Yes.

Q.—On the back of the voucher you find three items, making up the total of \$11,484.87?

A.—Yes.

40 Q.—One item of which is \$5000: “Legal — Ottawa” — paid to R. O. Sweezey?

A.—Yes.

Mr. Weldon:—I have no further questions.

Mr. Tyndale:—I have no cross-examination.

Mr. Languedoc:—I have no cross-examination.

(And further Deponent saith not).

J. H. Kenehan,
Official Court Reporter.

R. O. SWEEZEY (recalled for Plaintiffs) Examination in chief.

No. 14

In the
Superior Court
District of
Montreal.

No. 14
Plaintiffs'
Evidence

Robert Oliver
Sweezy —
recalled
Examination

DEPOSITION OF ROBERT OLIVER SWEEZEY (*recalled*)

A witness recalled on behalf of the Plaintiffs.

10

On this fourteenth day of November, in the year of Our Lord, one thousand nine hundred and thirty four, personally came and reappeared Robert Oliver Sweezy, already sworn, who being recalled as a witness on behalf of the Plaintiffs, deposes as follows:

Examined by Mr. Weldon, K. C., of Counsel for Plaintiffs:—

20

Q.—Early in your examination referred to two original letters from the late Mr. W. B. Sifton to yourself, dated October 17th, 1927, and October 23rd, 1927, as being included in a file already produced as Exhibit P-W-10. Will you please look at the two letters referred to in that file, of October 17th, 1927, and October 23rd, 1927, and will you say if both original letters now in the file Exhibit P-W-10, were received by you from W. B. Sifton?

A.—Yes.

30

Mr. Weldon:—I have no further questions.

This completes the Plaintiffs' case.

Mr. Languedoc:—I have no questions.

Mr. Tyndale:—I have no questions.

(And further Deponent saith not).

40

J. H. Kenehan,
Official Court Reporter.

HUGH B. GRIFFITH (for Defendant) Examination in chief.

In the
Superior
Court
District of
Montreal.

No. 15
Defendant's
Evidence

Deposition of
Hugh B.
Griffith
Examination

Defendant's Evidence at Enquete

No. 15

10 DEPOSITION OF HUGH B. GRIFFITH,

A witness examined on behalf of the Defendant.

On this fourteenth day of November, in the year of Our Lord, one thousand nine hundred and thirty four, personally came and appeared Hugh B. Griffith, of the City and District of Montreal, already sworn and examined on behalf of the Plaintiffs, who being now examined as a witness on behalf of the De-
20 fendant, deposes as follows:

Examined by Mr. Languedoc, K. C., of Counsel for Defendant:—

Q.—You have already been sworn?

A.—Yes.

Q.—I understand that in September, 1927, you were a partner in the firm of Newman Sweezey & Company?

A.—Yes.

30 Q.—A Syndicate, known as the Beauharnois Syndicate, had already been formed with a view to developing the Beauharnois Power project?

A.—Yes.

Q.—Will you examine Exhibit P-W-1, filed with the examination on discovery of Mr. Christie on behalf of the Plaintiffs in Warranty, and will you state whether it is the original agreement that was entered into between Mr. Sweezey and the Marquette Investment Corporation, and will you explain
40 how the matter was dealt with, from a corporate point of view, from the initial steps that were taken?

A.—I will have to identify this as a true copy of the original. It is not a signed copy.

Q.—Starting from that, will you explain to His Lordship how the original Beauharnois Syndicate was formed?

A.—I might say the purchase of the assets which subsequently became the Beauharnois Power Corporation was done by Mr. Sweezey, on behalf of an unincorporated group of persons, including himself and others, and including some corporations, who were organized into a Syndicate.

HUGH B. GRIFFITH (for Defendant) Examination in chief.

In the
Superior Court
District of
Montreal.

Q.—What was that Syndicate called?

No. 15
Defendant's
Evidence

A.—I think it was called the “Beauharnois Syndicate”.

Deposition of
Hugh B.
Griffith
Examination
(Continued)

10 There was, subsequently, a second syndicate, known as the
Beauharnois Power Syndicate.

By the Court:—

Q.—Was that Syndicate formed by agreement in writing?

A.—Yes, your Lordship.

By Mr. Languedoc, continuing:—

20 Q.—Will you take communication of Exhibit P-W-2, and
will you state whether it is a true copy of an agreement, dated
May 12th, between Mr. Sweezey and the Marquette Investment
Corporation; and will you explain what part was played by the
Marquette Investment Corporation with regard to the
Beauharnois Syndicate and in relation to the latter named body
or group?

30 A.—Exhibit P-W-2 is a duplicate original of the agree-
ment between Mr. Sweezey and Marquette Investment Corpo-
ration, and it is the agreement which created and set up the first
Syndicate, known as the Beauharnois Syndicate.

The Marquette Investment Corporation was simply an
unincorporated Company, formed for the sole purpose of hold-
ing the assets of the Syndicate, in order that the Syndicate might
have a corporate trustee to hold its assets, to be the depositary
of its cash, and to enter into such relations with the public gene-
rally as might require a corporate organization as opposed to
a syndicate organization.

40 By the Court:—

Q.—Exhibits P-W-1 and P-W-2 are agreements with the
Marquette Investment Corporation?

A.—Exhibit P-W-1 is a deed of assignment from R. O.
Sweezey to Marquette Investment Corporation. Exhibit P-W-2
is a more lengthy document, setting forth the conditions of the
assignment that it wishes to be held in trust for certain indivi-
duals who might become members of the Syndicate.

HUGH B. GRIFFITH (for Defendant) Examination in chief.

Mr. Languedoc:—And, as the context shows, the organization of the Syndicate, itself, and how it was to be run.

By Mr. Languedoc, continuing:—

10

Q.—This was on May 12th, 1927. Previous to that had efforts been made with the Quebec Government to further the project of the development of Beauharnois, and if so, with what result?

20

A.—Yes. In the Winter Session of 1927, the Beauharnois Light Heat & Power Company — all the shares of which had been acquired by Mr. Swezey on behalf of his associates — applied to the Legislature at Quebec for an amendment to its Charter. The application was not successful, and was with-

drawn.
Q.—What was the result, and where did matters stand, through the summer of 1927, — say during June, July, and August?

A.—There were no active steps under way to further the project. There were various conferences between Mr. Swezey and myself, and some of his associates, with a view to making preparations for a further attempt at the next Session.

30

Q.—Apparently matters were temporarily at a standstill?

A.—Quite.

Q.—Can you tell us, of your personal knowledge, how the late Mr. Sifton first came into the picture?

Mr. Tyndale:—On behalf of the Defendant in Warranty I would ask that the general objections we placed of record in regard to the evidence of the Plaintiff in chief should apply, in the same way, as against similar evidence offered on behalf of the Defendant.

40

His Lordship:—The evidence will be taken under reserve of your objections, Mr. Tyndale.

Witness:—My first knowledge of the possibility of Mr. Sifton's retainership was a conversation with Mr. Swezey, when he suggested to me it might be useful to retain Mr. Sifton in connection with furthering the objects of the Syndicate.

By Mr. Languedoc, continuing:—

Q.—In any given place, particularly?

A.—More particularly at Ottawa.

HUGH B. GRIFFITH (for Defendant) Examination in chief.

In the
Superior
Court
District of
Montreal.

No. 15
Defendant's
Evidence

Deposition of
Hugh B.
Griffith
Examination
(Continued)

- Q.—With the Federal Government, I take it?
A.—Yes.
Q.—When was that conversation?
A.—It must have been some time in September, 1927.
10 Q.—What was the result of the conversation?
A.—The result was that Mr. Swezey had a telephone conversation with Mr. Sifton, and suggested that I visit Mr. Sifton at his home in Brockville.
Q.—When he requested you to go up to see Mr. Sifton did he entrust you with any document?
A.—Yes. He gave me a letter of introduction.
Q.—Is that the letter referred to as Exhibit P-2, dated September 6th, 1927?
A.—Yes. It is filed as an Exhibit.
20 Q.—A copy of it has been produced as Exhibit P-2, and it has been identified as attached to the Act of Deposit referred to this morning?
A.—Yes.
Q.—Did you go to Brockville?
A.—Yes.
Q.—Did you see Mr. Sifton?
A.—Yes.
Q.—Where did you see him?
A.—At his home, outside Brockville, — near Brockville.
30 Q.—What was the substance of your interview with him?
A.—We had a general discussion about the purpose for which our Syndicate had been formed, the work which would have to be done before the Beauharnois project could be proceeded with, and the various steps, of a legal, financial, and engineering nature, which would have to be taken.

I suggested to him that the experience he had gained in an attempt to promote the Georgian Bay Canal Company might be of some value to us. He had the same opinion, and professed himself to be willing to work for the Syndicate, and I specifically recall some conversation with him in respect to the financial organization which our group had — as to whether it was a corporate entity, or whether it was an incorporation, and, more particularly, as to what the personnel of the group. I think Mr. Sifton wished to be reassured of the fact that there were people of substance behind it, so that he would be working for a capable organisation.

HUGH B. GRIFFITH (for Defendant) Examination in chief.

In the
Superior
Court
District of
Montreal.

No. 15
Defendant's
Evidence

Deposition of
Hugh B.
Griffith
Examination
(Continued)

Q.—At that time was anything conclusive arrived at with regard to a bargain as to his reward, or anything of that kind?

A.—Not by me.

10 Q.—Did he express himself as being satisfied to accept a retainer from the Syndicate?

A.—He expressed his complete willingness to work for us. The terms on which he was to be retained were something he preferred to discuss with Mr. Sweezey.

Q.—Did you explain to him on that occasion the nature of the organization, including the Marquette Investment Syndicate?

A.—Yes.

Q.—And, the Beauharnois Syndicate?

A.—Yes.

20 Q.—You then returned to Montreal?

A.—Yes.

Q.—What was the next development? Did anything happen between that and the next time you saw Mr. Sifton? I mean, to your personal knowledge. Did you return and confer with Mr. Sweezey, or other managers of the syndicate, or what did you do?

30 A.—I reported to Mr. Sweezey, and possibly to other managers of the Syndicate, that Mr. Sifton was available to work for us, and that I would recommend he should be retained.

Q.—Do you remember what was the next development in the relationship between the Syndicate and Mr. Sifton?

A.—As I recall it, Mr. Sifton started to work for the Syndicate forthwith — possibly within a day or two, although it was some days, and possibly weeks later, before he and Mr. Sweezey came to a final agreement as to the precise retainership.

40 From then on he gave a very substantial part of his time to the interests of the Syndicate.

Q.—When did you next first see him after your return to Montreal, at Mallorytown?

A.—Certainly within ten days.

Q.—At that time, as appears by the Deed itself, Exhibit P-W-2, the managers of the syndicate were Messrs. Sweezey, yourself, Steele of the Dominion Securities, and Newman, one of your partners?

A.—Yes. There must have been a fifth as well.

HUGH B. GRIFFITH (for Defendant) Examination in chief.

In the
Superior
Court
District of
Montreal.

No. 15
Defendant's
Evidence

Deposition of
Hugh B.
Griffith
Examination
(Continued)

Q.—There was a fifth manager, in the person of Mr. William Robert, was there not?

A.—Yes. Mr. Robert was an original manager. He resigned at some early stage in the Syndicate's efforts. Whether he was a manager at the time, or whether there was a temporary vacancy filled by a clerk in the office, I am not sure.

Q.—Did Mr. Robert ever take any active part in the Syndicate?

A.—None at all.

Q.—Did he ever attend the meetings?

A.—Only the one at which he resigned.

Q.—Were meetings held of the First, or Beauharnois, Syndicate?

A.—No, I do not think there were any formal meetings of the Beauharnois Syndicate, with the exception of some meetings immediately prior to the formation of the Second Syndicate.

Q.—Were any minutes kept of the proceedings of the First or Beauharnois Syndicate?

A.—Not other than Minutes of Meetings on the formation of the Syndicate, and the meeting immediately preceding its dissolution.

Q.—In spite of that, were matters formally discussed between the active managers?

A.—Yes.

Q.—Do you know whether the retainer of the late Mr. Sifton on behalf of Beauharnois Syndicate was one of the matters discussed between the managers?

A.—I believe it was.

Q.—Were you made aware of the terms on which Mr. Sifton had been retained?

A.—I was.

Q.—Do you know whether the other managers were?

A.—It is my opinion they were, with the exception of Mr. Robert.

Q.—Where was the locus — where was the office, or the place of business, of the Beauharnois Syndicate?

A.—210 St. James Street.

Q.—Montreal?

A.—Montreal.

Q.—In whose office?

A.—The office of Newman Sweezey & Company.

HUGH B. GRIFFITH (for Defendant) Examination in chief.

In the
Superior
Court
District of
Montreal.

No. 15
Defendant's
Evidence

Deposition of
Hugh B.
Griffith
Examination
(Continued)

Q.—In the quarters of Newman, Sweezy & Company?

A.—Yes.

Q.—Or, was it R. O. Sweezy & Company?

A.—Newman, Sweezy & Company.

10 Q.—Were all conversations, deliberations, and meetings, if such there were, held in those premises?

A.—Not all of them. Some may have been held in hotels in Montreal or in the office of Dominion Securities Corporation.

Q.—Apart from the meetings held outside Montreal, or at hotels, where were the meetings held?

A.—In the office of Newman Sweezy & Company.

Q.—Did you ever see the late Mr. Winfield Sifton there?

A.—Frequently.

20 Q.—Was he in constant attendance, and in constant conference with the managers of the Syndicate, — yourself, Mr. Sweezy, and Mr. Newman?

A.—I would say in frequent conference.

Q.—What was the history of the Beauharnois Syndicate? Matters went along, and, I understand, the late Mr. Sifton was devoting a great deal of time to the affairs of the Syndicate?

A.—Yes.

Q.—And, he died on June 13th, 1928?

A.—Yes.

30 Q.—Shortly before his death was there any change in the corporate structure of the unit, or units, which had undertaken the development of this project?

A.—Yes.

Q.—What was it?

A.—It became apparent that the promotion of the enterprise would involve a very substantial amount of technical and engineering work, and the purchase of real estate, involving an expenditure of money in excess of our original estimate; and, in order to create an organization to raise further funds it was
40 decided to reorganize the syndicate.

Q.—Will you take communication of Exhibit P-W-3, and will you state whether it embodies the change to which you refer, as incorporated in an agreement dated April 4th, 1928 between the Beauharnois Syndicate and the Beauharnois Power Syndicate?

A.—That is correct.

The form of reorganization consisted in forming a second syndicate which acquired all the assets and assumed all the liabilities of the first syndicate.

HUGH B. GRIFFITH (for Defendant) Examination in chief.

In the
Superior Court
District of
Montreal.

No. 15
Defendant's
Evidence

Deposition of
Hugh B.
Griffith
Examination
(Continued)

Q.—What stage of development had the plans and the project generally reached at the date of the death of Mr. Winfield Sifton ?

10 A.—The application for amendment to the Special Act incorporating the Beauharnois Light, Heat & Power Company had been passed, and, I think, assented to by the Legislature at Quebec.

Q.—Had Mr. Winfield Sifton anything to do with that, or was his work confined to the Federal Government at Ottawa ?

A.—He had nothing to do with the Quebec effort as I recall it.

Q.—Had other solicitors been retained for that purpose ?

A.—Yes, they had.

20 Q.—How far had the development or project progressed, from the point of view of control of the Federal Government at Ottawa, at the date of the late Mr. Sifton's death ?

A.—I believe an application in very general terms had been made to the Federal Government early in 1928, and it was subsequently withdrawn. Later an application was made, after Mr. Sifton's death, and after the granting of the lease from the Province of Quebec; which is the application which was acted upon when P. C. 422 was passed.

Q.—That was on March 8th, 1929 ?

30 A.—Yes. I do not recall the date on which the application was filed in Ottawa. If you want that, I would have to consult my records.

Q.—Do you remember approximately the date of the withdrawal of the application of which you have just spoken ?

A.—No, I do not.

Q.—Can you say in what season of the year it was withdrawn ?

A.—No, I cannot. I would have to refresh my memory by consulting my records before I could answer.

40 Q.—In any event, the first official act of approval by the Government was Order in Council P. C. 422, of March 8th, 1929 ?

A.—Yes.

Q.—I understand that was subsequently amended ?

A.—Yes.

Mr. Languedoc:—And, as I shall show your Lordship, the Order in Council as amended was subsequently completely annulled by Statute.

HUGH B. GRIFFITH (for Defendant) Examination in chief.

His Lordship:—That is a matter of almost public knowledge.

By Mr. Languedoc, continuing:—

10

Q.—Will you take communication of the cheques filed with the examination on discovery of Mr. Christie as Exhibit P-W-8, and will you explain, if any explanation is required, (which is doubtful) what they mean. Take a typical cheque and voucher, and explain why the late Mr. Sifton in so many cases, if not in all cases, addressed his request for money to you ?

20 A.—I might say Mr. Sifton and I were working very closely together, and he had much more frequent communication with me than with any other member of the Syndicate or member of the Board of Managers of the Syndicate. He was aware of the fact that in my office of the Secretary and Treasurer I was custodian of the Syndicate's records, and in my capacity as Secretary and Treasurer of Marquette Investment Corporation I was the custodian of its funds, and the keeper of its books. He used to address his expense accounts and his request for payment on account of his fees to me personally, both as to the envelopes which contained the Statements of Account and also as to the detail of the account itself.

30 Q.—How did those cheques come to be signed or executed by Marquette Investment Corporation? What part was Marquette Investment Corporation playing? Why was Mr. Sifton paid by cheques of Marquette Investment Corporation?

A.—Marquette Investment Corporation had no assets — or, rather, carried on no business whatever other than the business of the Syndicate, and acted solely as custodian of the Syndicate's funds. It opened a bank account in its own name, which, in reality was a trust account for the Syndicate's funds.

40 Q.—So, it was Syndicate money that went through Marquette's cheques?

A.—Only Syndicate money.

Q.—To come back to the previous question, referring to the repayment of \$5000. to Mr. Swezey; have you any explanation or comment to make on it? Was that the initial payment made to Mr. Sifton?

A.—During the early days of the Syndicate's operations there were frequent periods when the Syndicate did not have sufficient funds to meet its liabilities. On two or three occasions Mr. Swezey, as the President of the Syndicate, made advances

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Evidence

Deposition of
Hugh B.
Griffith
Examination
(Continued)

HUGH B. GRIFFITH (for Defendant) Examination in chief.

10 out of his own funds. At a subsequent date, after the organization of the second syndicate — which was organized in order that further moneys might be raised — the syndicate found itself in a position to repay Mr. Sweezey for those advances. As a result, a cheque for some \$10,000 or \$11,000 was issued, and one of the items it covered was the original payment of \$5000. to Mr. Sifton.

Q.—That was the original retainer of \$5000 paid to Mr. Sifton?

A.—I am not sure whether Mr. Sifton had any amount before he got the \$5000. He may have collected a small expense account before he received the \$5000, or the \$5000 may have been the first payment. In any event, it was made quite early.

20 Q.—Will you look at voucher No. 101 in Exhibit P-W-8, and will you identify a letter dated December 12th, 1927, attached to this voucher as being a letter addressed to you by the late Mr. Winfield B. Sifton, if you are familiar with his signature?

A.—Yes.

Q.—This is addressed “Dear Hugh”. Who is “Hugh”?

A.—Myself.

30 Q.—With those vouchers before you, will you tell me whether all payments, without exception, made to the late Mr. Sifton during his lifetime, were made by means of Marquette Investment Corporation cheques, with the possible exception of the \$5000 cheque to which you have alluded as having possibly been made by Mr. Sweezey directly?

A.—That is true.

Q.—I show you the list marked Exhibit P-W-9. I do not notice the \$5000 payment which may have been made by Mr. Sweezey included in the list of payments made to Mr. Sifton during his lifetime. Is there any mistake there?

40 A.—No. It could not appear twice. Mr. Sweezey may have the cancelled cheque which was originally sent to Mr. Sifton. The \$5000 cheque issued to Mr. Sweezey to reimburse him for payment made to Mr. Sifton does occur here.

By Mr. Tyndale:—

Q.—It is not a \$5000 cheque: it is an element forming part of the \$11,000 ?

A.—Yes, that is correct.

HUGH B. GRIFFITH (for Defendant) Examination in chief.

By Mr. Languedoc, continuing:—

Q.—After Mr. Sifton's death there were further payments made to his Estate, were there not?

10 A.—Yes.

Q.—We heard this morning of a letter covering a cheque for \$10,094.93. Will you look at voucher No. 265 in Exhibit P-W-8. Was the letter of June 4th, 1928, attached to this voucher No. 265, the last letter you received from the late Mr. Sifton?

A.—I could not answer that.

Q.—In any event, this payment was made after his death, in the form of a cheque from Marquette Investment Corporation to his brother and executor, Mr. Victor Sifton?

A.—Yes.

20

By Mr. Tyndale:—

Q.—There are two letters attached to that voucher, are there not: one of June 1st, and one of June 4th.

A.—Yes.

By Mr. Languedoc, continuing:—

30 Q.—Just to clear up this matter of payments. Certain payments were made to the widow of the late Mr. Sifton, I understand?

A.—Yes.

Q.—Are they correctly shown on the list Exhibit P-W-9?

A.—Yes. I would say this covers the payments during the period I was associated with Beauharnois Power Corporation.

40 Q.—In other words, there is a list of cheques of the Beauharnois Power Corporation which are also produced in the bundle of vouchers Exhibit P-W-9, to Mrs. W. B. Sifton. Is that correct?

A.—Yes.

Q.—I do not want to lead you, but I presume the change over from the drawer of the cheque was due to the fact that the project had then been taken over by the Beauharnois Power Corporation?

A.—Yes.

In the
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No. 15
Defendant's
Evidence

Deposition of
Hugh B.
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Examination
(Continued)

HUGH B. GRIFFITH (for Defendant) Examination in chief.

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Subsequently to the organization of the Beauharnois Power Corporation Marquette Investment Corporation, on behalf of the Syndicate, issued no more cheques to any person.

No. 15
Defendant's
Evidence
—
Deposition of
Hugh B.
Griffith
Examination
(Continued)

10 Q.—Will you explain to His Lordship why those payments were made to Mrs. Sifton ?

A.—I would describe it as a compassionate allowance.

Q.—At the time those payments were made did you know who represented the late Mr. Sifton's Estate? Who were his heirs, or legatees, or executors?

A.—I knew his brothers, or some of them, were executors for his Estate.

20 Q.—Have you had occasion to total up, or could you total up, the amount of money that was paid to the late Mr. Sifton from the date of his retainer forward — either to himself, or to his Estate?

A.—About \$29,000 to Mr. Sifton or his Estate, and about \$10,000 to Mrs. Sifton.

I might say there is nothing on those records to indicate how much was on account of disbursements and for expenses, and how much for fees.

30 Q.—But, the vouchers would show that in detail?
A.—Yes.

Q.—It might be interesting, not to say important, to have the expenses segregated from the fees. Could you have that done ?

A.—I could, yes, but it would take some time to do it.

40 Mr. Weldon:—There has been no suggestion in any of the Pleadings that any amount was paid for expenses, or what amount was paid for expenses, or what amount was paid for services. There is no issue in regard to that, and evidence of this character cannot be relevant.

Mr. Tyndale:—It all appears in the vouchers and the idea of segregating the different amounts is simply to make it easier for his Lordship.

Mr. Weldon:—But, there is no issue in regard to it, and I object to evidence of this character.

HUGH B. GRIFFITH (for Defendant) Examination in chief.

His Lordship:—It is all in the record now.

10 Mr. Weldon:—But, I am entitled to object, insofar as it affects my clients. My friends for the Defendant in Warranty may not object, because the evidence may not be important in regard to them.

Mr. Languedoc:—Our position is simply this: that it is an integral part of the same transaction.

Mr. Weldon:—But, it will open the door to a long enquiry, and it is not fair.

His Lordship:—As I say, it is all in the record now, and it is simply a matter of dissecting it.

20 Mr. Weldon:—Insofar as it may develop into some defence against us, I would ask your Lordship to note my objection.

His Lordship:—Your objection will be noted, and the evidence will be taken subject to it.

By Mr. Languedoc, continuing: —

30 Q.—Will you take communication of the copy of agreement between Beauharnois Power Syndicate and Beauharnois Power Corporation, Limited, already produced as Exhibit P-W-4, and will you tell me whether this is the agreement under which Beauharnois Power Syndicate as successor to Beauharnois Syndicate turned over the Beauharnois Power project development, rights, liabilities, and obligations, to the Beauharnois Power Corporation Limited?

His Lordship:—What is the date of it?

Mr. Languedoc:—October 31st, 1929.

40 Witness:—My recollection is this is an agreement to transfer, which might have been subsequently amended. If I had the reference to the Minute Book, I could say.

By Mr. Languedoc, continuing:—

Q.—Will you take communication of Exhibit P-W-5, being a copy of agreement between Beauharnois Power Syndicate and Marquette Investment Corporation, dated December 17th, 1929; and will you state whether it is the agreement under which the Beauharnois Power Syndicate transferred and assigned to the Beauharnois Corporation, Limited, its undertaking and assets of every kind, on condition of the Beauharnois Cor-

*H. B. GRIFFITH (for Defendant) Cross-examination
for Defendant in Warranty*

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poration, Limited, taking over all the liabilities and obligations of the Syndicate except its obligations and liabilities to its members as such ?

A.—Yes.

10 I think the two agreements must be read together. The second one simply implements and makes effective the first one.

Q.—The Minute Book of the Beauharnois Company is Exhibit P-W-6 ?

A.—Yes.

Q.—And, Exhibit P-W-7 is the Minute Book of Beauharnois Power Syndicate ?

A.—Yes.

20 Mr. Languedoc:—I have no further questions.

Cross-examined by Mr. Tyndale, K. C., of Counsel for Defendant in Warranty.

Q.—In reply to my friend's question about the status of matters when Mr. Winfield Sifton died, you said that early in 1928 a Petition had been filed with the Dominion Government, which was later withdrawn at a date which you could not fix. Is that correct ?

30 A.—I think it is correct.

Q.—Subsequently, after Mr. Winfield Sifton's death, a further Petition was made to the Government ?

A.—That is correct.

By the Court:—

Q.—Was the Petition before, or after, Mr. Sifton death ?

A.—I cannot answer that without reference to my records.

By Mr. Tyndale, continuing:—

40 Q.—The first Petition (if that is the proper name to give to an application) was not argued before the Government, so to speak ?

A.—No, it was not.

Q.—On consulting the Report of the Parliamentary Committee which sat in 1931, I find that the matter was first argued before the Government in January, 1929. Does that conform with your recollection ? That was when Mr. Aimé Geoffrion presented the case on behalf of the applicants ?

A.—I would think there was some informal argument before the Minister prior to that.

*H. B. GRIFFITH (for Defendant) Cross-examination
for Defendant in Warranty*

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(Continued)

Q.—This hearing took place before the Minister of Public Works and some of the other Ministers?

A.—That was the first, and only, public hearing.

Q.—And, that was in January, 1929?

10 A.—Yes.

Q.—You spoke of the contract with Mr. Sifton for his services. Would you indicate to me any minutes in either the First or the Second Syndicate Minutes concerning that contract?

A.—There are no Minutes covering the engagement or appointment at all.

Q.—Is there any reference to it in the Minute of Beauharnois Power Corporation during the period you were there?

A.—Not that I am aware of.

20 Q.—Is there any reference at all to the matter? I draw your attention to a minute dated November 19th, 1931. You were Secretary of the Corporation at that time, were you not?

A.—Yes.

Q.—Is there any reference to the Sifton matter in that Minute?

A.—Yes, there is.

Q.—Is the extract from the Minute I show you a true and verbatim extract from the Minute in so far as it concerns the Sifton matter?

30 A.—Yes.

Q.—You were Secretary at the time?

A.—Yes.

Q.—And, you signed the original Minute in the book you have before you?

A.—Yes.

Q.—Will you produce, as Exhibit D-W-1 a certified extract, which you have just verified, as being a true extract of the Minute?

40 A.—Yes.

Q.—Being an extract from the Minutes of Beauharnois Power Corporation under date November 19th, 1931?

A.—Yes.

Mr. Tyndale:—I should have prefaced my cross-examination by a statement to the effect that I cross-examined the witness under reserve of all objections.

I have no further questions to ask the witness.

Mr. Weldon:—I have no cross-examination.

(And further Deponent saith not).

J. H. Kenehan,
Official Court Reporter.

ROBERT O. SWEEZEY (for Defendant) Examination in chief.

No. 16

DEPOSITION OF ROBERT O. SWEEZEY,

A witness examined on behalf of the Defendant.

In the
Superior Court
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Montreal.

No. 16
Defendant's
Evidence

Deposition of
Robert O.
Sweezy
Examination

10 On this fourteenth day of November, in the year of Our Lord, one thousand nine hundred and thirty four, personally came and appeared Robert O. Sweezy, of the City and District of Montreal, Civil Engineer, already sworn and examined on behalf of the Plaintiff, who, being now called as a witness on behalf of the Defendant, deposes as follows:—

Examined by Mr. Languedoc, K. C., of Counsel for Defendant:—

20 Q.—You have already been sworn?

A.—Yes.

Q.—We have documentary evidence, and you have heard the testimony of Mr. Griffith, with regard to the inception of the Beauharnois project, the formation of the Marquette Investment Corporation, and of the original Beauharnois Syndicate. Do you corroborate what Mr. Griffith said with regard to those two group or bodies?

A.—Yes.

30 Q.—Coming more directly to the point, will you tell His Lordship exactly how you got in touch with Mr. Sifton in connection with those enterprises?

A.—I had known Mr. Sifton for some years, having worked with him in the Royal Securities Corporation in 1912 and 1913.

Q.—Mr. Griffith was also there, I believe?

A.—Yes. He was also in the Royal Securities Corporation at some subsequent date.

40 I met a mutual friend of Mr. Sifton and myself on the street one day.....

Q.—(interrupting) In what year would that be?

A.—In the late summer, or early fall, of 1927.

Q.—Previous to September 6th?

A.—Yes.

He suggested that Mr. Winfield Sifton might be of great help to me in carrying on some of our work. The idea was one

ROBERT O. SWEEZEY (for Defendant) Examination in chief.

with which I agreed, because I knew of Mr. Sifton's ability, and that he had recently fought a very interesting fight in connection with the Georgian Bay Canal, and I figured from that that he would be useful in helping to guide us in this. Consequently
10 I telephoned him, and asked him if he was available to act for us in any capacity in which his services might be suitable. He agreed that he was interested, and would like to have a talk with me, and asked me if I would like to go to see him. At the last moment I was unable to go, and I sent Mr. Griffith, with a letter of introduction.

Q.—Is that the letter which has been filed as Exhibit P-2 ?

A.—Yes.

Q.—Dated September 6th, 1927 ?

20

A.—Yes.

Q.—Mr. Griffith went to see Mr. Sifton ?

A.—Yes.

Q.—What was the next step ?

A.—When Mr. Griffith came back he reported to me and to Mr. Newman, who was also in the office.

Q.—Was Mr. Newman there when Mr. Griffith returned ?

A.—Yes. Mr. Newman was always in the office.

Q.—He was your partner ?

30

A.—Yes.

Q.—How often was Mr. Steele in the office ?

A.—Quite frequently, because we were every day developing some new ideas of how to proceed with our effort, and how to raise money.

Q.—What was the next development ?

A.—Mr. Sifton came to Montreal, and I had several talks with him, pointing out to him the physical aspects of the undertaking. He was apparently quite convinced the project had all the engineering merits it should have, and he was very interested
40 from a legal standpoint and pointed out some of the difficulties we would have. He pointed out that the greatest difficulties would obviously be political difficulties, defining the jurisdiction of Quebec vs Ottawa in regard to the ownership of the Power, which, by the way, we felt were very considerable, and on which we desired to have assistance and guidance, and, naturally, we were quite relieved to have Mr. Sifton's advice and assistance.

Then we came to an agreement, a few days after Mr. Griffith had seen him, in regard to a retainer of \$5000, which I

ROBERT O. SWEEZEY (for Defendant) Examination in chief.

agreed to pay him; and I probably paid him forthwith, in a day or two, with my own funds — the Syndicate not having sufficient money at the time.

Q.—On whose behalf was Mr. Sifton's retainer effected?

10 Mr. Weldon:—I object to the question, as tending to vary or affect the documents filed.

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

Witness:—All the work I did was, obviously, on behalf of the Syndicate.

By Mr. Languedoc, continuing:—

20 Q.—But I would like you to make the answer narrower. On whose behalf was Mr. Sifton retained?

Mr. Weldon:—It is understood this evidence is being made under reserve of my objection?

His Lordship:—Yes.

Witness:—On behalf of the Syndicate.

By Mr. Languedoc, continuing:—

30 Q.—Was that made clear to Mr. Sifton at the time

A.—Oh, quite.

Q.—Was there any doubt in your mind that he knew he was being retained for the Syndicate?

A.—There could not be any doubt.

Q.—The terms of his retainer are as evidenced by Exhibits P-5, P-6 and P-7 (P-7 being supposed to clarify the terms of P-4), of October 15th, October 17th, and October 19th, 1927?

A.—Yes.

40 Q.—It was in accordance with those terms that the various sums shown on Exhibits P-W-8 and P-W-9 were paid to the late Mr. Sifton?

A.—Correct.

Q.—Is Exhibit P-8 a truthful and accurate epitome of the substance of your meeting with Mr. Clifford Sifton, one of the present Plaintiffs, on or about June 7th, 1932?

A.—I am not sure I quite understand your question.

Q.—Did anything else occur at your interview beyond what is embodied in that letter?

ROBERT O. SWEEZEY (for Defendant) Examination in chief.

Mr. Weldon:—I submit evidence as to whether this represents a correct statement of what Mr. Sweezy thought, or said, at the meeting is not legal. There was no attempt on our part to vary a valid written instrument.

10 Here we have a letter in which Mr. Sweezy signs an undertaking, and now he is being asked to say if it is a true statement of what he undertook to do. This morning Mr. Sweezy was asked if he admitted he owed the money, subject only to approval, and the interpretation of "approval" was asked for. My friend is now asking Mr. Sweezy whether the letter he signed represents his undertaking.

Mr. Languedoc:—I am not asking him that. I am asking him whether there was anything else.

20 His Lordship:—You are objecting to the question, Mr. Weldon?

Mr. Weldon:—Yes, my Lord.

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

30 Witness:—The letter was naturally the result of an interview I had with Mr. Sifton, in which Mr. Sifton was anxious to press this matter as quickly as possible, and I, on the other hand, was anxious to defer any Action of the kind, because we were right in the midst of an effort to care for the investment of the bondholders in Beauharnois, and any plan we had in view would have been seriously jeopardized by a lawsuit at that time.

In these circumstances Mr. Sifton consented to postponing any Action on his part, provided this type of letter were written to satisfy him in relation to his co-executors.

By Mr. Languedoc, continuing:—

40 Q.—Is it to your personal knowledge, — or can you give direct testimony, of your own knowledge — that you made known to your fellow managers of Beauharnois Syndicate the retainer of the late Winfield Sifton?

A.—Absolutely: without doubt. It was an every-day thing. Everything we did was reviewed with the managers of the Syndicate.

Q.—Did you make it known to Mr. R. W. Steele?

A.—Yes.

ROBERT O. SWEEZEY (for Defendant) Examination in chief.

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Deposition of
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Examination
(Continued)

Q.—And, to Mr. Henry Newman?

A.—Yes.

Q.—Did you make it known to Mr. Robert?

10 A.—No. Mr. Robert was in a dual position, and was why
he withdrew.

Q.—Did he ever take part in your conferences?

A.—No.

Q.—Was he an active member of the Syndicate?

A.—He was not. He was the vendor of certain assets, and
felt, therefore, he should not be an active member of the Syn-
dicate, and he withdrew for that reason.

Q.—But, there were four out of the five managers who
knew all about it?

20 A.—Mr. Steele, Mr. Griffith, and Mr. Newman, knew all
about it. Including myself, there were four.

Q.—I believe Mr. Moyer came into the Syndicate later on?

A.—Yes.

Of course, when he came in he was brought up to date on
what had transpired.

Q.—Do you know what knowledge, if any, the other man-
agers had of the terms of Mr. Sifton's retainer?

30 A.—I certainly told them, and they saw Mr. Sifton in my
office on frequent occasions. I told them the term of the agree-
ment.

Q.—Was there any objection taken to it?

A.—None whatever.

Q.—Approximately what was the total amount of capital
involved in the project?

A.—We estimated about \$76,000,000, I think.

40 Q.—Supposing the whole thing had gone smoothly, and
Mr. Sifton had lived to complete his work, at a rough guess, in
what possible expenditure were you involved?

A.—\$50,000, plus his current expenses and fees.

Mr. Languedoc:—I have no further questions to ask the
witness.

Mr. Weldon:—I have no cross-examination.

*ROBERT O. SWEEZEY (for Defendant) Cross-examination
for Defendant in Warranty.*

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examination
for Defendant
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Cross-examined by Mr. Tyndale, K. C., of Counsel for Defendant in Warranty:—

10 Q.—Mr. Griffith told us that Mr. Sifton's assistance was to be directed rather towards the authorities at Ottawa than towards the authorities at Quebec. That is correct, is it not?

A.—Yes.

Q.—After Mr. Sifton died, in June, 1928, I understand you engaged other Ontario Counsel, in the person of Senator Hayden and his partner?

A.—I do not recall just when Senator Hayden was retained. It may have been before Mr. Sifton died.

20 Q.—Perhaps I could refresh your memory. Mr. Ebbs testified in the proceedings before the Parliamentary Committee. He was a member of Senator Hayden's firm?

A.—Yes.

Q.—He testified his firm received a retainer of \$50,000, in addition to other fees, for work done from October 1928. That is in accordance with your recollection, is it not?

A.—Yes.

Q.—The contingent fee payable to Senator Hayden or his firm, was \$50,000, was it not?

30 A.—Yes.

Q.—Apart from expenses and retainer, of some \$15,000?

A.—Yes.

Q.—The contingent fee being subject to the approval of the project by the Dominion Government, I suppose? That would be the contingency of the fee?

A.—I cannot recall the terms of the undertaking. It was certainly contingent upon something, and it was obviously upon the completion of the scheme.

40 Q.—And that involved the approval of the Dominion Government?

A.—Yes.

Q.—And they were supposed to act towards the Dominion Government?

A.—Yes.

By Mr. Weldon:—

Q.—You told my friend Mr. Tyndale that after Mr. Sifton's death you retained other Ontario Counsel, and my friend

*ROBERT O. SWEEZEY (for Defendant) Cross-examination
for Defendant in Warranty.*

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(Continued)

Mr. Tyndale suggested Senator Hayden was Ontario Counsel.
Was he the only Ontario Counsel you had?

A.—No, we had several others; but, as I recollect Senator
10 Hayden's firm was the leading Ontario Counsel.

Q.—Mr. W. B. Sifton was not a barrister when you re-
tained him in September, 1927?

A.—I do not know when he became a barrister. It was
some time after he was retained.

Q.—He was not retained as legal counsel?

A.—Not for his legal standing.

By Mr. Languedoc:—

20 Q.—What was he retained for?

A.—He was retained for his familiarity with the proceed-
ings that had to be met with in Ottawa, and to guide us as the best
method of obtaining a hearing of our case.

Q.—Was he retained as a member of any firm?

A.—No.

Q.—Or, as an individual?

A.—As an individual.

30 By the Court:—

Q.—It looks as if he was retained principally for the pur-
pose of advising as to the rights of the Province of Quebec and
the rights of the Federal Government?

A.—There were many things he was adapted to. That
would be included in many others. He was experienced in busi-
ness as well as in legal matters, and in the methods of procedure
in dealing with Governments.

40 By Mr. Tyndale:—

Q.—His abilities were restricted only geographically?

A.—I think that is a fair estimate.

And further Deponent saith not.

J. H. Kenehan,
Official Court Reporter.

CLARE MOYER (for Defendant) Examination in chief.

No. 17

DEPOSITION OF CLARE MOYER,

In the
Superior
Court
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Montreal.

No. 17
Defendant's
Evidence

Deposition of
Claire Moyer
Examination

A witness examined on behalf of the Defendant.

10 On this fourteenth day of November, in the year of Our Lord, one thousand nine hundred and thirty four, personally came and appeared Clare Moyer, of the City of Ottawa, in the Province of Ontario, Barrister, aged 47 years, a witness produced and examined on behalf of the Defendant, who, being duly sworn, deposes as follows:

Examined by Mr. Languedoc, K. C., of Counsel for Defendant:—

20 Q.—I understand you were personally acquainted with the late Mr. Winfield Sifton, whose name has been constantly referred to during this trial?

A.—I was.

Q.—When did you first come into contact with him in connection with the Beauharnois project?

A.—In the month of January, 1928. I think it was during the first week of January.

Q.—In what circumstances?

30 A.—He approached me, in Ottawa.

Q.—Where were you in Ottawa at the time?

A.—Actually I saw him in the Chateau Laurier I was living in Ottawa.

He told me that he had some time previously been retained by a group or Syndicate of Montreal gentlemen who were interested in developing a power project at Beauharnois, and he said he had recommended to this group that they might usefully retain me. He asked me if I was interested, and I told him I

40 was.

Q.—Were those the words he used?

A.—That was the sense of what he said.

Q.—Have you any doubt whatever on the subject? Because it is a matter of great importance to my client. Have you any doubt whatever that he alluded to either “a group” or “a syndicate”?

A.—None whatever.

Q.—That is quite clear in your memory?

A.—Quite.

CLARE MOYER (for Defendant) Examination in chief.

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Deposition of
Claire Moyer
Examination
(Continued)

Q.—You then accepted, through him, a retainer for this group?

A.—I did.

Q.—Did he name the group to you?

10 A.—Not at that first contact.

Within a day or two, or it may have been later the same day, he saw me again. He was accompanied at the time by Mr. Griffith. It was then explained to me what it was all about, and I learned that Mr. Griffith was one of the group; and I learned, in the course of our conversation, or very shortly thereafter, who the others were.

Q.—Did you find out what the group was called?

20 A.—Yes. They were referred to as the Beauharnois Syndicate.

Q.—From then on what opportunity had you for contact with the late Mr. Winfield Sifton?

A.—We were in very close contact from the month of January, 1928, up to the time of his death, on June 13th. As a matter of fact I was with him when he died, and I was with him, not continuously but frequently, during the interval.

30 Q.—Would you think that on occasions you were with him several times a day, or portions of the day?

A.—Yes, I was with him quite often. He made my office his headquarters when he was in Ottawa.

Q.—Do you remember when you were retained?

A.—During the first week in January, I believe.

Q.—And, from then on, so long as Mr. Sifton's health permitted, you and he were associated in furthering the plans of this Syndicate?

A.—Yes.

40 Q.—And, did you carry on after his death?

A.—I did.

Q.—Do you know anything at all about the payments that were made to Mr. Sifton?

A.—I did not know at the beginning, but I learned as time went on.

Q.—Do you know to whom he looked for payment?

A.—I know he used to write to Mr. Griffith, and receive letters from him, and he used to keep them on file in my office.

CLARE MOYER (for Defendant) Examination in chief.

Q.—Do you know in what capacity Mr. Griffith was writing?

A.—I presume as Secretary of the Syndicate.

10 The payments were made by the Marquette Corporation.

Q.—Was your relation with the Syndicate practically the same as Mr. Sifton's?

A.—Practically identical, except to the amount of retained, and so on.

Q.—Were your payments made in the same form, by cheques from the Marquette Corporation?

A.—Yes.

20 Q.—Through your association with Mr. Sifton, do you know how far the work had proceeded towards securing the approval of the Dominion Government to the plans of the Syndicate and its successors at the date of Mr. Sifton's death?

A.—I think it would be very difficult for anyone to estimate the progress in terms of percentages, or on any other basis, but it certainly had not progressed to be appreciable in such a way that it might have been measured in terms of achievement of success.

30 Q.—And you were familiar, if anyone was, with the then condition of the project?

A.—I think I was. I became a syndicate manager later on, and I knew what was going on.

Q.—When did you become a syndicate manager?

A.—In April, 1928.

Q.—Before Mr. Sifton died?

A.—Yes.

Q.—Are you aware whether your fellow managers knew Mr. Sifton was being retained?

A.—Absolutely.

40 Q.—Do you include Mr. Steele in that knowledge?

A.—I take it for granted they must have known. We had meetings at No. 210 St. James Street, Montreal, and all of us who were present, and we usually were all present, would discuss matters of common interest.

Q.—And, other Counsel as well?

A.—Yes.

CLARE MOYER (for Defendant) Examination in chief.

Q.—And it is not surprising, I suppose, for Counsel to expect to be paid for going into conference with their clients?

A.—I think it is a recognized fact, even in this Province.

10 Mr. Languedoc:—I have no further questions to ask the witness.

Mr. Weldon:—I have no cross-examination.

Mr. Montgomery:—I have no cross-examination.

And further Deponent saith not.

20

J .H. Kenehan,
Official Court Reporter.

30

40

JAMES B. HUNTER (for Defendant in Warranty)
Examination in Chief.

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Court
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—
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Defendant's
Evidence
in Warranty
—
Deposition of
James B.
Hunter
Examination

Defendant's Evidence in Warranty

No. 18

10 DEPOSITION OF JAMES B. HUNTER,

A witness examined on behalf of Defendant in Warranty.

On this fourteenth day of November, in the year of Our Lord, one thousand nine hundred and thirty four, personally came and appeared James B. Hunter, of the City of Ottawa, in the Province of Ontario, Deputy Minister of Public Works, aged 58 years, a witness produced and examined on behalf of the
20 Defendant in Warranty, who, being duly sworn, deposes as follows:

Examined by Mr. Montgomery, K. C., of Counsel for Defendant in Warranty:—

Q.—I understand you have occupied the position of Deputy Minister of Public Works for a great many years?

A.—Since 1908 — twenty six years last July.

30 Q.—You were occupying that position during all the periods when the Beauharnois application, made by the Swezey interest, was in issue?

A.—I was.

Q.—That application went through the Department of Public Works, did it not? It was under their jurisdiction?

A.—Yes.

Q.—You heard Mr. Griffith say the first application was withdrawn?

A.—That is correct.

40 The application that was dealt with was filed in January, 1928.

Q.—And, so far as the Government was concerned, it was an application to the Governor in Council?

A.—Yes.

Q.—Was it pressed in January, 1928?

A.—No.

Q.—Can you tell His Lordship what happened in connection with it?

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10 A.—The application was made. Of course it was a very important application. There had been previous requests for Beauharnois developments, which had not got anywhere. On
20 account of the importance of the St. Lawrence River, and the various interests including the power, on it, it was a very serious matter for the Government to undertake to deal with. The result was considerable discussion as to whether there should be an Act of Parliament, or what the procedure should be. The discussions continued almost for the whole of that year, and it was only in December, 1928, that instructions were given to me to make a reference to the Department of Justice to ascertain whether it was an application that might properly be dealt with under the Navigable Waters Act. That was done, and the
20 Department of Justice replied that it was quite proper for the Government to deal with it under the Navigable Waters Act.

Q.—And, what followed?

A.—The Government appointed a Board of Engineers of the Departments of Public Works, Railways and Canals, Marine, and Interior.

Q.—When was that appointment made?

A.—In the early part of January, 1929.

30 While that Board was getting to work it was decided to hold a public hearing, which took place on January 15th, 1929. The Ministers presiding were the Minister of Public Works, Mr. Elliott; Mr. Stewart, Minister of the Interior; and Mr. Cardin, Minister of Marine.

Q.—Was there any opposition offered to the application?

40 A.—Yes. The file discloses a number of protestants against the application; such as Canada Steamship Lines, and some other Power Companies. All were invited, and I think the majority of them were represented at the hearing.

Q.—I think their names are mentioned in the Report, are they not?

A.—I think so.

By the Court:—

Q.—Reference has been made to an application which was filed, and then withdrawn. What do you know of that?

A.—The record I have is of one application, made in

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January, 1928; and that is the application we refer to all through our records. I do not remember any withdrawal of that application, or a subsequent one. That is the one I referred to the
10 Department of Justice in December of that year.

By Mr. Montgomery, continuing:—

Q.—I think the Companies which objected, and were represented, are those listed in Order in Council No. 422, Exhibit P-33: Canada Steamships, Canadian Light & Power Company, and so on ?

A.—Yes. Those are the Companies. They are on page 6 of this Exhibit.

20 Q.—That was when the first real fight took place on this matter, was it not ?

A.—Yes. That was when the might of the opposition crystallized.

Q.—An opinion of the Department of Justice was referred to ?

A.—What we desired to know was whether the Government had the right to authorize an application of that sort under the Navigable Waters Act, or whether it would require an Act
30 of Parliament.

Q.—When was P. C. 422 passed ?

A.—March 8th, 1929.

Q.—And, I note by the terms of the Order, that it was conditional ?

A.—Yes. There are a number of conditions.

By Mr. Tyndale:—

Q.—Twenty eight conditions ?

40 A.—Yes. Beginning on page 9.

By Mr. Montgomery, continuing:—

Q.—Twenty eight conditions would be approximately the number ?

A.—Twenty eight is correct.

Q.—Will you please refer to condition No. 11, and say what it is ?

A.—It is on page 11:—

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10 “The Company shall not commence the construction of the works until detailed plans of construction and all necessary information respecting the said works have been submitted to and approved by the Minister, provided that such plans and information shall be submitted within one year.”

Q.—May I ask you whether or not before this Order in Council was passed the plans which had been submitted had been referred to any body of engineers?

A.—The plans of the general scheme were referred to this inter-departmental body I have mentioned.

Q.—And, I believe reference is made to objections which had been taken on their part to certain elements of the plans?

20 A.—Yes. They took exception to the remedial works suggested, for one thing.

Q.—We now come to the condition in P. C. 422 which required further approval of plans. Were further plans submitted?

A.—Yes, further plans were submitted in July, 1929.

Q.—Were those ever approved?

A.—No, those were not approved, and were subsequently withdrawn; and others submitted in August, 1930.

30 Q.—And, were those plans ever approved?

A.—No, those plans were never approved — this is, by the Department of Public Works.

Q.—The next event, in order of time, was the famous Beauharnois Enquiry, was it not?

A.—Yes. That came on in June, 1931.

Q.—Prior to that Enquiry there had been no approval of any of the plans?

40 A.—No. The Minister had approved of no plans up to that time.

By the Court:—

Q.—The work was progressing in the meantime?

A.—Yes, the work was started I think. I think they got plant together in the fall of 1929, and were going on during 1930.

The general scheme was approved by the Order in Council of March, 1929; but the plans referred to as being required to be filed under Condition No. 11, were never approved.

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By Mr. Weldon:—

10 Q.—Those are the additional plans in Schedule 8 attached to the general scheme?

A.—Yes.

Mr. Montgomery:—The general scheme, which was the first application, speaks for itself; and your Lordship will see certain plans were not approved, and others required further approval.

Witness:—Subject to the conditions, and further detailed plans to be furnished.

By Mr. Montgomery, continuing:—

20 Q.—You have referred to the Report of the Investigating Committee in 1931. Will you file, as Exhibit D-W-2, Report Nos. 1, 2, 3 and 4 of the Parliamentary Committee of 1931, including the Minutes of Proceedings and Evidence?

A.—Yes.

Q.—I notice you were asked at the enquiry the same question as His Lordship just put to you: as to whether the work was proceeding in the meantime, notwithstanding the non-approval of plans, and you gave testimony in reference to that which might be material.

30 You were asked:—

“Q.—Do you know why the work proceeded without the approval by the Minister of the plans?”
and your answer was:—

“A.—Well, the work that had been done is entirely on the Company's property, not in the river. I suppose that was their business.”

40 Mr. Weldon:—On what page of the Report is that?

Mr. Montgomery:—Page 66.

By Mr. Montgomery, continuing:—

Q.—Would that still be your answer?

A.—I think it was the business of the Company to proceed with work on their own property, as long as they did not interfere with the river.

Q.—You were interested from the point of view of navigation and it was only when they got to the river, or did something affecting the river, that you were affected?

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A.—That was what we were protecting, under the Navigable Waters Act.

10 Q.—I see a reference in the Report to certain aspects in which the work as finally carried out was not in accordance with the general plans which were first submitted for approval and which were never approved.

A.—They were, as there usually are changes — minor, sometimes fairly substantial — in which the work as actually carried out may differ from the preliminary plans.

Q.—Would you mind indicating the major changes? Take the ones dealt with in the Reports, for instance?

20 A.—One change was the re-location of the entrance from Lake St. Francis. That was moved something about a mile from the original location. I have seen references to it, but I do not see the distance here.

Q.—It was moved about a mile from the original location?

A.—Yes. Northerly, I think it was.

Q.—When you speak of the original location, do you mean it was moved about a mile from the location shown on the plans that were submitted and were considered prior to Order in Council P. C. 422?

30 A.—The plans accompanying this Order in Council P. C. 422.

Q.—When you refer to the original location, you refer to the location shown on the plans referred to in Order P. C. 422?

A.—Yes. That was the old St. Louis feeder, as it was known.

40 Then there was a change made in the distance apart to the banks — not of the canal proper, but what you might call the containing channel of the navigation canal.

Q.—How extensive was that change?

A.—About 900 or 1000 feet difference.

Q.—Could you give us the original measurements?

A.—The Report states (and I imagine the figures are correct) the banks are about 3300 feet apart, whereas the original plans show a width of about 1100 feet in the rock section, and 4100 feet in the earth section.

Q.—What other major change was made?

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A.—I do not know that I am sufficiently familiar with the engineering changes. I was not dealing with those.

The two I have mentioned were the two main changes.

10

Q.—Before this matter could be submitted to the Governor in Council, it would have had to be considered by your Department, would it not? The Governor would act on the recommendation of the Minister of Public Works?

A.—Yes.

Q.—And the application was lodged in your Department, and would primarily pass through your Department?

A.—Correct.

20

Q.—Can you tell us whether any substantial progress had been made upon that application prior to the month of June, 1928?

A.—The first real action on the application was in December, 1928 when the reference was made to the Justice Department to know whether our Department would have the authority to deal with the application under the Navigable Waters Act.

Q.—Up to that time the matter had been pressed?

30

A.—So far as the official end of the Department was concerned, there had not been very much activity.

Q.—And it was really in December, 1928, or January, 1929, after you received the opinion of the Department of Justice to the effect that you could handle the matter, rather than having it done by Act of Parliament, that you started upon it?

A.—Yes.

Q.—So, I do not suppose you did much work with the late Mr. Winfield Sifton on that application?

40

A.—I never saw him at all in connection with that application.

Q.—And, you were the active head of that Department — not only the titular head but the active head, at that time?

A.—Of course they would not come to me to know whether the Government would deal with an application of that sort. They would go to the Minister, or other Cabinet Ministers. The Department comes into play once the Government decides to do something, and then we get our instructions.

J. B. HUNTER (for Defendant in War.) Cross-examination.

Mr. Montgomery:—I have no further questions to ask the witness.

Cross-examined by Mr. Weldon, K. C., of Counsel for
10 Plaintiffs:—

Q.—The Beauharnois plans have been approved by the Governor in Council, have they not?

A.—Yes.

Q.—Before the month of January, 1934?

A.—In March, 1929.

Q.—Subsequently the plans were approved, and the construction carried on, and a certain amount completed? Plans were approved before the work was done?

20 A.—I have no knowledge of that. There was a disruption there, and the work was taken from the Department of Public Works and put under the Department of Railways and Canals. There was no approval until it was taken from the Public Works Department, which was subsequent to the investigation of 1931.

We have a record of the application, but no approval by the Minister of the detail plans was given up to that time.

30 By Mr. Tyndale:—

Q.—Or ever?

A.—Or ever, by the Minister of the Public Works.

By Mr. Weldon, continuing:—

Q.—I am speaking of the approval by the Governor General in Council.

40 A.—Yes. And they are attached to the Order P. C. 422.

Q.—I am speaking of later than that again.

A.—There was no further approval of plans made by the Minister of Public Works. No other recommendation by the Public Works Department. I do not know what approval was made by other Departments.

Q.—After 1931 it had left your hands, and you cannot speak as to what happened?

A.—No. I do not know what approvals have been made since then.

J. B. HUNTER (for Defendant in War.) Cross-examination.

By Mr. Tyndale:—

Q.—Up to the time of that enquiry yourself, or the Department, would have had to give the approval?

10 A.—We were dealing with it up to that enquiry.

By Mr. Montgomery:—

Q.—You referred to a set of plans having been filed in July, 1929.

A.—The first detailed plans were filed in July, 1929, and were subsequently withdrawn.

Q.—The plans of July, 1929, were withdrawn, and another set substituted?

20 A.—In August, 1930, yes.

Q.—Were the plans filed in August, 1930, a complete set of plans, or a partial set?

A.—A partial set, —of the works at the outlet to Lake St. Francis.

Q.—None of the remedial works were shown in those plans?

A.—No. They were changed in that second set of plans.

30 Q.—So far as your Department was concerned, or anything proceeding through the Department of Public Works, the plans were never approved?

A.—No.

This Order made it conditional upon the plans being approved by the Minister of Public Works, and he never gave approval of any plans.

And further Deponent saith not.

40

J. H. Kenehan,
Official Court Reporter.



~~Part IV - JUDGMENT &c.~~

10 Province of Quebec
District of Montreal
No A-126082

JUDGMENT OF THE SUPERIOR COURT

on the 15th day of January, 1935.

Present: The Hon. Mr. Justice MacKinnon

HENRY A. SIFTON et al. es qual.,

Plaintiffs.

—vs—

20 ROBERT OLIVER SWEEZEY,

Defendant.

—&—

The said ROBERT OLIVER SWEEZEY,

Plaintiff-in-Warranty.

—&—

30 BEAUHARNOIS POWER CORPORATION,
LIMITED,

Defendant-in-Warranty.

THE COURT, having heard the parties by their respective counsels, having examined the documents, proof and proceedings of record and deliberated.

WHEREAS plaintiff declares as follows (see Plaintiff's Declaration page 3).

40 WHEREAS defendant by his amended plea, declares as follows: (see Defendant's Plea page 5).

WHEREAS plaintiffs, for answer to defendant's amended plea, declare as follows: (see Plaintiffs answer to Defendant's Plea, page 8).

WHEREAS defendant for reply to plaintiffs' answer declares as follows: (see Defendant's Reply to Plaintiffs' answer, page 10).

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WHEREAS the principal defendant, hereby constituting himself and acting as plaintiff-in-warranty against the said Beauharnois Power Corporation Limited, defendant-in-warranty, declares: (see Plaintiff Declaration-in-Warranty page 17).

WHEREAS defendant-in-warranty for plea declares as follows: (see Plea of Defendant-in-Warranty page 20).

10

WHEREAS for answer to the plea of the defendant-in-warranty, the plaintiff-in-warranty says: see Answer to Plea of Defendant-in-Warranty page 22).

WHEREAS for replication to plaintiff-in-warranty's answer to defendant-in-warranty's plea, defendant-in-warranty declares: (see Defendant-in-Warranty's replication to Plaintiff-in-Warranty's answer to its Plea page 28).

20 THE COURT PROCEEDS TO RENDER THE FOLLOWING JUDGMENT.

By judgment of the 4th September, 1934, the principal action and the action in warranty were joined for the purpose of enquete and merits and ordered tried at the same time and decided on the same evidence.

ADJUDICATING ON THE PRINCIPAL DEMAND.

30 The action of the principal plaintiffs es-qual is founded on an alleged contract entered into between the late C. Winfield B. Sifton and the principal plaintiff Robert O. Swezey in connection with what is commonly known as the Beauharnois proposition.

40 The plea of the principal defendant is in substance that he never personally assumed or entered into any undertaking or obligation to the late C. Winfield B. Sifton the said Sifton died before the plans of the syndicate or his successors, had been passed, that the plans were never definitely approved by the Dominion of Canada, and that the Orders-in-Council of the 8th March, 1929, and 22nd June, 1929, were subsequently set aside by Statute.

As to the defence that the principal defendant never personally assumed or entered into any undertaking or obligation with the late Sifton, the Court finds that the undertaking set forth in principal plaintiff's declaration was a definite undertaking or obligation of the principal defendant personally for which he is liable. Also that he is personally liable under it as a partner of the Beauharnois syndicate when the arrangement with Sifton was made.

The story of the transaction is as follows:—

10 Mr. Sweezy states that it had been suggested to him, early in September, 1927, that Mr. Sifton might be of great help in carrying out some of the work to which suggestion he agreed as he knew Sifton's ability and that he had recently had considerable experience in connection with matters relating to the Georgian Bay Canal. Sweezy also states that Sifton was "retained for his familiarity with the proceedings that had to be met with in Ottawa, and to guide us on the best method of obtaining a hearing of their case."

20 Sweezy immediately got into touch with Sifton by telephone and made an appointment with him to see Sifton at Malorytown, Ont., to discuss with him the question of engaging his services. Sweezy found at the last minute that he was unable to keep this appointment and sent Mr. Griffith in his stead. He gave Griffith a letter of introduction, dated 6th September, 1927, in which he introduced Griffith not only as secretary of the power syndicate, but as a partner of Sweezy's firm, at the same time stating that Griffith was familiar with all the details of the Power proposition. Mr. Griffith, who appears in the various capacities as a member of the syndicate, an associate of the defendant, Secretary-Treasurer of the syndicate, and Secretary-Treasurer of the Marquette Investment Co., states that he kept this appointment and discussed with Sifton, the purpose for which
30 the syndicate was formed, the work that had to be done before the Beauharnois project could be proceeded with, the various steps of the legal, financial and engineering nature which had to be taken and the financial organization of the syndicate. He also states that Mr. Sifton at that time wished to be reassured of the fact there were people of substance behind it so that he would be working for a capable organization. No arrangement was entered into at that meeting but Sifton expressed his willingness to work with Sweezy and Griffith. Griffith states further that on
40 his return to Montreal he reported to Sweezy personally, as well as to the other syndicate managers, the result of his interview with Sifton and suggested that Sifton be retained.

Sifton immediately started in, but it was about six weeks before any definite arrangement was made with him. Sweezy states that after the interview at Brockville with Griffith Sifton came to Montreal and that he went into all the details with him as to the proposition as well as regards the syndicate which had been formed for its furtherance.

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Prior to the 15th October, 1927, a verbal arrangement was entered into between Sweezy and Sifton which was confirmed by Sweezy to Sifton by letter of the 15th October, 1927; Sifton's letter to Sweezy of the 17th October and Sweezy to Sifton's letter of the 19th October, 1927.

10 On the 28th September, 1927, Sweezy had sent Sifton his own personal cheque for \$5,000 as a retaining fee, which letter bore the letterhead of R. O. Sweezy, Consulting Engineer, 136 St. James St., Montreal, and was written entirely in the first person.

The letter of the 15th October, 1927, from Sweezy to Sifton contains the agreement entered into with Sifton, with the exception of some slight changes mentioned in the two subsequent letters of the 17th and 19th October, 1927, already referred to. This letter is written on the letterhead of Newman, Sweezy & Co. Ltd., and states that it was written with the purpose of confirming
20 their conversation in which Sweezy agreed to pay \$5,000 as a retaining fee in connection with the St. Lawrence and Beauharnois Power situation. This letter reads as follows:—

Letterhead of
NEWMAN, SWEEZEY & COMPANY, LTD,
Investment Bankers,
136 St. James Street.

Montreal, 15th October, 1927.

30 W. B. Sifton, Esq.,
Mallorytown Ont.

Dear Sir:—

I apologize to you for the delay in writing you, as I promised I would some time ago.

This letter is to confirm our conversation in which I agreed to pay you \$5,000 as a retaining fee, in connection with the St. Lawrence and Beauharnois Power situation, which amount has already been sent you.

40 It is agreed between us that we pay you One hundred dollars a day and expenses (when employed away from your home) for such time as we may require your services as our work and effort proceed.

It is further agreed between us that when our plans have been passed and approved by Dominion Government with the aid of your counsel and efforts, we shall pay you the sum of \$50,000.00.

Yours truly,

“R. O. Sweezy.”

This letter was satisfactory to Sifton except that he raised the question that in the event of the approval of the plans by the Dominion Government he should not have to produce any evidence that it was due to his aid, in order to be entitled to the \$50,000 additional fee referred to in the letter of the 15th October, 1927.

10 Sifton worked continuously and diligently on the proposition up to the day of his death, which took place on the 17th of June, 1928.

On the 11th June, 1932, Sweezy gave Mr. Clifford Sifton, one of the executors of the estate of Winfield Sifton, a letter in which he gave his unqualified acknowledgment that he himself personally owed Winfield Sifton, at the time of his death, \$50,000 subject only to the approval of the Beauharnois plans at Ottawa. In his letter he states that this was an under-
20 taking made in connection with Beauharnois syndicate. This letter reads as follows;—

Mr. Clifford Sifton,

Executor Estate Winfield Sifton.

Dear Sir,—

In consideration of the executors' undertaking not to press this matter for six months from today, I hereby acknowledge that I owed Winfield Sifton at his death,
30 subject only to approval of Beauharnois plans at Ottawa, the sum of \$50,000, this being an undertaking I made in connection with Beauharnois Syndicate whose assets and liabilities were assumed by Beauharnois Power Corporation Ltd.

Yours truly,

“R. O. Sweezy.”

This letter of the 11th June, 1932, as well as those of Oc-
40 tober, 1927, all of which were written by Sweezy in the first person, show that Sifton's arrangement had been with the defendant personally. This letter of the 11th June, 1932, was dictated by Sweezy and handed Clifford Sifton in Sweezy's office, after an interview between them, the purpose of which was to obtain from Sweezy either the payment of the indebtedness or an acknowledgment of his liability.

The evidence of Clifford Sifton, as to his conversation with Sweezy, at the time Sweezy gave him the letter of the 11th June, 1932, is no where specifically denied by Sweezy. He

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states "he admitted to me that those letters (i. e. the letters of October, 1927) were proper and they set forth the arrangement that had been arrived at, and that, as a matter of fact, everything he had expected of my late brother had been done — that he had been largely responsible for framing vitally important parts of the plan, and that the plans had, in fact, been approved
10 by the Government, and he considered that he owed the money, but he pointed out to me that he had not the personal ability to pay."

It can be readily understood why at the very beginning Winfield Sifton wanted an arrangement with Sweezey personally. The work was to be done for a syndicate composed of a large number of members and in the event of being forced to enter suit he would wish to avoid the necessity of suing all the members of the syndicate. Moreover, at that time, according to the
20 evidence of Griffith, the syndicate did not have sufficient funds to meet its liabilities and the value of its assets were entirely problematical. Sweezey was a responsible person and one to whom Sifton could look to with a reasonable amount of certainty for payment of his work.

The evidence of Clifford Sifton as to what took place at the meeting of the 11th June, 1932, was admissible in view of Sweezey's letter of that date and of Sweezey's own admission, and does not alter the contents or meaning of the letter of that
30 date. Sweezey does not deny Clifford Sifton's statements as to what took place at that meeting and confines himself to the statement that this letter represents exactly what took place at the meeting. In his examination on discovery, Sweezey is asked;—

Ques.—"Did you not discuss with him at that time (referring to meeting 11th June, 1932) the approval you had in mind when that letter was written in October, 1927?"

40 Ans.—"I really do not recall what I may have discussed with him. I know he was anxious to have his brother's estate settled up and where he stood with this \$50,000 affair."

Ques.—"At that time did you not tell him you understood the approval to mean the first general approval of the plans of the Dominion Government?"

Ans.—"I do not know. I do not recall."

10 On the 13th June, Clifford Sifton wrote Sweezy thank-
ing Sweezy for his kindness to him on the previous Saturday
and for his frankness in going over the matter of the obligation
of Winfield Sifton's Estate and for his having admitted the
facts and undertakes not to press for the collection of the
\$50,000, which Sweezy had acknowledged owing, for a period of
six months from the 11th June, 1932, Sweezy makes no reply to
or any comment on this letter in any subsequent correspondence.
Previous to the meeting of the 11th June, 1932, Clifford Sifton
had written defendant on the 12th May, 1932 in which he states:
—"A careful perusal of the documents discloses a clear-out
undertaking by defendant to pay to Winfield Sifton \$50,000
upon the happening of an event which took place a long time
ago."

20 It is clear that Winfield Sifton knew all about the syndi-
cate and its personnel and that the work he was performing was
for the benefit of the syndicate and except for the \$5,000 paid,
as a retaining fee, all payments for services performed were made
by and on behalf of the syndicate. However, these facts
do not alter the position of Sifton as regards Sweezy.

30 The syndicate agreement, in effect when Sifton's services
were retained by the agreement made with Sweezy, provided
that every syndicate manager would be indemnified and saved
harmless out of the funds of the syndicate against all costs, char-
ges and expenses, which he sustained or incurred in or about or
in relation to the affairs thereof, except such costs, charges or
expenses as were occasioned by his own wilful neglect or fault
and consequently the arrangement made by Sweezy became an
obligation of the syndicate as it was made for the benefit of
the syndicate and with the knowledge of the syndicate managers.

40 The nature of Sifton's engagement was a most peculiar
one. It was primarily for the purpose of obtaining the consent
of the Dominion Government to the diversion of the water flow-
ing down the St. Lawrence River, between Lake St. Francis and
Lake St. Louis from its natural channel to an artificial channel
or canal to be constructed. This water when diverted was to be
used for power purposes and the right to such usage was a right
vested in the Province of Quebec.

Under the Navigable Waters Protection Act of the Dom-
inion of Canada, an approval had to be obtained from Ottawa to
divert the water from its natural channel for its use for power

purposes, and a great deal of spade work had to be done with the Federal Government and with the public. Such approval was absolutely necessary for without it the whole scheme could not proceed. The merits of the proposition had to be adequately represented to the public as well as to the Ministers of His Majesty's Government, the members of Parliament and the officials of the
10 Department at Ottawa. Sifton had had considerable experience with work of this nature at Ottawa in connection with what is known as the Georgian Bay Canal. He was to receive an additional remuneration of \$50,000 when the plans were approved, without having to establish how much his work had to do with the passing of these plans. Sweezey himself, by the letter of the 11th June, 1932, acknowledged that at the time of Sifton's death the work done by Sifton justified the claim for this additional compensation provided the plans were approved.

20 Were the plans approved? Was there sufficient approval of plans to entitle the plaintiffs equal to demand from the principal defendant the sum of \$50,000.00?

Sweezey in his evidence, has stated that prior to his undertaking with Sifton and letters of October, 1927, that his syndicate, as well as he personally, were interested in having certain plans approved in Ottawa and that the plans "were approved in one sense and yet to my knowledge never approved in another sense in detail." He also states that when he stipulated in
30 the latter of October 15th, 1927, that the amount of \$50,000 was to be payable when the plans had been approved by the Dominion Government, that he did not know that he had anything special in his mind and that he was under the impression that one snap approval was all that was needed.

The evidence as to the statements made to Clifford Sifton on the 11th June, 1932, must be considered as useful as an interpretation of the intentions of Winfield Sifton and Sweezey when they made the arrangements in the fall of 1927. This evidence is accepted for that purpose as the meaning of the contract as worded as to what work Sifton had to do and what plans were
40 to be approved is not clear, and consequently evidence is admissible to show what was the intention of the parties when they executed the contract as to the amount of work required from Sifton to entitle him to the \$50,000 bonus, as well as to what plans had to be passed in order this amount would be payable. It is a fact that some time prior to the 11th June, 1932 Sweezey had ceased to be a syndicate manager, and that as a matter of fact the syndicate had then dissolved and that on the 11th June,

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1932, and subsequent thereto, defendant Sweezey was not in a position in any way to bind or obligate the syndicate, and the letter written on the 11th June, 1932, and his evidence in the record are not accepted as the creation of any new liability but as an admission of a liability incurred by him in a syndicate matter while a member of the syndicate and for which the syndicate consequently became liable. The weight of the evidence is that the approval of the general scheme of the diversion of the water of the River St. Lawrence contemplated was the approval contemplated by the parties, and not the approval of all the engineering details and plans.

On the 8th March, 1929, Order-in-Council, P. C. 422 was adopted in which it is recited:—

20 “After a careful examination of all the points raised at the hearing held in connection with the application, as amended, the Minister reports that the approval of the plans and site of the proposed works can be recommended subject to the following regulations and conditions.” Here follow 28 conditions which is unnecessary to recite in detail.

Following this the following approval is set forth:—

30 “The committee, on the recommendation of the Minister of Public Works, submit for your Excellency’s approval, under section 7, Chap. 140, Revised Statutes of Canada, 1927, the Navigable Waters Protection Act—(subject to the foregoing conditions and to such additions, improvements, alterations, changes, substitutions, modifications or removals as may be ordered or required thereunder) the annexed plans of works, and the site thereof, according to the descriptions and plans attached, in booklet form, which works are proposed to be constructed by the Beauharnois Light, Heat & Power Company, with respect to the diversion of 40,000 cubic feet of water per second from Lake St. Francis to Lake St. Louis, in connection with a power canal to be built by the said company along the St. Lawrence River between the two lakes mentioned; the said approval to take effect only after an agreement incorporating the conditions enumerated above and satisfactory to the Minister of Public Works of Canada has been executed between the Beauharnois Light, Heat & Power Company and His Majesty, the King, as represented by the said minister.

40

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On the 25th June 1929, an agreement was entered into between the Beauharnois Light, Heat & Power Company and His Majesty, the King, represented therein by the Minister of Public Works of Canada, which agreement incorporates the terms and conditions of P. C. 422.

- 10 On the 22nd June, 1929, Order-in-Council, P. C. 1081 was passed, authorizing an agreement between Beauharnois Light, Heat and His Majesty, the King, in the form attached thereto and authorizing the Minister of Public Works to execute it. This agreement was entered into on the 25th June, 1929.

- 20 On the 3rd August, 1931, an Act respecting the Beauharnois Light, Heat & Power Company, (8 Geo. V., Chap. 19) was assented to, whereby the Order-in-Council P. C. 422, as amended by Order-in-Council, P. C. 1081 and the agreement between the Beauharnois Light, Heat & Power Company, and His Majesty, the King, dated 25th June, 1929, were annulled but the Act states that the Beauharnois Light, Heat & Power is granted the right to divert from Lake St. Francis up to, but not exceeding 53,072 cubic feet of water of the flow of the River St. Lawrence, to be returned to Lake St. Louis to be used for the development of hydro-electric power between the said two points, in such manner and upon such terms and conditions and with such limitations and reservations as may be prescribed by Order of the Governor in Council; and
- 30 by another Act assented to the same day (being an Act to declare certain works of the Beauharnois Light, Heat & Power Co. Limited, to be for the general advantage of Canada, (6 Geo. V., Chap. 20) it was declared and enacted that the Canal then being constructed for the Beauharnois Light, Heat & Power Company Ltd. between Lake St. Francis and St. Lawrence River and the works on lands or lands covered with water, excavations, embankments, retaining structures, remedial works, dams locks and other works appurtenant to said canal, then executed or thereafter to be executed, were works for the general advantage of
- 40 Canada. While these two Acts annulled the Orders-in-Council P. C. 422 and P. C. 1081 they approve of the diversion of over 50,000 cubic feet of water and constitute an approval, in a different form, of the work then being carried on and which was proceeded with until the power units went into production.

The fact that the Beauharnois Light, Heat and Power Company is now diverting waters from the St. Lawrence River through its canal from Lake St. Francis to Lake St. Louis and that the generators of the company have been in operation de-

livering power since the 1st. October, 1932, in the opinion of the Court, constitutes a sufficient approval to justify the principal plaintiffs es-qual in their demand.

10 CONSIDERING that for the reasons already stated, that the action of the principal plaintiffs es-qual against the principal defendant is well founded in fact and in law.

CONSIDERING that the principal plaintiffs es-qual are entitled to claim interest at the rate of 5% per annum from the 11th June, 1932, date on which the principal defendant acknowledged the indebtedness and requested a delay to pay the same, which interest to the time of the institution of the action amounts to \$3,972.61.

20 DOTH MAINTAIN the action of the principal plaintiffs es-qual against the principal defendant, and DOTH CONDEMN the principal defendant to pay the principal plaintiffs es-qual the sum of \$53,972.61, with interest from the date of service of the present action and costs.

ADJUDICATING ON THE ACTION IN WARRANTY.

30 The contract made by the plaintiff in warranty with Winfield Sifton was made by him personally for and on behalf of the syndicate. At that time the plaintiff in warranty was a syndicate manager of a partnership known as the Beauharnois Syndicate, and it is in evidence that all the other syndicate managers were advised as to the contract having been made with Sifton, and the amount earned by Sifton was paid out of the funds of the syndicate on the terms provided for in the contract.

40 Moreover, on the 4th April, 1928, while Sifton was still alive and employed under this contract, all the undertakings, assets and rights of the Beauharnois Syndicate, the then existing syndicate were sold and transferred to another syndicate known as the Beauharnois Power Syndicate. By this deed the purchaser the Beauharnois Power Syndicate assumed and promised to pay, fulfil and carry out to the complete exoneration of the vendor all the liabilities and obligations of the vendor of whatsoever nature in existence on that date. Sifton continued with the Beauharnois Power Syndicate under his contract and his per diem, remuneration and expenses under his contract were paid by the Beauharnois Power Syndicate and his contract was

consequently assumed as an obligation of this new syndicate, and if there had been no authorization and approval of the Board of Syndicate Managers of the first syndicate, the contract made by Swezey personally with Sifton for the benefit of the original syndicate was approved by being taken over and assumed by the new syndicate.

10

No minutes were kept as to any contracts, engagements or arrangements made by either of the two syndicates and the fact that no reference to the Sifton's contract appears in the Minutes of the Board of the Syndicate Managers of the first syndicate or of the second, as pleaded by the defendant in warranty, cannot be invoked as any evidence of a lack of a necessary approval. It is in evidence that subsequent to Sifton's death an arrangement was made with Senator Hayden and his partner, whereby a contingency fee of \$50,000 was to be paid in addition to other fees, which arrangement does not appear in the minute-book of the Beauharnois Power Syndicate. It is also in evidence that an amount of approximately \$10,000 was paid by the defendant in warranty, in various amounts and at various times, to Sifton's widow. The explanation given the Court that this payment to Mrs. Sifton was in the nature of a compassionate allowance cannot be accepted. Payments of such a considerable amount cannot be interpreted otherwise than as being payments in recognition of an obligation, which obligation is that sued on by the principal plaintiff. It would appear as though these payments to Mrs. Sifton had not been made to the person entitled thereto and cannot be set off in compensation.

20

30

On the 31st October, 1929, the Beauharnois Power Syndicate sold to the Beauharnois Power Corporation Limited, the defendant in warranty, all its undertakings and assets of any nature whatsoever (except unpaid balances due by syndicate members) one of the considerations of the sale being the assumption by the Beauharnois Power Corporation Limited of all liabilities and obligations of the syndicate (except its liabilities and obligations to its members as such).

40

This sale of the 31st October, 1929, was contingent on the performance and happening of certain things, the performance and happening of which was evidenced by a subsequent agreement of the 17th December, 1929, between the Beauharnois Power Syndicate and the Beauharnois Power Corporation Limited, whereby payment of the purchase price, provided for in the agreement of the 31st October, 1929, was acknowledged and whereby

the Beauharnois Power Corporation Ltd undertook to pay all the aforesaid liabilities and obligations of the syndicate which had previously been assumed by it under the said agreement of the 17th December, 1929.

10 SEEING that for the reasons above stated, the action of the plaintiff in warranty against the defendant in warranty is well founded and should be maintained.

DOTH DECLARE that the defendant in warranty was obliged to intervene in the principal action brought by the principal plaintiffs es-qual against the plaintiff in warranty and DOTH CONDEMN the defendant in warranty to acquit and indemnify the plaintiff in warranty, the defendant in the principal action, against the judgment hereinabove rendered against him in the principal action in capital, interest and costs, and 20 DOTH also CONDEMN the defendant in warranty to pay the costs of the action in warranty.

C. Gordon Mackinnon,

J. C. S.

In the
Superior
Court
District of
Montreal.

No. 19
Judgment
of the Hon.
Mr. Justice
C. Gordon
Mackinnon,
15 Jan. 1935
(Continued)

No. 20

In the
Court of
King's Bench
—
No. 20
Judgment
of the Court
of King's
Bench
9 June 1936

JUDGMENT OF THE COURT OF KING'S BENCH
(Appeal Side)

10

MONTREAL, Tuesday, the nine day of June one thousand
nine hundred and thirty-six (1936).

PRESENT:

Sir MATHIAS TELLIER, Chief Justice of the Province
of Quebec,

20

The Honourable Mr. Justice Hall,
“ “ Bond,
“ “ Galipeault,
“ “ St-Germain.

No. 998.

ROBERT OLIVER SWEEZEY,
(Defendant in the Superior Court),

APPELLANT,

30

— & —

HENRY A. SIFTON *et al, es qualité,*
(Plaintiffs in the Superior Court),

RESPONDENTS.

No. 996.

40

BEAUHARNOIS POWER CORPORATION, LIMITED,
(Defendant in Warranty in the Superior Court),

APPELLANT,

— & —

ROBERT OLIVER SWEEZEY,
(Plaintiff in Warranty in the Superior Court),

RESPONDENT.

THE COURT having heard the parties by their respective Counsel upon the merits of the present appeals, examined the record and proceedings in the Court below, and deliberated:

In the
Court of
King's Bench
—
No. 20
Judgment
of the Court
of King's
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9 June 1936
(continued)

10 WHEREAS the respondents in their quality of Testamentary Executors of the estate of the late Clifford Winfield Burrows Sifton, claim from the appellant Robert Oliver Sweezy the sum of \$50,000, with interest accrued thereon;

WHEREAS the said action is based on certain correspondence between the late Winfield Sifton and the appellant Sweezy, whereby the said Appellant Sweezy entered into the following agreement, *i.e.*

20 "It is further agreed between us that when our plans have been passed and approved by Dominion Government we shall pay you (*i.e.* the said Sifton) the sum of Fifty thousand dollars (\$50,000).

Yours truly,

R. O. SWEEZEY."

which letter was dated 15th October 1927;

30 WHEREAS the said Sifton died on the 13th June 1928, and at that time no appreciable progress had been made towards procuring the stipulated approval;

WHEREAS on the 8th March 1929 an Order in Council was passed whereby a conditional approval of the plans in question was given, subject, however, to twenty-eight conditions, to be embodied in an agreement, the whole subject to the approval of the Minister of Public Works;

40 WHEREAS a second Order in Council was passed on the 22nd June 1929 approving the form of the agreement embodying the 28 conditions, subject to which such tentative approval had been given, and subject, always, to the approval of the Minister of Public Works;

CONSIDERING that it appears from the evidence of record, both documentary and oral, that the said conditions were not complied with, nor was the approval of the Minister of Public Works obtained;

CONSIDERING that the plans subsequently submitted on the 22nd August 1930 were later withdrawn without having been approved;

In the
Court of
King's Bench

No. 20
Judgment
of the Court
of King's
Bench
9 June 1936
(continued)

10 CONSIDERING that by an Act of Parliament of Canada, 21-22 Geo. V. chapter 19 (assented to on the 3rd August 1931) it was declared in the preamble thereto as follows:

“And Whereas in the opinion of Parliament the said company has not complied with all the terms and conditions of the said amended Order in Council which are also embodied in the said Agreement.”

CONSIDERING that by the said Act of Parliament the Orders in Council above referred to were annulled;

20 CONSIDERING that the agreement by the appellant Sweezy to pay to the late Winfield Sifton the said sum of \$50,000 was contingent upon and subject to the approval of the said Sweezy's plans by the Dominion Government;

30 CONSIDERING that even the qualified approval subject to the observance of certain conditions and further approval, was never confirmed, but on the contrary expressly withdrawn and cancelled by reason of the failure to observe the conditions imposed, and this on the 3rd August 1931;

CONSIDERING that the said Sweezy withdrew from the project on the 19th November 1931, and that even then no approval had been obtained;

CONSIDERING, also, the provisions of Articles 1668 and 1202 of the Civil Code;

40 CONSIDERING that the respondents have failed to establish the essential allegations of their Declaration;

CONSIDERING that there is error in the judgment appealed from, to wit, that rendered by the Superior Court for the District of Montreal on the fifteenth day of January, one thousand nine hundred and thirty-five (1935) maintaining the respondents' action;

DOTH MAINTAIN the present appeal of the appellant Sweezy with costs against the respondents Henry A. Sifton *et al*, *es qualité*;

DOTH CANCEL and ANNUL the said judgment of the Superior Court;

AND, proceeding to render the judgment that should have been rendered,

In the
Court of
King's Bench
—
No. 20
Judgment
of the Court
of King's
Bench
9 June 1936
(continued)

10 DOTH DISMISS, with costs, the action of the said Henry A. Sifton *et al, es qualité*.

(St-Germain, J., dissenting).

And Whereas by an action in warranty directed against the appellant Beauharnois Power Corporation, Limited, the said Robert Oliver Sweezey (now respondent in the said action in warranty before this Court) sought to hold the appellant, the Beauharnois Power Corporation, Limited, liable to indemnify
20 him, the said Sweezey, in the event of his being condemned to pay the said sum of \$50,000 and interest;

Whereas the appellant, Beauharnois Power Corporation, Limited, contested the said action in warranty;

30 CONSIDERING that, for the reasons given in the principal action herein, the said action in warranty is likewise unfounded, and there is error in the said judgment of the Superior Court maintaining the said action in warranty;

DOTH MAINTAIN the appeal of Beauharnois Power Corporation, Limited, with costs;

DOTH CANCEL and ANNUL the said judgment of the Superior Court maintaining the said action in warranty;

AND, proceeding to render the judgment that should have been rendered by the said Superior Court;

40 DOTH DISMISS the action in warranty, with costs against the said Sweezey.

(St-Germain, J., dissenting).

W. L. Bond,
J.K.B.

No. 21a

In the
Court of
King's Bench

REASONS OF JUDGMENT

No. 21a
Reasons
of Hon.
Sir Mathias
Tellier, J.C.

NOTES DE L'HONORABLE JUGE SIR MATHIAS
TELLIER, J.C.

10

Je partage l'opinion de notre collègue M. le juge Bond. Comme lui, et pour les raisons qu'il donne dans ses notes, je ferais droit à l'appel du défendeur principal et à celui de la défendresse en garantie; et je rejetterais tant l'action principale que l'action en garantie, le tout avec dépens.

(Signé) Sir M. Tellier,
J.C.B.R.

20

No. 21b

NOTES OF THE HONOURABLE MR. JUSTICE HALL

No. 21b
Reasons
of Hon. Mr.
Justice Hall

30

The contract which forms the basis of this action is found in a series of letters exchanged between Appellant and the late Clifford Winfield Sifton, the ultimate agreement being effectively reproduced in those of Oct. 15th, 1927 (Exh. P.4, p. 175), and of Oct. 17th, 1927, (Exh. P.5, p. 176), which read as follows:—

“W. B. Sifton, Esq.,
Mallorytown, Ont.

“Dear Sir:—

40

I apologize to you for the delay in writing you, as I promise I would some time ago.

This letter is to confirm our conversation in which I agreed to pay you Five thousand Dollars as a retaining fee, in connection with the St. Lawrence and Beauharnois Power situation, which amount has already been sent you.

It is agreed between us that we pay you One Hundred Dollars a day and expenses (when employed away from your home) for such time as we may require your services as our work and efforts proceed.

It is further agreed between us that when our plans have been passed and approved by Dominion Government with the aid of your counsel and efforts, we shall pay you the sum of Fifty Thousand Dollars (\$50,000).

In the
Court of
King's Bench
—
No. 21b
Reasons
of Hon. Mr.
Justice Hall
(continued)

Yours truly,

10

“R. O. Sweezy” ”

“R. O. Sweezy,
136 St. James St.
Montreal.

Dear Bob,

20

I beg to acknowledge your letter of Oct. 15 confirming arrangement between us, and agree and approve same as stated by you.

30

I think your last paragraph is slightly ambiguous. It is of course understood that I shall use my best endeavors on your behalf, and shall act subject to yr. instructions. Having done so, my understanding is that upon the plans being passed and approved by the Dominion Govt. the additional fee of \$50,000 shall become due and payable to me. I don't think it will be possible now or hereafter to produce evidence that such passing of plans will be due to the “aid of counsel and efforts” from any particular person. I think therefore that it would clarify our understanding if this phrase were eliminated.

Yrs. Tly,

(Sgd.) “W. B. S.” ”

40

It appears from the evidence that the Appellant has formed a very high opinion of Mr. Sifton's ability, and experience in negotiating with the Federal authorities for the grant of concessions for the development of water powers within their control, and desired to secure his personal participation in the application he (the Appellant) proposed to make on behalf of a Syndicate, for the exploitation of the Beauharnois site.

It is obvious that the contract is one by which, in consideration of the payments agreed upon, the late Mr. Sifton was to devote his personal attention to the Appellant's interests in this connection.

He himself expresses this understanding in clear and unmistakable terms:—

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Court of
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Reasons
of Hon. Mr.
Justice Hall
(continued)

“I shall use my best endeavours on your behalf, and shall act subject to your instructions.”

10 For his actual participation, Mr. Sifton was to receive, and did receive, his full fee of \$100. a day and expenses. The present action has reference only to the contingent fee of \$50,000.

The condition precedent to this claim is stated by Mr. Sifton as follows:—

20 “Having done so” — (that is, having used his best endeavors and having acted subject to the Appellant's instructions) — “my understanding is that, upon *the plans being passed and approved* by the Dominion Government the additional fee of \$50,000. shall become due and payable to me.”

Mr. Sifton's object in thus clarifying the understanding, was to obviate the possibility of it being contended that the approval of the plans had not been secured by his “aid, counsel and efforts”.

30 While, however, it was definitely agreed that the contingent fee would become due to Mr. Sifton so soon as the Government's approval of the plans was obtained, whatever the particular persuasions that may have induced the approval, nevertheless, he still remained under the obligation of continuing to “use his best endeavours and to act subject to instructions” until the approval was formally granted.

40 The preliminary application was lodged with the Federal authorities in January, 1928, but that step did not, in my opinion, relieve Mr. Sifton from the obligation to continue to use his best endeavors. Indeed, it would appear to be obvious that, if Mr. Sifton's knowledge and experience were of any value at all, his subsequent direction of the negotiations were of paramount importance.

Unfortunately, Mr. Sifton died on the 13th June, 1928, long before any approval was obtained. So dependent was the Appellant on further expert advice and assistance that he secured the services of Senator Haydon, in consideration of the same contingent fee.

I conclude, therefore, that the contract was terminated by Mr. Sifton's death. He had, during his lifetime, received on account of services actually rendered, and expenses, the substantial sum of \$19,314. for eight months' work, but, as he was no longer able to continue to use his best endeavors and act subject to instructions, neither he, nor his Estate, became entitled to the
10 contingent fee, even had the Government's approval been ultimately secured.

In the
Court of
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—
No. 21b
Reasons
of Hon. Mr.
Justice Hall
(continued)

But, as a matter of fact, approval of the *plans*, was never finally secured.

It is contended by the Respondents that all that was required was a general approval, in principle of the scheme, and that the carrying out of the qualifying conditions insisted upon by the Government was the sole concern of the Appellant and
20 his associates.

Such a theory is directly negatived by the express terms of Mr. Sifton's letter. What was to be secured was the "*passing of the plans*" as well as the approval of the scheme.

It is not difficult to recognize that, while general approval of the scheme might have been obtained, the conditions imposed might have made it impracticable or impossible for the applicants to submit plans which would be passed.
30

The actual passing of the plans was, therefore, one of the essential conditions of the contract, on which depended Mr. Sifton's right to the contingent fee.

The Order-in-Council (P.C. 422) March 8th, 1929, approved the scheme in principle, but imposed many conditions; in particular:—

40 (11) "The Company shall not commence the construction of the works until detailed plans of construction and all necessary information respecting the said works have been submitted to and approved by the Minister, provided that such plans and information shall be submitted within one year."

The Order-in-Council concludes:—

"The said approval to take effect only after an agreement incorporating the conditions enumerated above and sa-

tisfactory to the Minister of Public Works of Canada has been executed between the Beauharnois Light, Heat & Power Company and His Majesty the King, as represented by the said Minister.”

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Court of
King's Bench
—
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Reasons
of Hon. Mr.
Justice Hall
(continued)

10 It is obvious, therefore, that the approval was dependent upon the submission to the Minister of Public Works, and the approval by him of the detailed plans of construction.

The Deputy Minister (Hunter p. 84) asserts the plans were never approved.

20 Order-in-Council P.C. 1081, 22nd June, 1929, merely records that the agreement incorporating the conditions of approval had been concluded, but, the final approval of the execution of the scheme was still dependent upon the Minister's approval of the detailed plans.

I concur, therefore, with Mr. Justice Bond, in the opinion that Mr. Sifton never became entitled to the contingent fee.

30 After the Parliamentary investigation, which resulted in the revocation of the Orders-in-Council, and the ousting of the Appellant and his associates from all participation in the Beauharnois development, the Respondents made a claim on the Appellant for the contingent fee, in reply to which he wrote as follows:—

“Mr. Clifford Sifton,
Executor Estate Winfield Sifton,

“Dear Sir:—

40 In consideration of the executors' undertaking not to press this matter for six months from today, I hereby acknowledge that I owed Winfield Sifton at his death, subject only to approval of Beauharnois Plans at Ottawa, the sum of fifty thousand dollars, this being an undertaking I made in connection with Beauharnois Syndicate whose assets and liabilities were assumed by Beauharnois Power Corpn. Ltd.

Yours truly,

“R. O. Sweezey”
Record p. 272—Plaintiff's Exh. P-8”

It is now argued that this constitutes a categorical admission of liability, which overrides any possible legal qualification based upon a strict interpretation of the contract.

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Court of
King's Bench
—
No. 21b
Reasons
of Hon. Mr.
Justice Hall
(continued)

An admission is defined by Warton as “ a concession of certain facts by an opponent”.

10 Fuzier-Herman (Rep. Vo. Aven. No. 11 et seq.) writes:—

“L’aveu ne pouvant porter que sur un fait, il s’en suit que les déclarations d’une partie concernant les règles de droit applicables à la décision de la cause ne constituent pas des aveux. Ces déclarations ne lient pas le juge, qui reste maître de juger ce point de droit en sens contraire.”

In the present instance, it appears to me that the Appellant’s letter above quoted, amounts to nothing more than an admission of the contract itself, which leaves the interpretation of
20 the contract to the Court.

What he says is:— “I *owed* Winfield Sifton at his death, subject only to approval of the Beauharnois plans at Ottawa, the sum of fifty thousand dollars.”

The plans, however narrow or restricted an interpretation be given to that word, had certainly not been approved at that time. Had no further negotiations been necessary, had there been no further occasion for Mr. Sifton’s intervention, and had the approval been secured shortly thereafter, doubtless, the admission
30 would have been effective as an acknowledgment that the condition upon which rested the payment of the conditional fee had been fulfilled.

But the context clearly discloses that such was not the fact. At the time of Sifton’s death, the Appellant *owed* him a contingent fee, but as, since his death, Sifton was unable to discharge his obligations of personal service, on which the contingent fee was conditioned, and since the other condition, the approval of the plans, was not fulfilled, the conditional debt lapsed, and when
40 the action was instituted, the Appellant no longer owed the contingent fee.

I, therefore, concur with Mr. Justice Bond in the opinion that the appeal should be allowed, and that the Respondent’s action should be dismissed; the whole with costs.

It follows that the appeal of the Beauharnois Power Corporation should also be maintained, and that the Respondent Swezey’s action in warranty should also be dismissed, with costs.

June 2nd, 1936.

(Signed) A. Rives Hall,
J.C.K.B.

No. 21c

In the
Court of
King's Bench
—
No. 21c
Reasons
of Hon. Mr.
Justice Bond

NOTES OF THE HONOURABLE MR. JUSTICE BOND

10 This is an appeal by the defendant in the Superior Court, as also by the Defendant in Warranty in the Superior Court, from a judgment rendered on the 15th January 1935 (MacKinnon, J.,) maintaining the principal action and also the action in warranty.

20 The plaintiffs in their quality of testamentary executors of the late Clifford Winfield Burrows Sifton claimed from the defendant Robert O. Swezey the sum of \$50,000. together with \$3972.60 interest accrued thereon to the date of the action, and in support of their claim relied upon a lease of the services of Winfield Sifton evidenced by six letters, being Exhibits P-2 to P-7 inclusive.

30 The principal defendant contested this action denying the construction placed upon the letters by the plaintiffs, now respondents, and denying any liability thereunder. He also pleaded that if any liability was created thereby it was to the knowledge of Sifton that such liability was incurred for and on behalf of a Syndicate whose liabilities were subsequently assumed by Beauharnois Power Corporation, Limited, the other appellant herein, and the appellant Swezey accordingly called the said corporation in by an action in warranty.

The appellant Beauharnois Power Corporation Limited as defendant in warranty did not take up the cause of the appellant Swezey, but on the contrary contested it.

40 The learned trial judge found that Swezey was liable to the respondents, both personally and also as a member of the syndicate for which he was acting, and he also held that the appellant corporation had assumed the liabilities of the syndicate. He accordingly condemned Swezey in the principal action for the amount claimed, and also condemned the appellant corporation to indemnify Swezey in the amount of such principal condemnation.

From this judgment both Swezey and the Beauharnois Power Corporation appeal.

During the relevant times, Mr. Sweezey was a Civil Engineer and also a Financier, and carried on business under the firm name and style of Newman, Sweezey & Company, Investment Bankers”.

In the
Court of
King's Bench
—
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10 It appears from the evidence that in the year 1927 Sweezey was actively engaged in a plan to develop hydro electric power at Beauharnois, and he had secured the control of all issued shares of the company known as the “Beauharnois Light Heat & Power Company” (Record pp. 52, 138 and 139). Sweezey had also formed a syndicate in connection therewith, the syndicate managers being Sweezey, Newman, Griffith and Steele, — the first three being partners in the firm of Newman, Sweezey & Company (Record p. 50). There was a fifth manager, Mr. William Robert, but he resigned at the first meeting. (Record p. 55)

20 In addition to this, a company named the Marquette Investment Corporation was organized, —

“ for the sole purpose of holding the assets of the syndicate, in order that the syndicate might have a corporate trustee to hold its assets, to be the depositary of its cash, and to enter into such relations with the public generally as might require a corporate organization as opposed to a syndicate organization.” (Record p. 51)

30 — These assets above referred to included all the issued shares of the Beauharnois Light Heat & Power Company (Exhibit P.W.1, Record p. 139, as well as other assets acquired from the Robert family.

40 Largely in view of the provisions of the Navigable Waters' Protection Act (R.S.C. 1927 ch. 140), the approval of the Dominion Government was required before the proposed diversion of water from the River St. Lawrence between Lake St. Francis and Lake St. Louis could be proceeded with. This is a section of the River St. Lawrence about 14½ miles apart, and where there is a fall of 83 feet (Record p. 222).

Sweezey had been informed that Sifton had acquired considerable experience in piloting an application of this nature through departmental and governmental channels at Ottawa in connection with the Georgian Bay Canal, and he decided to approach Sifton with a view to engaging his services on behalf of the Beauharnois project.

On the 6th September 1927, Sweezy wrote to Sifton as follows:

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(continued)

Letterhead of
NEWMAN, SWEEZEY & COMPANY, LIMITED
Investment Bankers
136 St. James Street,

10

Montreal, 6th September, 1927.

W. B. Sifton, Esq.,
Mallorytown, Ont.

My dear Wynn —

20

This introduces Hugh B. Griffith, who is the Secretary of our Power Syndicate, and also a partner in our firm. He is very familiar with all the details of the Power proposition, and is calling on you in case there is anything you might discuss to advantage at this time, and also in case you are unable to come to Montreal.

With best regards, I am,

Yours sincerely

R. O. SWEEZEY"

30

ROS.HMK.

(Plaintiff's Exhibit P-2, Record p. 173).

Mr. Griffith, who was introduced by this letter, called upon Mr. Sifton at his home near Brockville, Ontario, and produced his letter of introduction; and Mr. Griffith relates what occurred on that occasion:

40

"Q. What was the substance of your interview with him?

A. We had a general discussion about the purpose for which our Syndicate had been formed, the work which would have to be done before the Beauharnois project could be proceeded with, and the various steps, of a legal, financial and engineering nature, which would have to be taken.

I suggested to him that the experience he had gained in an attempt to promote the Georgian Bay Canal Company might be of some value to us. He had

10 the same opinion, and professed himself to be willing to work for the Syndicate and I specifically recall some conversation with him in respect to the financial organization which our group had — as to whether it was a corporate entity, or whether it was an incorporation, and, more particularly, as to what the personnel of the group. I think Mr. Sifton wished to be reassured of the fact that there were people of substance behind it, so that he would be working for a capable organization.

Q. At that time was anything conclusive arrived at with regard to a bargain as to his reward, or anything of that kind?

A. Not by me.

20 Q. Did he express himself as being satisfied to accept a retainer from the Syndicate?

A. He expressed his complete willingness to work for us. The terms on which he was to be retained were something he preferred to discuss with Mr. Sweezey.

Q. Did you explain to him on that occasion the nature of the organization, including the Marquette Investment Syndicate?

A. Yes.

Q. And, the Beauharnois Syndicate?

30 A. Yes.

Q. You then returned to Montreal?

A. Yes.

Q. What was the next development? Did anything happen between that and the next time you saw Mr. Sifton? I mean, to your personal knowledge. Did you return and confer with Mr. Sweezey, or other managers of the syndicate, or what did you do?

40 A. I reported to Mr. Sweezey, and possibly to other managers of the Syndicate, that Mr. Sifton was available to work for us, and that I would recommend he should be retained.

Q. Do you remember what was the next development in the relationship between the Syndicate and Mr. Sifton?

A. As I recall it, Mr. Sifton started to work for the Syndicate forthwith — possibly within a day or two, although it was some days, and possibly weeks later, before he and Mr. Sweezey came to a final agreement as to the precise retainership.

From then on he gave a very substantial part of his time to the interest of the Syndicate.”

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(continued)

(Record pp. 53 & 54)

10 On the 28th September 1927, Sweezy wrote to Sifton as follows:

“ Letterhead of
R. O. SWEEZEY, (B.Sc., M.E.I.C.)
Consulting Engineer,
136 St. James Street

Montreal, 28th Sept., 1927.

20 W. B. Sifton Esq.,
Mallorytown, Ont.

My dear Wynn —

I am sorry I have been away for a few days and delayed in sending you the letter I promised.

30 As I am somewhat in a hurry at the moment and as the letter will take a little thinking over, I am just sending you the cheque for \$5,000 in the meantime for your retaining services, and when I come back to town in two or three days I will write the other letter.

I am obliged to you for your memorandum, which came duly to hand, and I am very well pleased with the progress you are making.

It is likely I shall be in Ottawa tomorrow and may seize the opportunity to have a talk with the Senator.

40 Yours very truly

R. O. SWEEZEY ”

ROS.HMK.

(Record p. 174).

Again, on the 15th October, 1927, Sweezy wrote to Sifton as follows:

“ NEWMAN, SWEEZEY & COMPANY LIMITED
Investment Bankers,
136 St. James Street

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of Hon. Mr.
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(continued)

Montreal, 15th Oct. 1927.

W. B. Sifton Esq.,
Mallorytown, Ont.

10

Dear Sir:

I apologise to you for the delay in writing you, as I promised I would some time ago.

This letter is to confirm our conversation in which I agreed to pay you Five Thousand Dollars as a retaining fee, in connection with the St. Lawrence and Beauharnois Power situation, which amount has already been sent you.

20

It is agreed between us that we pay you One Hundred Dollars a day and expenses (when employed away from your home) for such time as we may require your services as our work and efforts proceed.

It is further agreed between us that when our plans have been passed and approved by Dominion Government with the aid of your counsel and efforts, we shall pay you the sum of Fifty Thousand Dollars (\$50,000.).

Yours truly,

30

R. O. SWEEZEY. ”

(Record p. 175).

While this letter was satisfactory in the main to Sifton, he was prompt to seize upon what might prove to be a catch in it, and accordingly on the 17th October Sifton wrote to Sweezy as follows:

“

Letterhead of

WINFIELD B. SIFTON

40

Assiniboine Lodge
Mallorytown,

Telephone & Telegraphs
Brockville, Ont.

Oct. 17/27

R. O. Sweezy, Esq.,
136 St. James St.,
Montreal.

Dear Bob,

I beg to acknowledge your letter of Oct. 15th con-

firming arrangement between us, and agree and approve same as stated by you.

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of Hon. Mr.
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(continued)

10

I think your last paragraph is slightly ambiguous. It is of course understood that I shall use my best endeavours on your behalf, and shall act subject to your instructions. Having done so, my understanding is that upon the plans being passed and approved by the Dominion Govt. the additional fee of \$50,000, shall become due and payable to me. I don't think it will be possible now or hereafter to produce evidence that such passing of plans will be due to the "aid of counsel and efforts" from any particular person. I think therefore that it would clarify our understanding if this phrase were eliminated.

Yrs. Tly.

20

(sgd) "W. B. S."

(Record p. 176).

To this letter Sweezy replied on the 19th October as follows:

“ NEWMAN, SWEEZEY & COMPANY, LIMITED
Investment Bankers
136 St. James Street

30

Montreal, 19th Oct. 1927.

W. B. Sifton Esq.,
Mallorytown, Ont.

Dear Sir —

I have your letter of October 17th, which for purpose of clearer understanding I quote herewith:—

40

“It is, of course, understood that I shall use by best endeavours on your behalf, and shall act subject to your instructions. Having done so, my understanding is that upon the plans being passed and approved by the Dominion Government, the additional fee of \$50,000 shall become due and payable to me. I do not think it will be possible now or hereafter to produce evidence that such passing of plans will be due to the aid of Counsel and efforts from any particular person. I think therefore it would clarify our understanding if this phrase were eliminated.”

Reference may also be had, at this point, to the evidence to that effect of Griffith (Record p. 53) Sweezy (pp. 67 *et seq.*) and Moyer (p. 72).

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I merely mention this in passing, for in the view I take of the matter (as will appear later) I do not consider it of much
10 importance.

In any event, the present action is clearly directed against Sweezy personally, on the strength of his letters and not as a member of an unincorporated Syndicate.

On the 13th June 1928 Winfield Sifton died. During the period of about eight months that had elapsed since his engagement, Sifton had himself drawn from the Marquette Investment Corporation \$19,314 and his executors after his death obtained
20 a further sum of \$10,094 as compensation for his activities — whatever they were — up to the time of his death (Record pp. 265 & 266). Subsequently, his widow received from the other appellant, the Beauharnois Power Corporation Limited (Record p. 60) a sum of \$10,100, which is somewhat engagingly described as a “compassionate allowance”. (Record p. 61)

At this time no appreciable progress had been made in the plans of Mr. Sweezy or the Beauharnois Syndicate. The evidence of Mr. Clare Moyer, a member of the Ontario Bar, is illu-
30 minating on this point,—

“Q. I understand you were personally acquainted with the late Winfield Sifton, whose name has been constantly referred to during this trial?

A. I was.

Q. When did you first come into contact with him in connection with the Beauharnois project?

A. In the month of January 1928. I think it was during the first week of January.

40

Q. In what circumstances?

A. He approached me, in Ottawa.

Q. Where were you in Ottawa at the time?

A. Actually I saw him in the Chateau Laurier, I was living in Ottawa.

He told me that he had some time previously been retained by a group or Syndicate of Montreal gentlemen who were interested in developing a power

project at Beauharnois, and he said he had recommended to this group that they might usefully retain me. He asked me if I was interested, and I told him I was.

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(continued)

X X X X X X X

10 Q. From then on what opportunity had you for contact with the late Mr. Winfield Sifton?

A. We were in very close contact from the month of January 1928, up to the time of his death, on June 13th. As a matter of fact I was with him when he died, and I was with him, not continuously but frequently, during the interval.

X X X X X X X

20 Q. And, from then on, so long as Mr. Sifton's health permitted, you and he were associated in furthering the plans of this Syndicate?

A. Yes.

Q. And did you carry on after his death?

A. I did.

X X X X X X X

30 Q. Was your relation with the Syndicate practically the same as Mr. Sifton's?

A. Practically identical, except to the amount of retainer, and so on.

Q. Were your payments made in the same form, by cheques from the Marquette Corporation?

A. Yes.

40 Q. Through your association with Mr. Sifton, do you know how far the work had proceeded towards securing the approval of the Dominion Government to the plans of the Syndicate and its successors at the date of Mr. Sifton's death?

A. I think it would be very difficult for anyone to estimate the progress in terms of percentages, or on any other basis, but it certainly had not progressed to be appreciable in such a way that it might have been measured in terms of achievement of success."

(Record, pp. 72, 73 & 74).

So, also, Mr. James B. Hunter, the Deputy Minister of Public Works, examined in this connection, testified as follows:

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(continued)

- 10 “Q. Before this matter could be submitted to the Governor in Council, it would have had to be considered by your Department, would it not?
A. Yes.
Q. And the application was lodged in your Department, and would primarily pass through your Department?
A. Correct.
Q. Can you tell us whether any substantial progress had been made upon that application prior to the month of June, 1928?
A. The first real action on the application was in December, 1928, when the reference was made to the Justice Department to know whether our Department would have the authority to deal with the application under the Navigable Waters Act.
20 Q. Up to that time the matter had been pressed?
A. So far as the official end of the Department was concerned, there had not been very much activity.
Q. And it was really in December 1928, or January 1929, after you received the opinion of the Department of Justice to the effect that you could handle the matter, rather than having it done by Act of Parliament, that you started upon it?
30 A. Yes.
Q. So, I do not suppose you did much work with the late Mr. Winfield Sifton on that application?
A. I never saw him at all in connection with that application.”

(Record p. 82).

The Civil Code dealing with contract of lease or hire of personal service says, —

- 40 1668. It is terminated by the death of the party hired or his becoming, without fault, unable to perform the services agreed upon ...

Again, the Civil Code says, —

1202. When the performance of an obligation to do has become impossible without any act or fault of the debtor and before he is in default, the obligation is ex-

tinguished and both parties are liberated; but if the obligation be beneficially performed in part, the creditor is bound to the extent of the benefit actually received by him.

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of Hon. Mr.
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(continued)

10 No claim, here, is made for a *quantum meruit* — payment of the full amount alone is claimed.

20 The respondents invoke the terms of the contract contained in the letters upon which they rely, to show that Winfield Sifton was not obliged to prove that his efforts were the cause of the plans being approved. I think there is no room for doubt on this point. But his personal services to that end were the consideration of the stipulated payments, and this consideration ceased with his death. He was no longer able to carry out his share of the bargain. So much was this so that, after the death of Sifton, Swezey retained the services of Senator Haydon's firm to do the same work, and with the same contingent fee of \$50,000 dangling before them. (Record p. 245). Moreover, the approval of the plans was the condition upon which Sifton's right to the \$50,000 depended. Neither during his lifetime, nor after, were these plans approved.

30 Let us look at the established facts in this connection. The respondents point to the two Orders-in-Council, and claim that they establish such a proof. The first Order-in-Council is Number 422 dated 8th March 1929 (Record p. 190), some nine months after Sifton's death. By the very terms of this Order-in-Council it was purely tentative or conditional.

Approval was granted subject to 28 conditions,—

40 “ After a careful examination of all the points raised at the hearing held in connection with the application, as amended, the Minister reports that the approval of the plans and site of the proposed works can be recommended, subject to the following regulations and conditions:”

(Record pp. 200 & 201).

There then follows the 28 conditions. These were to be embodied in an agreement, and to be subject to the approval of the Minister of Public Works.

Condition Number 11 (Record p. 203) reads as follows:

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of Hon. Mr.
Justice Bond
(continued)

10

“ The Company shall not commence the construction of the works until detailed plans of construction and all necessary information respecting the said works have been submitted to and approved of by the Minister, provided that such plans and information shall be submitted within one year.”

Condition Number 12 (Record p. 204) is as follows:

“ No work in the St. Lawrence River shall be undertaken until a programme of construction shall have been submitted to and approved by the Minister.”

20

Condition Number 28 (Record p. 208) is as follows:

“ It is clearly stipulated and understood that nothing is hereby granted except approval of the proposed works under the provisions of the Navigable Waters' Protection Act upon and subject to these conditions.”

All these conditions were accepted in advance (Record, p. 196).

30

The second Order-in-Council, Number 1081, dated 22nd June 1929 (Record p. 209) merely approved the form of the agreement.

But these conditions were not complied with, and the approval that was granted was subject to compliance with such conditions.

40

The Special Committee of the House of Commons appointed to investigate the Beauharnois Power Project, in its report dated 28th July 1931 (Record p. 221), expressly found that these conditions had not been complied with. Paragraph 22 of this report (Record p. 229) is as follows:

“ Subsequently on the 29th July 1929, modified plans were submitted to the Department of Public Works by the Company, and for these there were on the 22nd August, 1930, certain other plans substituted. None of these has as yet received the approval of the Minister of Public Works,

although the Chief Engineer of the Department has recommended them for approval. Plans submitted on the 22nd August 1930, did include plans for the remedial works, but such plans were subsequently withdrawn and as the matter now stands there is not before the Department for approval any plan or plans of these remedial works.”

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10

Again, the Committee by paragraph 3 of Section 6 of its report, “Authority for Construction Work”, declared as follows:

(Record p. 238),—

“ The work as it is being carried out is not in accordance with the plans referred to in this Order-in-Council in certain important respects ... ”

20 (and there follows, then, an indication in connection therewith).

Paragraph 4 is to the following effect:

“ The remedial works shown on the original plans have not been approved either by Order-in-Council or by the Minister.”

and again, by paragraph 7 (Record p. 239)the Committee reports as follows:

30

“ Your Committee finds as a fact that the work of construction is proceeding according to plans which have not received the approval of the Governor in Council or of the Minister of Public Works.”

The evidence of Mr. JAMES B. HUNTER, the Deputy Minister, is to the same effect (Record p. 79),—

40

“Q. We now come to the condition in the Order-in-Council Number 422 which required further approval of plans. Were further plans submitted?

A. Yes, further plans were submitted in July 1929.

Q. Were those ever approved?

A. No, those were not approved, and were subsequently withdrawn; and others submitted in August 1930.

Q. And were those plans ever approved?

A. No, those plans were never approved — that is by the Department of Public Works.

Q. The next event, in order of time, was the famous Beauharnois Enquiry, was it not?

A. Yes, that came on in June 1931.

Q. Prior to that Enquiry there had been no approval of any of the plans?

A. No. The Minister had approved of no plans up to that time.”

10

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And again, the same witness (at page 84) testified as follows:

“Q. So far as your Department was concerned, or anything proceeding through the Department of Public Works, the plans were never approved?

A. No. This order made it conditional upon the plans being approved by the Minister of Public Works, and he never gave approval of any plans.”

20

But there is still more to be said on this subject. By an Act of Parliament, 21-22 Geo. V, chap. 19 (assented to on the 3rd August 1931) the Order-in-Council Number 422, as amended by Order-in-Council Number 1081 (both of which I have referred to) and the agreement referred to in such Orders-in-Council, were formally annulled; and the preamble to the Act contains the following:

30

“ And whereas in the opinion of Parliament the said company has not complied with all the terms and conditions of the said amended Order-in-Council which are also embodied in said Agreement.”

This Act came into force upon its proclamation on the 1st March 1932 (Canada Gazette, Volume 65, page 2416) and this was nearly four years after the death of Sifton.

40

In the light of the foregoing, I find it impossible to agree with the respondents that “our plans have been passed and approved by the Dominion Government”, which was the condition upon which depended the payment by Swezey to Sifton of the sum of \$50,000.

There remains yet, however, to be considered one further letter written by Swezey on the 11th June 1932 (Record p. 272), and upon which the respondents lay great stress as constituting an admission of liability by Swezey.

It appears that in April 1932, Mr. Clifford Sifton, one of the executors, in "digging through the record of Winfield's Estate" came across the original correspondence above referred to between Swezey and Sifton, and thereupon he began to press Mr. Swezey for the payment of the \$50,000. now in question (Record pp. 269 & 270),

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(continued)

10

On the 13th May, 1932, Swezey wrote to Mr. Sifton as follows (Exhibit P-14, Record p. 271):

BEAUHARNOIS POWER CORPORATION
LIMITED
University Tower
Montreal

13th May 1932.

20

Clifford Sifton, Esq.,
Messrs. Plaxton, Sifton & Co.,
Canada Permanent Building,
Bay & Adelaide Sts.,
Toronto 2, Canada.

My dear Mr. Sifton:

Re: W. B. Sifton Estate.

30

I have your letter of the 12th May, and regret that I was unable to see you in Toronto the day I attended the enquiry. As there was a meeting of the Beauharnois Committee in Ottawa the same night, I had to hustle away on the afternoon train.

40

I may say that the present situation in which the Beauharnois Company finds itself, has left me without any capital whatsoever, and unless the Company is reorganized on a basis in accordance with my ideas, I shall be left with nothing. On the other hand I am hoping to get back into the saddle to carry the enterprise through to its proper conclusion, and had been counting on this happening long before the present date, at which time I had in mind making some arrangement with Mrs. W. B. Sifton, whereby the Company would carry on with her by allowing a certain income on a basis similar to the one which was operative about a year ago.

If you can leave the matter in abeyance until such time as I am in authority, I believe that an arrangement

satisfactory to Mrs. Sifton and yourself may be brought about.

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of Hon. M.:
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(continued)

10 My getting back into the picture of course is dependent upon several factors, in all of which I am exerting myself to the utmost, but meanwhile it is desirable that this information be treated as confidential.

If I should be in Toronto soon, I shall then remain over to talk with you, otherwise, if you find it convenient to be in Montreal at any time, please give me a call.

Yours very truly,

R. O. SWEEZEY.

20 Received May 14-1932
Plaxton, Sifton & Co.

The executors, however, appear to have been anxious to press the matter, and finally, on the 11th June 1932, Sweezy wrote to Mr. Clifford Sifton the following letter (Plaintiff's Exhibit P-8, Record p. 272):

June 11th 1932.

Mr. Clifford Sifton,
Executor Estate Winfield Sifton.

30 Dear Sir,

40 In consideration of the executors' undertaking not to press this matter for six months from today, I hereby acknowledge that I owed Winfield Sifton at his death, subject only to approval of Beauharnois plans at Ottawa, the sum of fifty thousand dollars, this being an undertaking I made in connection with Beauharnois Syndicate whose assests and liabilities were assumed by Beauharnois Power Corpn. Ltd.

Yours truly,

R. O. SWEEZEY

It is contended by the respondents that this is a complete admission on the part of Sweezy of his indebtedness to Sifton's Estate. I am, however, far from sharing this view. As matters then stood, Sweezy was undoubtedly anxious to avoid further complications in the way of law suits. The letter, itself, however,

in my opinion, is merely a re-statement of the original letter of the 15th October 1927, as modified by the letter of the 19th October 1927.

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10 Sweezy acknowledged that at the time of Winfield Sifton's death he was indebted to him in the sum of \$50,000 provided the Beauharnois plans were approved at Ottawa, and this proviso lies at the bottom of the whole matter. As I have attempted to show, Sweezy's plans were never approved, and such qualified approval as had been obtained was annulled for non-compliance with the conditions upon which such qualified approval had been given. To my mind, this last mentioned letter adds nothing to the claim against Sweezy, and, more — appears to have been written by Sweezy partly with a view to shifting any responsibility on his part to the shoulders of the Beauharnois Corporation, Limited. But Sweezy had severed his connection with the Beauharnois Power Corporation some seven months before, namely, 20 on the 19th November 1931. (Record p. 35).

On the whole, I reach the conclusion that the agreement to pay Sifton \$50,000 was clearly subject to the approval by the Government of Canada of Sweezy's plans; and I further reach the conclusion, from the evidence, that such approval of Sweezy's plans was never obtained, either with or without the assistance of Sifton. No doubt subsequent plans by those who succeeded Sweezy received sanction, as is evidenced by the Plant now in 30 operation. But that appears to me to have no bearing upon the contract between Sifton and Sweezy, and, consequently, I should say that in assuming the liabilities of the Beauharnois Power Syndicate, the Appellant the Beauharnois Power Corporation, Limited, assumed no responsibility to the present respondents inasmuch as it did not constitute a liability.

I would accordingly MAINTAIN the appeal of the Appellant Sweezy, with costs, and DISMISS the action of the 40 Respondents.

AND, for the same reasons, I would MAINTAIN the appeal of the Appellant Beauharnois Power Corporation, Limited, with costs, and DISMISS the action in warranty of the Respondent Sweezy.

(Signed) W. L. Bond
J.K.B.

Mr. Justice St. Germain dissenting)

No. 21d

NOTES DE L'HONORABLE JUGE GALIPEAULT

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of Hon.
Justice
Galipeault

10 Je concours avec nos collègues messieurs les Juges Hall et Bond, et concluant comme eux, je maintiendrais l'appel Sweezey, rejetant l'action des intimés, et ferais aussi droit à l'appel de Beauharnois Power Corporation Limited, rejetant l'action en garantie de l'intimé Sweezey.

(Signé) Antonin Galipeault,
J.C.B.R.

3 juin, 1936.

No. 21e

20

NOTES DE L'HONORABLE JUGE ST. GERMAIN

No. 21e
Reasons
of Hon.
Justice
St. Germain

Pour les raisons données par l'honorable juge de première instance, je suis d'avis que le jugement a quo doit être confirmé et les appels respectifs de Robert Oliver Sweezey et de Beauharnois Powr Corp., Limited, *rejetés* avec dépens.

30 Je considère qu'aux termes du contrat d'engagement intervenu en octobre 1927, entre Sweezey et W. B. Sifton, la somme de \$50,000, présentement réclamée par les héritiers Sifton, représentait un honoraire additionnel que Sifton, en outre de son allocation de \$100 par jour, pour ses services, avait le droit de toucher, si les plans du projet en question étaient approuvés par le gouvernement fédéral.

40 Or ces plans ont été approuvés, sujets, il est vrai, à certaines conditions, mais à des conditions acceptées par la Compagnie. Dès lors, il n'appartenait plus qu'à la Compagnie de respecter ces conditions, et si plus tard le parlement du Canada a jugé à propos de révoquer le dit Ordre en Conseil pour entre autre motifs que la dite Compagnie ne s'était pas conformée à tous les termes et conditions du dit arrêté en conseil, Sifton ou ses héritiers ne sauraient en supporter les conséquences.

L'on objecte que parmi les conditions auxquelles est subordonnée l'approbation du gouvernement se trouve entre autres la condition suivante:

The Company shall not commence the construction of the works until detailed plans of construction and all necessary information respecting the said works have been submitted to and approved of by the Minister, provided that such plans and information shall be submitted within one year.

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King's Bench
—
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Reasons
of Hon.
Justice
St. Germain
(continued)

10 et l'on ajoute que ces plans détaillés de construction n'ont jamais été approuvés par le département des travaux publics, et que, partant, la condition attachée à l'honoraire additionnel de \$50,000 n'a pas été remplie.

Je suis d'avis que les plans auxquels l'on réfère dans les conditions souscrites par la Compagnie Beauharnois Power ne sont nullement les plans auxquels il est référé dans l'engagement entre Sifton et Sweezy; les plans auxquels réfère cet engagement sont bien plutôt les plans annexés à l'Ordre en Conseil et ces plans annexés à l'Ordre en Conseil sont ceux mentionnés dans
20 la requête amendée de la Compagnie, laquelle se lit comme suit :

The application of the Beauharnois Light, Heat and Power Company now pending before the Governor in Council is purely and simply for the approval of plans for hydraulic development which will be subject to a condition that no more than 40,000 cubic feet per second shall be diverted from the river — from Lake St. Francis, to be returned to Lake St. Louis, and used for power purposes
30 by the Company between these two points; and any condition that the Government may exact, in any wording satisfactory to the Government, involving that limitation, is accepted in advance by the applicant. If the engineers think that the plans should be altered to meet this declaration the Company will submit to any such alteration.

En d'autres termes, les plans approuvés par l'Ordre en Conseil sont les plans généraux du projet, et ce sont ces plans que Sifton et Sweezy ont en vue dans le contrat d'engagement,
40 et non les plans détaillés auxquels il est référé dans les conditions annexées à l'Ordre en Conseil et auxquelles, encore une fois, la Compagnie a souscrit.

Pour arriver à cette conclusion, je ne crois même pas qu'il soit nécessaire de prendre en considération la preuve apportée sur ce point, soit par Sweezy, soit par Clifford Sifton.

Quant à l'action en garantie, je n'ai rien à ajouter aux motifs du jugement a quo pour le maintien de la dite action.

(Signé) P. St. Germain,
J.C.B.R.

No. 23

In the
Court of
King's Bench
—
No. 23
Ordonnance
Judgment
admitting
appeal to
His Majesty
in His Privy
Council
16 Oct. 1936

ORDONNANCE

JUDGMENT ADMITTING APPEAL TO HIS MAJESTY
IN HIS PRIVY COUNCIL

10

Montréal, le 16 octobre 1936.

L'Honorable Sir Mathias Tellier, J.C., et les Honorables
Juges Dorion, Rivard, Walsh et St-Jacques.

LA COUR,

20 Parties ouies sur la requête des intimés sus-nommés, en
date du 18 septembre 1936, présentée à cette Cour aujourd'hui et
conçue en ces termes :

“WHEREAS by judgment rendered by this Hon-
ourable Court on the 9th day of June, 1936, St. Germain,
J. dissenting, the appeal of the Appellant was maintained
with costs and the judgment condemning the Appellant to
pay to the Respondents the sum of \$53,972.61 with interest
and costs was dismissed ; and

30 WHEREAS in the present case the amount demand-
ed exceeds the sum of \$12,000., to wit : the sum of \$53,972.61 ;
and

WHEREAS the Respondents believe themselves to
be aggrieved by the said judgment and desire to appeal
therefrom to His Majesty in His Privy Council ;

40 THAT the Respondents be permitted to appeal to
His Majesty in His Privy Council from the judgment ren-
dered herein on the 9th day of June, 1936, and that a delay
be fixed by this Honourable Court within which the Res-
pondents may furnish good and sufficient security as re-
quired by law to effectively prosecute such appeal, to satisfy
any condemnation and to pay such costs and damages as
may be awarded by His Majesty in the event of the judg-
ment appealed being confirmed, the whole with costs re-
served.”

CONSIDERANT que cette demande n'est pas contestée ;

CONSIDERANT que la cause dont il s'agit est de celles dans lesquelles il y a droit d'appel au Conseil privé de Sa Majesty, en vertu de l'article 68 du Code de procédure civile;

PAR CES MOTIFS,

10 FAIT DROIT à la motion des intimés; ORDONNE que le cautionnement à fournir par l'appelant, suivant que pourvu à l'article 1249 du dit Code, soit donné dans un délai de quinze jours du présent jugement et qu'il soit de \$2,500; et ORDONNE en outre que les frais des présentes suivent le sort de l'appel.

(Sgd) J. M. Tellier,
J.C.P.Q.

In the
Court of
King's Bench

No. 23
Ordonnance
Judgment
admitting
appeal to
His Majesty
in His Privy
Council
16 Oct. 1936
(continued)

No. 25

20

MOTION OF APPELLANTS AS TO CONTENTS
OF RECORD

RESPONDENTS' MOTION

No. 25
Motion
of Appellants
as to contents
of record
16 Nov. 1936

WHEREAS Plaintiffs-Respondent have appealed to His Majesty in his Privy Council from the judgment rendered herein the 9th day of June 1936, annulling the final judgment of the Superior Court and dismissing their action with costs; and

30

WHEREAS in the Superior Court the Defendant-Appellant herein took action as Plaintiff-in-Warranty against Beauharnois Power Corporation Limited as Defendant-in-Warranty and the said Superior Court, by interlocutory judgment rendered the 4th day of September 1934, did order that "the said principal action and the said action in warranty be joined for purposes of enquete and merits and be tried at the same time and decided on the same evidence"; and

40

WHEREAS the said final judgment of the Superior Court not only condemned Defendant to pay Plaintiffs the full amount of their said claim, but also condemned said Defendant-in-Warranty to acquit and indemnify Plaintiff-in-Warranty against the said judgment rendered against him; and

WHEREAS the said Defendant and the said Defendant-in-Warranty filed separate inscriptions in appeal to this Honourable Court from said judgment, but printed and filed a Joint Case herein and the two appeals were argued at the same hearing and were disposed of by the said judgment herein, which annuled

not only the said judgment in the principal action, but also the judgment in the warranty action and dismissed said warranty action with costs; and

In the
Court of
King's Bench
—
No. 25
Motion
of Appellants
as to contents
of record
16 Nov. 1936
(continued)

10 WHEREAS Defendant-Appellant herein has not appealed from the said judgment of this Honourable Court in the warranty action, and the issues of the warranty action will not be involved in the Plaintiffs-Respondents' present appeal to His Majesty; and

WHEREAS Plaintiffs-Respondents submit that the pleadings filed and evidence taken in the warranty action and the exhibits filed therein are not relevant to the issues in the Plaintiffs-Respondents' present appeal to the Privy Council; and

20 WHEREAS the Defendant-Appellant has agreed to exclude the said pleadings in the warranty action from the Record for the Privy Council, but has refused to consent to the exclusion of the said depositions and exhibits in the warranty action from said Record; and

30 WHEREAS, before the Joint case was printed for this Honourable Court, the Defendant-Appellant and the Plaintiffs-Respondents agreed that the exhibits filed in the warranty action should not be included in the Case in Appeal in the principal action, but said exhibits were included in the Case in Appeal in the warranty action, as appears by the Joint Case and by the Agreements and Consents printed on pages 265, 266, 267 and 268 of said Joint Case; and

WHEREAS the nine exhibits filed by Plaintiff-in-Warranty in the warranty action, namely Exhibits P-W.1 to P.W.9 inclusive (pages 108 to 146; 151 to 163; and 186 to 239) are concerned with the relations between Plaintiff-in-Warranty and Defendant-in-Warranty and have no bearing on or relevance to the issues in the principal action; and

40 WHEREAS Exhibit D.W.1 filed by Defendant-in-Warranty (p. 239) is a copy of resolution of the Board of Directors of Defendant-in-Warranty and is not relevant to the issues in the principal action; and

WHEREAS Exhibit D.W.2 filed by Defendant-in-Warranty (pages 193 to 239) comprising some 47 pages, is a copy of a Report of a Committee of the House of Commons and was produced by counsel for Defendant-in-Warranty and formed no part of the record in the principal action and was irrelevant thereto:

MOVED:

1. THAT the Record of Appeal for the Privy Council do

comprise the following papers (as included in the Joint Case at the pages mentioned) namely:—

In the
Court of
King's Bench
—
No. 25
Motion
of Appellants
as to contents
of record
16 Nov. 1936
(continued)

	The pleadings	pages	3 to	12
	Evidence of Plaintiffs' witnesses	"	35 to	72
	Evidence of Defendant's witnesses	"	73 to	98
10	Exhibits	"	146 to	151
		"	163 to	185
		"	240 to	251
	Final Judgment of the Superior Court	"	252 to	264

and the following papers in addition thereto:—

	Judgment of the Court of King's Bench, June 9th, 1936;
	Notes of the five Judges therein;
20	Judgment of the Court of King's Bench on this Motion;
	Certificate of the Clerk verifying the transcript record; and
	Index of the Privy Council Record.

2. THAT the following papers which were included in the said Joint Case at the pages mentioned be omitted from the said Record for the Privy Council, namely:—

30	Inscription in Appeal in principal action	pages	1 to	2
	Inscription in Appeal in warranty action	"	13 to	14
	Pleadings in warranty action	"	15 to	28
	Judgment joining cases for trial	"	29	
	Evidence of witnesses for Plaintiff-in- Warranty	"	30 to	34
	Evidence of witnesses for Defendant-in- Warranty	"	99 to	107
40	Exhibits in warranty action	"	108 to	146
		"	151 to	163
		"	186 to	239
	Consent to printing in appeal in principal action	"	265 to	266
	Consent to printing in appeal in warranty action	"	267 to	268

3. THAT, in printing the pleadings in the principal action, the Amendment to Defendant's Plea, as well as the Plain-

tiffs' Answer to Defendant's Amendment, be incorporated in the original Plea and in the original Answer respectively, the whole with costs to follow the event.

In the
Court of
King's Bench
—
No. 25
Motion
of Appellants
as to contents
of record
16 Nov. 1936
(continued)

MONTREAL, November 16th, 1936.

(Signed) Weldon & Lynch-Staunton,
Attorneys for Plaintiffs-Respondents.

10

I, JOSEPH WILLIAM WELDON, of 355 Olivier Avenue, in the City of Westmount, in the District of Montreal, Advocate, having been duly sworn, make oath and say that:

1. I am a member of the firm of Weldon and Lynch-Staunton and had charge of the present case for Plaintiffs in the Superior Court and for Respondents in this Honourable Court.

20

2. The facts set forth in the foregoing petition are true.

SWORN TO at Montreal, in
the District of Montreal,
this 16th day of November,
1936; before me,

(Signed) J. W. Weldon

(Signed) C. E. Germain
A Commissioner of the
Superior Court for the

30 District of Montreal.

To Errol Languedoc, Esq., K.C.,
Attorney for Defendant-Appellant.

Sir,

40 Take notice of the foregoing Motion and Affidavit and that they will be presented before the Judge of the Court of King's Bench, in Appeal, sitting in Chambers, in the Court House at Montreal, on Monday, the 23rd day of November, 1936, at 11 a.m., or so soon thereafter as counsel can be heard.

MONTREAL, November 16th, 1936.

(Signed) Weldon & Lynch-Staunton,
Attorneys for Plaintiffs-Respondents.

TRUE COPY

(Signed) Weldon & Lynch-Staunton,
Attorneys for Plaintiffs-Respondents.

In the
Court of
King's Bench
—
No. 26
Judgment of
The Hon. Mr.
Justice Hall
on motion
to fix contents
of record
27 Nov. 1936

No. 26

10 JUDGMENT OF THE HONOURABLE MR. JUSTICE HALL
ON MOTION TO FIX CONTENTS OF RECORD

I, the undersigned Judge of the Court of King's Bench, sitting in Chambers, having heard the Parties by their Counsel on the Respondents' Motion asking for directions in the preparation of the Record to be submitted to the Judicial Committee of the Privy Council;

20 WHEREAS the Parties agree that the list of documents set out in paragraph one of the said Motion should be included in the said Record; and that the following papers which were included in the Joint Case in appeal should be excluded, to wit:—

	Inscription in appeal in principal action	pages	1 to 2
	Inscription in appeal in warranty action	“	13 - 14
	Pleadings in warranty action	“	15 - 28
	Consent to printing in appeal in principal action	“	265 - 266
30	Consent to printing in appeal in warranty action	“	267 - 268

WHEREAS Counsel for Appellant object to the exclusion of the following papers, to wit:—

	Judgment joining cases for trial	page	29
	Evidence of witnesses for Plaintiff-in-Warranty	pages	30 - 34
	Evidence of witnesses for Defendant-in-Warranty	“	99 - 107
40	Exhibits in warranty action	“	108 - 146
		“	151 - 163
		“	186 - 239

CONSIDERING that one of the grounds of the Appellant's plea was that the contract with the late Sifton was not made by the Appellant personally, but as the representative of the Syndicate which was formed for the promotion of the Beauharnois project, and that, in consequence, the judgment joining the cases for trial is relevant to the issues and should be included.

CONSIDERING that the witness for the Plaintiff-in-Warranty (pages 30-34) was called solely for the purpose of producing documents, and that, therefore, his deposition is not essential;

In the
Court of
King's Bench
—
No. 26
Judgment of
The Hon. Mr.
Justice Hall
on motion
to fix contents
of record
27 Nov. 1936
(continued)

10 CONSIDERING that, while there is much irrelevant matter in the exhibits in the warranty action, there are nevertheless passages to which reference was made in the judgment of this Court, and to which the Appellant may find it essential to direct the attention of their Lordships of the Judicial Committee;

20 CONSIDERING, in particular, that, as the Report of the Special Committee of the House of Commons (pages 193 to 239) deals with the fundamental question of approval of plans by the Government, and that, while much of that Report is irrelevant, their Lordships may find it advantageous to have before them the context of the relevant paragraphs, it would be unwise to exclude the same, unless Counsel for the Parties can agree between themselves on what pages should be omitted;

DO, THEREFORE, direct that the Record for the Judicial Committee should contain, in addition to the papers specified in the Motion, on which the Parties agree, the following:—

	Judgment joining cases for trial	page 29
30	Evidence of witnesses for Defendant-in-Warranty	pages 99 - 107
	Exhibits in warranty action	“ 108 - 146
		“ 151 - 163
		“ 186 - 239

The whole with costs to follow the event of the appeal.

(Signed) A. RIVES HALL
J.K.B.



EXHIBITS

~~Part III~~ **EXHIBITS**

Plaintiff's
Exhibit
in Warranty
on Discovery

P.W.-1
Agreement
between
R. O. Sweezey
and
Marquette
Investment
Corporation
12 May 1927

10 PLAINTIFF'S EXHIBIT P-W-1 IN WARRANTY
 ON DISCOVERY.

*Copy of agreement between R. O. Sweezey and
Marquette Investment Corporation with
Schedules A and B attached thereto.*

20 MEMORANDUM OF AGREEMENT made in triplicate
 at the City of Montreal in the Province of Quebec this twelfth
 day of May One thousand nine hundred and twenty-seven:

 By and Between: —

 ROBERT OLIVER SWEEZEY of the City of West-
 mount in the said Province of Quebec, hereinafter called the
 "Transferor";

 Party of the First Part.

 And:

30 MARQUETTE INVESTMENT CORPORATION, a
 company duly incorporated by Letters Patent of the Province of
 Quebec, hereinafter called the "Transferee";

 Party of the Second Part.

40 WHEREAS on the third day of February 1927 an agree-
 ment was entered into between William Henry Robert, Joseph
 Alfred Robert and Miss Sarah Mary Robert as parties of the
 first part and the said Transferor as party of the second part,
 a copy whereof signed by the parties hereto for identification is
 annexed hereto as Schedule "A"; and

 WHEREAS on the third day of February 1927, an agree-
 ment was entered into between the said William Henry Robert,
 Joseph Alfred Robert and Miss Sarah Mary Robert as parties
 of the first part, the said Transferor as party of the second part
 and National Trust Company Limited as Trustee and party of
 the third part, a copy whereof signed by the parties hereto for
 identification is hereto annexed as Schedule "B";

NOW, THEREFORE, THIS AGREEMENT WITNES-
SETH:—

1. The Transferor for good and valuable consideration
the receipt whereof is hereby acknowledged by the Transferee
hereby transfers, assigns and makes over unto the Transferee all
10 his the Transferor's rights and interests in and to and arising
out of the said two agreements (copies whereof are hereto an-
nexed as Schedules "A" and "B") and in and to all the assets
and things covered by the said two agreements.

2. The Transferee hereby accepts the said transfer and
hereby assumes, to the exoneration of the Transferor, all the
liabilities and obligations contained in or arising out of the said
two agreements.

20 IN WITNESS WHEREOF the parties hereto have exe-
cuted these presents at the City of Montreal on the day and date
firstly above written.

IN THE PRESENCE OF:

(Sgd.) C. G. Heward. (Sgd.) R. O. Sweezey.

MARQUETTE INVESTMENT CORPORATION,

30 By (Sgd.) R. W. Steele,
Vice-President.
L. S.

(Sgd.) Henry Newman. & (Sgd.) Hugh B. Griffith,
Sec. Treas.

Schedule "A" of No. 1.

40 MEMORANDUM OF AGREEMENT made in quintu-
plicate at the City of Montreal in the Province of Quebec on the
third day of February, One thousand nine hundred and twenty-
seven.

BETWEEN:—

WILLIAM HENRY ROBERT, formerly of the Town
of Beauharnois, now of the said City of Montreal: JOSEPH

Plaintiff's
Exhibit
in Warrant
on Discovery
—
P.W.-1
Agreement
between
R. O. Sweezy
and
Marquette
Investment
Corporation
12 May 1927
(continued)

ALFRED ROBERT of the City of Ottawa, Province of Ontario, and MISS SARAH MARY ROBERT, fille majeure et usant de ses droits of the said City of Montreal, as well personally as in their quality of Executors and Executrix of the Last Will and Testament and Codicil thereto of the late Dame Sarah Robert in her lifetime widow of the late Joseph Bartholomew Robert of the Town of Beauharnois in the said Province hereinafter called "Vendors":

Of the One Part

AND:

ROBERT OLIVER SWEEZEY of the City of Westmount in the said Province of Quebec, hereinafter called "PURCHASER";

Of the Other Part.

WITNESSETH:—

20

WHEREAS the Vendors declare that they together with their brother Edmund Arthur Robert of the said City of Montreal are the only residuary legatees under the last Will and Testament of their father, the said late Joseph Bartholomew Robert, executed before Maître William de M. Marler and colleague, Notaries on the 7th July, 1886, and codicil thereto executed before the said William de M. Marler and colleague, Notaries on the 12th July, 1886; and

30

WHEREAS the said Vendors declare that the said Edmund Arthur Robert by deed executed before the said Maître W. De M. Marler, Notary, on the 17th July, 1909, did transfer, assign and make over unto his mother the said late Dame Sarah Robert, all his right, title and interest to and in the Estate and succession of his father Joseph Bartholomew Robert; and

40 WHEREAS the Vendors declare that they are the Executors and Executrix of and under the said Last Will and Testament of the said late Dame Sarah Robert, executed before Maître W. De M. Marler and colleague, Notaries, on the 27th July, 1909, and to and under the Codicil thereto in English form dated the 5th of March, 1910, and duly probated in the Superior Court of the District of Beauharnois on the 12th April, 1922, and that as such Executors and Executrix they are vested with power to make the sale and enter into other covenants herein contained and that their seizin extends beyond the year and day allowed by law;

NOW THEREFORE these presents witness that the parties hereto have agreed together as follows:—

1. The Vendors hereby sell, transfer, assign and make over without warranty of any kind, restitution of prices or other recourse whatsoever (except as to their acts and deeds only) un-
10 to the Purchaser hereto present and accepting, all the Vendor's rights title and interest in, to or under:

(A) An agreement bearing date the 28th December 1909. between His Majesty The King of the First Part and the said Dame Sarah Robert and the Vendors of the Second Part, the Vendors declaring that the said Parties of the Second Part by deed passed before L. C. Tassé, Notary, on the 26th March, 1910, under his number 7156, transferred all their rights under the
20 said agreement to the Beauharnois Light Heat and Power Com-
pany, all the capital stock of which Company is herein conveyed to the Purchaser, and that the present transfer of their rights under this agreement is made with a view to abandoning to the Purchaser any rights that the Vendors might still have in the said Agreement.

(B) A certain feeder carrying water from Lake St. Francis to the River St. Louis with the land belonging thereto, the said feeder and land being known as lot number 341 on the Official Plan and in the Book of Reference of the Parish of St.
30 Cécile, and certain lots at the mouth of the said feeder being known as lots numbers 172, 173 and 175 on the said Official Plan and in the said Book of Reference; the vendors declaring that the said feeder and land lot Number 341 and the said lots numbers 172, 173 and 175 have been transferred to the said Beauharnois Light Heat & Power Company by the said Joseph Bartholomew Robert by deed of the 14th May, 1902, passed before Maître W. de M. Marler, Notary, under his number 25280, and
40 that the present transfer of their rights to the said lots is thus made with a view to abandoning in favour of the Purchaser any right which the Vendors may still have thereto.

(C) The following deeds:—

1. Ellice to Robert dated 11th September, 1867;
2. Ellice to Robert dated 11th May, 1871;
3. Browning to Robert dated 11th May 1871;
4. Browning to Robert dated 23rd January, 1884;
5. Ellice to Robert dated 18th March, 1903;

Less any and all rights and property transferred with warranty under clause 2, hereof, as well as those heretofore parted with by the Vendors, and more especially the piece of land on the east side of the River St. Louis, transferred to the Roman Catholic Church by deed before Tassé, Notary, dated 10th October, 1903.

10

(D) That certain deep water lot situate in the said Lake St. Francis immediately in front of the said lots 172, 173 and 175, Parish of St. Cécile, acquired by the late Joseph Bartholomew Robert from the Province of Quebec by Letters Patent dated 5th June, 1902, the said Vendors hereby declaring that the said deep water lot was transferred by the said Joseph Bartholomew Robert to the said Beauharnois Light Heat & Power Company by Deed of Sale passed before W. De M. Marler, Notary Public on the 14th May, 1902, and that the present transfer of their rights thereto is thus made with a view to abandoning in favour of the Purchaser any rights which the Vendors may still have thereto.

20

(E) Water power in the River St. Louis.

2. The Vendors hereby sell, transfer, assign and make over all Warranty unto the Purchaser thereof accepting the following:—

30

(A) All the issued shares of the Beauharnois Light Heat & Power Company a body corporate created by the Act 2, Edward VII, Chapter 72, which was amended by the Act 1, George V., Chapter 77, of the Province of Quebec, which shares the Vendors covenant and agree are fully paid up and non-assessable, but without warranty of any kind, restitution of price or other recourse whatsoever in respect of the items described in subparagraphs (A), (B) and (D) of paragraph one hereof or any other property or rights of the Company, but the Vendors warrant that the said Company has no debts or liabilities other than current taxes and an indebtedness to the Vendors which is being discharged concurrently with the execution of this agreement, and those which may have been incurred in the ordinary course of business.

40

(B) That certain lot known as number 266 on the Official Plan and in the Book of Reference of the Parish of St. Clément.

(C) That certain lot known as number 555 on the Official Plan, and in the Book of Reference of the Town of Beauharnois, less:

- 10 (i) The strip of lands sold to the Beauharnois Junction Railway by deed registered in the Beauharnois County Registry office under No. 25032.
- (ii) The rights granted to the Howard Smith Paper Company Limited by deed of the 5th of October, 1912 (Sidings, etc.)
- (iii) The rights granted to the Howard Smith Paper Mills Limited under deed of the 3rd of April, 1917 (Transmission Lines, gas, water, drains, etc)
- 20 (iv) The parts of lot 555 of the rights transferred to the Howard Smith Paper Mills Limited by deed dated the 14th of September,
- (v) The part of lot 555 described in paragraph (D) (iii) hereof, together with all the rights granted to the Vendors by the Howard Smith Paper Company Limited, and the Howard Smith Paper Mills, Limited under the Deeds above mentioned in this
- 30 paragraph.

(D) That certain lot known as number 556 on the Official Plan and in the Book of Reference of the Town of Beauharnois, less:

- 40 (i) That part of said lot number 556 sold to the Dominion Blanket and Fibre Company by deed dated the 10th April, 1893, and the water power and other rights therein mentioned.
- (ii) The Homestead property of the Vendors forming the South West Corner of Mill and St. Lawrence Streets, which with the property sold to Mrs. Lefebvre hereinafter mentioned forms the block of land not enclosed in green lines on the plan made by M. D. Barclay, C. L. S., dated the 11th October, 1921, with the servitudes and other rights appertaining thereto, including rights to drain with the River St. Louis across Mill Street and part of

Cadastral Lot 559 and the rights to use Mill Street which purchaser recognizes as a public thoroughfare.

- 10 (iii) That certain piece of land forming part of said lot number 556, and of said lot number 555, bounded to the north by St. Lawrence Street, to the east by the property of the Howard Smith Paper Mills, Limited, to the south by the right of way of the St. Lawrence and Adirondack Railway to the west by an Avenue known as Victoria on the cancelled subdivision plan of the said lot made and filed in the Registry office in the Town of Beauharnois and the continuation of the said Avenue in a Straight line to the said right of way.
- 20 (iv) That piece of land sold to Howard Smith Paper Company by deed dated 5th October 1912.
- (v) Subdivisions 1 and 2 of said lot 556.
- (vi) The rights granted to Howard Smith Paper Mills Limited by deed dated the 3rd April, 1917, (transmission lines, gas, water, drains, etc.)
- 30 (vii) That piece of land sold to Mrs. Arthur Lefebvre by deed before J. C. Trudeau, N. P., dated the 7th of May, 1917, with servitude over lot number 559.
- (viii) The land and rights sold to Howard Smith Paper Mills Limited by deed dated the 14th September, 1922.

40 Subject to the rights granted by the Vendors in the Deeds mentioned in this paragraph and including the reserves therein also mentioned in favour of the Vendors,

(E) That certain lot known on the said Official Plan of the Town of Beauharnois as Lot number 557, less a small corner thereof carrying the flume to the property of Jacques Bisailon or his representatives.

(F) That certain lot known on the said Official Plan of the Town of Beauharnois as Lot number 559, less:

- 10 (a) A thirty foot roadway on the west side thereof.
- (b) Sub-division 1 of said lot number 539.
- (c) All rights granted to the Corporation of the Town of Beauharnois under Deed dated the 7th of October 1914. (drain, etc.)
- (d) That piece of land 17½ by 17 sold to the Howard Smith Paper Mills Limited under deed of exchange with the Beauharnois Light Heat & Power Company dated the 5th of October, 1912.
- (e) That piece of land owned by Leduc and Fortin and all rights acquired by them from their auteurs.
- 20 (f) The rights granted to the Howard Smith Paper Mills Limited under deed dated the 3rd of April, 1917 (Transmission lines, gas, water, drains, etc.).
- (g) That piece of land of about 1161.5 feet sold to Howard Smith Paper Mills Limited by deed dated the 25th of February, 1918.
- 30 (h) That piece of land sold to Howard Smith Paper Mills Limited by deed dated the 14th of September 1922 and corrected by deed dated the 17th of May 1924.

Subject to the rights granted by the Vendors in the Deeds mentioned in this paragraph, and including the benefit of all reserves in favour of the Vendors therein.

3. There is reserved and excepted from the present sale all the rights of all parties other than the Vendors and the Beauharnois Light Heat and Power Company in the said feeder and in the said River St. Louis and to power from or to take or use the water of or from the said River St. Louis.

There is also reserved from the present sale the lighthouse at or near the mouth of the said feeder together with the land serving the same and the right of ingress and egress thereto in favour of the Dominion Government,

4. It is understood and agreed that it is the intention of the Vendors to sell and transfer and of the Purchaser to purchase, in addition to the properties and rights which the Vendors may own which may be useful to the Purchaser in carrying out the proposed hydro electric development hereinafter referred to, except those properties and rights heretofore sold by the Vendors and those which are herein specifically reserved, and, moreover, the Vendors herein sell and transfer to the Purchaser any and all rights and claims if any which they may have against the said Beauharnois Light Heat and Power Company.

5. The Vendors undertake and agree to deliver to the Purchaser forthwith upon demand written resignations of all the present Directors of the Beauharnois Light Heat & Power Company.

6. The Vendors shall have the right until the month of September 1927, to remove from the properties hereby sold all moveable property thereon or therein belonging to them.

7. The purchaser declares that it is his intention to develop or cause to be developed the water powers existing by reason of the difference in level between Lake St. Francis and Lake St. Louis.

8. The present sale is thus made for the following price and consideration payable by the purchaser to the Vendors as follows:—

A. One hundred thousand dollars (\$100 000) paid to the Vendors at the execution of these presents, by accepted cheques payable to the order of William H. Robert, the receipt whereof is hereby acknowledged by the Vendors.

B. Two hundred and fifty thousand dollars (\$250,000) in cash concurrently with the first issue of Bonds provided for in sub-paragraph (C) hereof, or at the termination of three years from the date of these presents if such issue of Bonds be not made within that period, but subject always to the right of extention as stipulated in paragraph 10 whereof,

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10 C. Five hundred thousand dollars of face of Bonds forming part of the first issue of Bonds to be made for the purpose of financing the cost of developing the water power or any part thereof existing by reason of the difference in level between Lake St. Francis and Lake St. Louis, which issue shall have priority over all other issues of bonds or debentures for such purpose. The purchaser declares that the development aforesaid shall be made by the Beauharnois Light Heat & Power Company or by some other Company which he or his assigns shall directly or indirectly cause to be organized and the Bonds above referred to shall be the bonds of which-
20 ever such Company may undertake such development, and if any bonus of common stock is given to any underwriters of such bonds the Purchaser shall at the same time as he delivers the said Five Hundred Thousand Dollars in face value Bonds to the Vendors, deliver to the Vendors a bonus of Common Stock on the same basis as the best bonus given to any underwriters of the said Bonds; such Five Hundred Thousand Dollars in face value of Bonds together with the said bonus, if any, of Common Stock shall be delivered at the time when such
30 first issue of bonds is made, and such issue and delivery shall not be later than three years from the date hereof, but subject always to the right of extension stipulated in paragraph 10 hereof.

40 D. One hundred and fifty thousand dollars (\$150,000) in cash on the date when any part of the power plant to be erected shall be first put into operation for the delivery of electric power to any customer, or the Vendors may at their option demand in lieu of payment of One hundred and fifty thousand dollars (\$150,000) cash bonds of the value of One hundred and fifty thousand dollars (\$150,000) at the rate paid for such Bonds by the underwriters, together with a bonus of Common Stock on the same basis as mentioned in sub-paragraph C of this paragraph 8.

E. Five hundred thousand dollars (\$500,000) of First Preferred Stock of the Company issuing the Bonds

10 provided for in sub-paragraph (C) of this para-
graph 8 and if any bonus of Common Stock of the
said Company is given to any underwriters of such
Preferred Stock the Purchaser shall at the same
time as it delivers the said Five Hundred Thousand
Dollars (\$500,000) of First Preferred Stock to the
Vendors deliver to them a bonus of Common Stock
on the same basis as the best bonus given to any
underwriters of the said Preferred Stock, such Five
Hundred Thousand Dollars (\$500,000) of First
Preferred Stock together with the said bonus,
if any, of Common Stock to be delivered to the Ven-
dors at the same time as the payment of the said
sum of One Hundred and fifty thousand dollars
(\$150,000) mentioned in sub-paragraph D, of this
paragraph 8.

20 F. One hundred (100) shares of a syndicate of Four
thousand (4,000) shares at the outset, but subject
to increase up to (5,000) shares, if necessary, to
be formed to do the preliminary work in respect of
and the preliminary financing for the said devel-
opment, the said syndicate may be incorporated
or unincorporated, as the Purchaser may deem
best, and the Purchaser undertakes that the said
30 W. H. Robert, one of the Vendors shall be appoint-
ed one of the Directors or Managers, as the case may
be of the said syndicate; the said One hundred (100)
shares shall be delivered when the said syndicate is
organized and the said W. H. Robert shall be ap-
pointed at the same time as the Purchaser is ap-
pointed a Director or Manager.

40 9. At the time of the delivery to the Vendors of the said
Five hundred thousand dollars (\$500,000) of Preferred
the Vendors shall receive common stock of the Company referred to
in sub-paragraph (C) of paragraph 8 hereof, on a basis to be
agreed upon to compensate them for interest at the Preferred
Dividend rate on the aforesaid Five Hundred thousand dollars
of First Preferred Stock between the date of the aforesaid first
issue of bonds and the date of delivery of the said Preferred
Stock. However, the Purchaser may at his option pay such in-
terest in money.

10 10. It is expressly understood and agreed, however, that the Purchaser may obtain a further delay of three years (that is to say until the expiration of six years from the date hereof) for the issue of the bonds and the payment of the instalments of purchase price mentioned in sub-paragraphs B and C of paragraph 8 hereof, by paying to the Vendors at any time within three

10 years from the date hereof the sum of One hundred thousand dollars (\$100,000) such payment of One Hundred Thousand dollars (\$100,000) to be applied in satisfaction to that extent of the instalment provided for in sub-paragraph B of paragraph 8 hereof. It being understood, however, that nothing herein contained shall entitle the Purchaser to postpone the date of the complete payment of the said instalments provided for in sub-paragraphs B and C of the paragraph 8 hereof beyond the date when the first issue of Bonds is made as aforesaid.

20 11. As security for the payment of the instalments of purchase price provided for in sub-paragraphs B and C of paragraph 8 hereof the shares of the Capital Stock of the said Beauharnois Light Heat & Power Company have been transferred to the National Trust Company Limited, to be held by it as Trustee until payment in full of the said two instalments, and in default of payment of either of the said instalments within the delay stipulated, or any Extensions thereof as herein provided for, the said shares are to be returned by the Trustee to the Vendors. So long

30 as the said shares are held by the Trustee the Purchaser shall have complete right and power to vote the same at any and all meetings of the shareholders of that Company for any and all purposes except the alienation hypothecation or charging of the assets of that Company. Provided that nothing herein contained shall prevent the said shares being voted for the purpose of authorizing creating and issuing the bonds provided for in paragraph 8 hereof.

40 12. Upon payment of the instalments of the purchase price provided for in sub-paragraphs B and C of paragraph 8, hereof, the Vendors shall sign and execute such releases and discharges as may be reasonably required by the Purchaser to free and clear the properties and rights hereby sold of all claims, rights and privileges of the Vendors, upon the said properties and rights and the said shares of the Beauharnois Light Heat & Power Company shall be delivered by the Trustee to the Purchaser, provided however, that the Purchaser delivers at the same time to the said Trustee Six hundred and

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fifty thousand dollars (\$650,000) in face value of the First Mortgage Bonds referred to in sub-paragraph C of paragraph 8 hereof, such bonds to be held by the said Trustee as security for the payment of the instalments of purchase price mentioned in sub-paragraphs D and E of paragraph 8 hereof, and upon payment of the said instalments to be returned to the Purchaser, or
10 in default of such payment to be delivered to the Vendors with the right to the Vendors to keep the same as their own property or their option to enforce the payment of the instalments provided for in said sub-paragraphs D and E. The coupons attached to the said bonds shall not be presented for payment unless and until default is made in the payment of the said instalments of purchase price provided for in sub-paragraphs D and E of paragraph 8 hereof.

RESOLUTORY CONDITION.

20

13. If the said instalments of the purchase price mentioned in sub-paragraphs D and C of paragraph 8, hereof be not made within the delays therein provided for, or the extension thereof provided for in paragraph 10 hereof, if such be obtained, then the present sale shall thereupon become null and void to all intents and purposes and the properties and rights hereby sold shall revert to and become properties and rights of the Vendors, and all instalments of purchase price theretofore paid to the Vendors shall be forfeited to
30 them as liquidated damages, but the Purchaser shall not be under any further liability or obligation hereunder. The mere lapse of the stipulated delay without payment being made shall of itself put the Purchaser in default and cause the Resolatory condition herein provided for to take effect immediately without any demand or other formality whatsoever and the Purchaser shall reconvey the said properties and rights upon demand to the Vendors without reimbursement on
40 the part of the Vendors of the value of any repairs or improvements, the Purchaser hereby renouncing thereto as well as to any rights to remove improvements. In the event of this Resolatory Condition taking effect, any rights, properties, privileges and concessions acquired by or in the name of the Beauharnois Light Heat & Power Company shall remain the property of the said company without any compensation to the Purchaser, and in the event of any rights, privileges or concessions having been obtained for the benefit of the said proposed hydro-electric development otherwise than in

the name of the said Beauharnois Light Heat and Power Company, the same shall be transferred to it upon the said Resolatory Condition taking effect, and upon the said Resolatory Clause taking effect any indebtedness of the Beauharnois Light Heat & Power Company created after the date hereof by the Purchaser or his assigns or nominees, shall be paid and discharged by the
10 Purchaser.

14. All municipal and school taxes upon the properties hereby sold and the properties of the Beauharnois Light Heat and Power Company from the First of January, 1926, shall be borne by the Purchaser, and all prior taxes by the Vendors.

15. The charge of the Vendors' solicitor Henry N. Chauvin, K. C., in connection with the present sale shall be paid by the
20 Purchaser.

16. It is understood and agreed in regard to the suit at law (Superior Court Montreal No. 2620) instituted by the Great Lakes & Atlantic Canal and Power Company Limited against the said William Henry Robert at al (which has been dismissed by judgment of the Superior Court of Montreal confirmed by the Court of King's Bench, and is now in appeal to the Supreme Court of Canada) that if final judgment be obtained by the said Great Lakes and Atlantic Canal and Power
30 Company Limited in its favour and the latter complete the purchase from the Vendors referred to in such suit, the present sale shall be null and void to all intents and purposes and the Vendors shall forthwith repay to the Purchaser such of the price and consideration provided for in paragraph 8 hereof as may have been theretofore paid and shall reimburse to the Purchase all moneys expended by it in payment of taxes on the properties hereby sold without any further liability on the part of the
40 Vendors.

17. It is further agreed that in the event of the said Great Lakes & Atlantic Canal and Power Company Limited obtaining final judgment in its favour and completing the purchase as aforesaid, the Purchaser will not acquire directly or indirectly from the said Great Lakes and Atlantic Canal and Power Company Limited, the properties and rights so purchased by it unless he purchase from the Vendors at a price to be agreed upon such of the properties and rights

hereby sold as are not comprised in the properties and rights claimed by the said Great Lakes & Atlantic Canal and Power Company, Limited.

10 18. Any and all payments of the purchase price or consideration to be made by the Purchaser hereunder to or for the benefit or exoneration of the Vendors may be made to the said William Henry Robert on behalf of all the Vendors, or, if he be dead or otherwise incapable of receiving the same, then to the said National Trust Company, Limited, on behalf of all the Vendors, and the receipt and discharge the said William Henry Robert or the said National Trust Company Limited as the case may be, shall be a good and valid discharge to the Purchaser for such payment, and the Purchaser shall not be obliged to see to the application of the moneys or other things so paid. The foregoing provision is a
20 stipulation made by the Purchaser and is irrevocable without his consent.

19. Any and all payments of money to be made by the Purchaser to the Vendors or on their behalf may be made by accepted cheque instead of cash, at the Purchaser's option.

30 20. It is agreed by both parties that the present agreement shall not be registered, and the Vendors undertake and agree at the expense of the Purchaser to execute and do at the request of the Purchaser all such further documents and things as may be necessary or useful to fully and effectually carry out the intents and purposes of this agreement, or, subject to the terms hereof, to vest in the Purchaser the rights and properties aforesaid, including such notarial transfers as may be reasonably required by the said Purchaser.

40 21. These presents shall apply to, enure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, successors and assigns.

22. Time shall be of the essence of this agreement.

IN WITNESS WHEREOF the parties hereto have executed these presents in quintuplicate at the place and on the date hereinabove firstly written.

Signed Hugh B. Griffith,

Signed W. H. Robert,
“ S. M. Robert,
“ J. A. Robert,
“ R. O. Sweezey.

Schedule "B" of No. 1.

Plaintiff's
Exhibit
in Warranty
on Discovery

P.W.-1
Agreement
between
E. O. Sweezy
and
Marquette
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Memorandum of Agreement made in quintuplicate at the City of Montreal in the Province of Quebec on the 3rd day of February, One Thousand nine hundred and twenty-seven.

10 BETWEEN:—

WILLIAM HENRY ROBERT formerly of the Town of Beauharnois, now of the said City of Montreal, JOSEPH ALFRED ROBERT of the City of Ottawa, Province of Ontario and Miss SARAH MARY ROBERT, fille majeure et usant de ses droits of the said City of Montreal, as well personally as in their quality of Executors and Executrix of the Last Will and Testament, and Codicil thereunto, of the late Dame Sarah Robert, in her life time widow of the late Joseph Bartholomew Robert, of the Town of Beauharnois, in the said Province, hereinafter called the "Vendors";

20

Of the one Part;

A N D

ROBERT OLIVER SWEEZEY of the City of Westmount, in the said Province of Quebec, hereinafter called "Purchaser":

Of the second Part;

30 A N D

NATIONAL TRUST COMPANY LIMITED, a corporation having its head office in the City of Toronto and an office in the City of Montreal, hereinafter called "Trustee"

Of the third Part.

WITNESSETH:—

WHEREAS the Vendors and the Purchaser have this day entered into an agreement of sale a copy of which is hereto annexed signed by all the parties hereto for identification: and

40

WHEREAS by paragraph 11 of the said Agreement of Sale it is declared that all the issued shares of the Capital Stock of Beauharnois Light Heat & Power Company have been transferred to the Trustee to be held and dealt with by it as Trustee as in the said Agreement of Sale provided; and

WHEREAS the said shares have been so transferred to the Trustee; and

the trusts herein provided for and to reimburse to it upon demand all expenditures or loss, costs, or damages incurred by it in connection with the exercise of the said trusts, including any and all legal and notarial expenses.

6. The Trustee shall give to the Purchaser or his assigns
10 from time to time upon demand the necessary proxies to enable the Purchaser or his assigns to vote the said shares of Beauharnois Light Heat and Power Company at all meetings of shareholders of that Company for any and all purposes save those specially excepted in paragraph 11 of the said agreement of sale, and the Trustee shall from time to time upon demand at the instance of the Purchaser or his assigns allow the transfer of such of the said shares as may be necessary for the purpose of qualifying Directors of the said Beauharnois Light Heat and Power Company upon the execution of appropriate
20 declarations of trust from the said transferees.

7. Any notifications or other communications to be given or made to the Vendors by the Trustee shall be deemed to be effectively given or made if given or made to them by registered letter addressed to them in care of W. H. Robert, 214 Bishop Street Montreal, or at such other place in lieu thereof as the Vendors or their assigns from time to time may notify in writing to the Trustee, and any notifications or other communications to
30 be given or made to the Purchaser by the Trustee shall be deemed to be effectively given or made if given or made to him by registered letter addressed to him at number 136 St. James Street, Montreal, or at such other place in lieu thereof as the Purchaser or his assigns from time to time may notify in writing to the Trustee.

8. All payments whether of money or otherwise which the Trustee may require to make to the Vendors under the terms hereof shall be made to them or to their order at the office of the
40 Trustee in the City of Montreal.

9. The said shares of the Beauharnois Light Heat & Power Company (other than said qualifying shares) are registered on the books of said Company as follows "National Trust Company Limited as Trustee for W. H. Robert, J. A. Robert and Miss Sarah Mary Robert, personally and es qualit , and R. O. Sweezy, the parties to an agreement dated the third of February, 1927." and upon the assignment or other transmission of the rights of any of the said parties, the Trustee shall on the

request in writing of the representative of such party and such evidence of title as the Trustee may require, cause appropriate changes to be made in such registration.

In witness whereof the parties hereto have signed these presents in triplicate this Third day of February, One thousand 10 nine hundred and twenty-seven.

Sgd. W. H. Robert
S. M. Robert
J. A. Robert
R. O. Sweezy.

National Trust Company Limited,
Sgd. J. M. Macdonell,
Manager.

20 O. B. MacCallum,
Trust Officer.

Witness:
Sgd. Hugh B. Griffith.

PLAINTIFF'S EXHIBIT P-W-2 IN WARRANTY
ON DISCOVERY.

30 *Copy of agreement No. 2. between R. O. Sweezy and
Marquette Investment Corporation.*

(Syndicate Agreement.)

MEMORANDUM OF AGREEMENT made in duplicate at the City of Montreal in the Province of Quebec as of the twelfth day of May, One thousand nine hundred and twenty-seven:

By and Between:—

40 ROBERT OLIVER SWEEZEY of the City of Westmount in the Province of Quebec, hereinafter referred to as "Sweezy",

Party of the First Part;

And:

MARQUETTE INVESTMENT CORPORATION, company fully incorporated by Letters Patent of the Province of Quebec, hereinafter called the "Depository";

Party of the Second Part;

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on Discovery

P.W.-1
Agreement
between
R. O. Sweezy
and
Marquette
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(continued)

P.W.-2
Agreement
No. 2 between
R. O. Sweezy
and
Marquette
Investment
Corporation
12 May 1927

Plaintiff's
Exhibit
in Warrant
on Discovery

P.W.-2
Agreement
No. 2 between
B. O. Sweezey
and
Marquette
Investment
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12 May 1927
(continued)

WHEREAS by a Memorandum of Agreement bearing even date herewith (a copy of which together with copies of the Schedule therein referred to are annexed as Schedule "X" to these presents) Sweezey has transferred to the Depository all his rights and interests in and to and arising out of two agreements therein referred to, and in and to the assets and things
10 covered by the said two agreements, which said rights and interests are hereinafter referred to as "the rights and interests transferred"; and

WHEREAS "the rights and interests transferred" have been so transferred to the Depository to be held by it in trust for the purposes and upon and subject to all the trusts, provisions and conditions in these presents set out;

20 NOW, THEREFORE, THESE PRESENTS WITNESS AS FOLLOWS:—

1. "The rights and interests transferred" shall be held and dealt with by the Depository in trust for and on behalf of the Syndicate hereinafter mentioned, and upon and subject to all the trusts, provisions and conditions of these presents.

30 2. Any and all other property, money, assets or rights of whatsoever nature which may hereafter be transferred to or placed in the custody of the Depository by or on behalf of the said Syndicate shall be held and dealt with by the Depository in trust for and on behalf of the said Syndicate and upon and subject to all the trusts provisions and conditions of these presents.

40 3. The Syndicate shall be known as "The Beauhar- nois Syndicate" and shall consist of Sweezey, together with the other persons hereinafter nominated as Syndicate Managers and such other persons as shall from time to time be admitted to membership therein by the Syndicate Managers in accordance with the Provisions hereof and of the By-Laws hereinafter provided for.

4. The purposes for which the Syndicate has been organized are all or any of the following, namely:

(a) To acquire, hold, use, administer, develop, improve, turn to account, grant leases of, sell, exchange, mortgage, hypothecate, pledge or otherwise dispose of or deal with, in whole or in part, "the rights and interests transferred";

120
10 (b) To acquire by purchase, lease or otherwise, hold, use, administer, develop, improve, turn to account, grant leases of, sell, exchange, mortgage, hypothecate, pledge or otherwise dispose of or deal with any other property, rights and concessions, and in particular any property, rights and concessions which may be necessary or useful for the develop-
ment of the water powers existing by reason of the difference in level between Lake St. Francis and Lake St. Louis;

(c) To develop or cause to be developed the water powers existing by reason of the difference in level between Lake St. Francis and Lake St. Louis;

20 (d) To promote or cause to be promoted, contribute to, subsidize or otherwise assist, any companies, syndicates or enterprises for the purpose of doing or causing to be done any of the above things, or carrying on or proposing to carry on any business or enterprise similar to that of the Syndicate or capable of being conducted so as directly or indirectly to benefit the Syndicate, and to subscribe, take, acquire, pay for, hold, sell or otherwise dispose of or deal in any shares or interests in or securities of such companies, syndicates or enterprises;

30 (e) To subscribe for, take, acquire, pay for, hold, sell or otherwise dispose of or deal in such shares, interests in or securities of any company, syndicate, partnership, firm or undertakings as the Board of Syndicate Managers may deem expedient or useful;

40 (f) To employ engineers, architects, appraisers and other experts to investigate, examine into and report upon any undertaking, project, proposal, property or rights of any kind, and the condition, prospects, value and character of the same;

(g) To invest money at interest on the security of property, moveable or immoveable and generally to lend and advance money to such persons and upon such terms and subject to such conditions as may be deemed expedient;

(h) To receive money or deposit at interest or otherwise, and to advance and lend money and assets of all kinds upon such terms as may be arranged;

- (i) To take part in the management, supervision or control of the business or operations of any company or undertaking, and for that purpose to appoint and remunerate any directors, accountants or other experts or agents;
- 10 (j) To apply for, purchase or otherwise acquire, any trade marks, trade names, patents, licenses, concessions and the like, conferring any exclusive or non-exclusive or limited or unlimited right to use, or any secret or other information as to, any invention formula, recipe or process, which may seem capable of being used for any of the purposes of the Syndicate, or the acquisition of which may seem calculated, directly or indirectly, to benefit the Syndicate, and to use, exercise, develop or grant licenses in respect of, or otherwise turn to account the property, rights or information so acquired;
- 20 (k) To enter into partnership, or into any arrangement for sharing of profits or expense, union of interests, co-operation, joint adventure, reciprocal concession, or make other working arrangements with any person, company or enterprise carrying on any business similar to that which the Syndicate is organized to carry on, or business capable of being conducted so as directly or indirectly to benefit the Syndicate, and to manage, operate and carry on the property, undertakings and affairs of any such business and to acquire the same, including its goodwill rights, liabilities and other accessories by purchase, lease or otherwise;
- 30 (l) To issue, allot and deliver as fully paid up and non-assessable, or partly paid up, the part-interest of the Syndicate in payment or part payment of any securities, rights or things that it can acquire, or in payment or part payment for any services rendered to the Syndicate, whether in connection with the promotion and organization of its business or otherwise, or in or towards the payment or satisfaction of debts and liabilities owing by the Syndicate;
- 40 (m) To sell, lease, or otherwise dispose of or deal with the whole or any part of the undertaking of the Syndicate and of its assets and goodwill and rights and obligations of any kind, for such consideration as the Syndicate Managers may think fit, including shares, debentures and other securities of any corporation, and to distribute among its members any such securities or other consideration so received;

(n) To acquire the goodwill, property, rights and assets, either with or without assuming the liabilities of any person, firm, corporation or enterprise, capable of being conducted so as directly or indirectly to benefit the Syndicate, or possessed of property suitable for the Syndicate, and to pay for the same in cash or in fully paid up and non-assessable or in partly paid part-interests or securities of the Syndicate or otherwise;

(o) To make advances to or guarantee the obligations or contracts of or otherwise assist in any manner any company whose shares of capital stock, bonds or other obligations are held in whole or in part by the Syndicate, and to do any act or thing for the preservation, improvement or enhancement of the value of any such shares, bonds or obligations; and in like manner to advance money to or guarantee the contracts of or otherwise assist any person, firm or company having business engagements with the Syndicate or indebted to it;

(p) To lend money to persons or companies having dealings with the Syndicate and to invest and deal with any funds or assets not immediately required for the purposes of the Syndicate as may be deemed expedient;

(q) To enter into any arrangement with any authority or government, municipal, local or otherwise, that may seem conducive to the objects of the Syndicate, or any of them, and to obtain from any such authority or government any rights, privileges, concessions, subsidies or other benefits which it may seem desirable to obtain, and to carry out or exercise and comply with any such arrangements, rights and benefits;

(r) To carry on any other business which may seem to the Syndicate Managers capable of being conveniently carried on in connection with its business, or calculated directly or indirectly to enhance the value of or render profitable any of the property or rights of the Syndicate;

(s) To distribute amongst the Members of the Syndicate and other persons entitled thereto in kind any property of the Syndicate, and in particular any shares, debentures or securities which the Syndicate may have power to dispose of;

(t) To pay all costs incidental to or in connection with the formation and organization of the Syndicate, and to do all

such things as are incidental or conducive to the attainment of the above objects, and to promote any company or companies for the purpose of acquiring any or all of the undertakings, assets, rights or liabilities of the Syndicate, or for any other purposes which may seem calculated to benefit the Syndicate;

10 (u) To do all or any of the above things as principals, agents, contractors, managers, supervisors or otherwise and by or through trustees or agents, or any corporation or other syndicates, or otherwise, and either alone or in conjunction with others, and to do all such things as may be incidental or conducive to the attainment of the above objects;

20 (v) Such other purposes as may from time to time be decided upon by the Board of Syndicate Managers, provided the same be approved by the holders of a majority in number of the outstanding part-interests of the Syndicate.

5. (a) The capital of the Syndicate shall be divided into not more than four thousand (4,000) part-interests without nominal value, provided, however, that the maximum number of part-interests into which the capital may be divided may be increased from time to time to not more than five thousand (5,000) part-interests by the Board of Syndicate Managers;

30 (b) Each part-interest shall be equal to every other part-interest. At all meetings of members of the Syndicate each member shall have one vote for each part-interest held by him;

(c) Part-interests may be allotted by the Board of Syndicate Managers from time to time as they deem expedient and for such consideration as they deem appropriate, and either as fully paid up or subject to subsequent calls thereon;

40 (d) Part-interest shall be transferable only on the books of the Syndicate by the registered holder thereof, or by duly authorized attorney, provided, however that no transfer of any part-interest shall have any effect unless and until permitted or approved by the Board of Syndicate Managers, who need not give any reason for refusal of such permission or approval and shall be free to exercise their unfettered discretion in this connection it being hereby understood and declared that the undertaking of the Syndicate is of such a nature that the

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character and identity of the various members thereof is of vital importance to the successful carrying out of such undertaking;

10 (e) The Depository shall be the Transfer Agent and Registrar of part-interests of the Syndicate, and there shall be kept by the Depository on behalf of the Syndicate a book or books wherein shall be kept and recorded;

- i. the names alphabetically arranged of all persons who are or have been members;
- ii. the address and calling of every such person while a member;
- iii. the number of part-interests held by each member;
- 20 iv. the amounts paid in and remaining unpaid respectively on the part-interests of each member;
- v. all transfers of part-interests in their order as presented to the Depository for entry, with the date and other particulars of each transfers and the date of entry thereof; and
- 30 vi. the names, addresses and callings of all persons who are or have been Syndicate Managers, with the several dates at which each became or ceased to be a Syndicate Manager;

Such book or books during reasonable business hours of every day, except Sundays and holidays, shall be kept open for the inspection of members of the Syndicate and their personal representatives at the office of the Depository;

40 (f) Certificates representing the issued fully paid part-interests in the Syndicate shall be issued to the holders of such part-interests by the Depository on behalf of the Syndicate, and the Depository may decline to register any transfer of the part-interests represented by any certificate unless such certificate be surrendered to it;

(g) No transfer of any part-interest shall be valid for any purpose whatsoever until entry thereof has been duly made in the transfer book kept by the Depository, except for the purpose of exhibiting the rights of parties thereto towards each other;

6. The chief place of business of the Syndicate shall be maintained at the office of the Depositary, and the Syndicate may maintain such other places of business as the Board of Syndicate Managers may deem advisable.

10 7. (a) The property, rights, affairs and concerns of the Syndicate shall be managed and controlled by a Board of five Syndicate Managers, but the number of Syndicate Managers may from time to time be decreased to not less than three, or increased, provided such decrease or increase receive the approval of members holding a majority in number of the then outstanding part-interests;

20 (b) No person (other than those nominated by subsection (c) hereof to be the first Syndicate Managers) shall be qualified to be elected, or appointed or to act as a Syndicate Manager unless he be a member of the Syndicate holding at least one part-interest therein;

(c) The said Sweezey and Henry Newman and Robert W. Steele both of the City of Westmount and Hugh B. Griffith and William H. Robert both of the City of Montreal shall be the first Syndicate Managers until replaced by others duly appointed in their stead;

30 (d) The said Sweezey, Newman and Griffith are hereby acknowledged and declared to be directors and shareholders of and financially interested in Newman, Sweezey & Company Limited and it is understood and agreed that the said Sweezey, Newman and Griffith shall not nor shall any of them be accountable to the Syndicate nor to any of the members thereof for or in respect of any profits which they or any of them may make through their or his interest in Newman, Sweezey & Company Limited arising out of contracts or dealings which said Newman, Sweezey & Company Limited may now or hereafter have
40 with the Syndicate, nor shall the said Newman, Sweezey & Company Limited be accountable for any profits which it may make arising out of any such contracts or dealings.

The said Steele is hereby acknowledged and declared to be a director and shareholder of and financially interested in The Dominion Securities Corporation Limited and it is understood and agreed that the said Steele shall not be accountable to the Syndicate nor to any of the members thereof for or in

Plaintiff's
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in Warrant
on Discovery

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Agreement
No. 2 between
E. O. Sweezey
and
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(continued)

10 respect of any profits which he may make through his interest in said The Dominion Securities Corporation Limited arising out of contracts or dealings which said The Dominion Securities Corporation Limited may now or hereafter have with the Syndicate nor shall the said The Dominion Securities Corporation Limited be accountable for any profits which it may make arising out of any such contracts or dealing.

20 The said Robert is hereby acknowledged and declared to be interested in the "rights and interests transferred" in that he is one of the vendors thereof to the said Sweezey and it is understood and agreed that the said Robert shall not be accountable to the Syndicate nor to any of the members thereof for or in respect of any profits which he may make through his interest in the "rights and interests transferred" or the purchase price thereof;

30 (e) The Syndicate Managers shall be elected by the members in general meeting at such times, in such manner and for such terms as the By-laws of the Syndicate from time to time prescribe. If at any time an election of Syndicate Managers is not made or does not take effect at the proper time, such election may take place at any subsequent special general meeting of the members of the Syndicate called for the purpose, and the retiring Syndicate Managers shall continue in office until their successors are elected;

40 (f) Every Syndicate Manager and his heirs, executors, administrators and estate and effects respectively, shall be indemnified and saved harmless out of the funds of the Syndicate from and against all costs, charges and expenses whatsoever which such Syndicate Manager sustains or incurs in or about any action, suit or proceeding which is brought, commenced or prosecuted against him for or in respect of any act, deed, matter or thing whatsoever, made, done or permitted by him in or about the execution of the duties of his office; and also from and against all other costs, charges and expenses which he sustains or incurs in or about , or in relation to the affairs thereof, except such costs, charges or expenses as are occasioned by his own wilful neglect or default.

(g) Any member of the Syndicate or person owning a part-interest may contract or deal in his own right, or be interested in a firm or company which contracts or deals with the Syndi-

cate, without being responsible to the Syndicate for any profits made by so doing.

(h) Any Syndicate Manager may contract or deal in his own right, or be interested in a firm or company which contracts or deals with the Syndicate and if disclosure is made in writing
10 to the Syndicate Managers of such separate interest (without it being necessary to disclose the nature or extent of such interest) neither he nor such firm or company shall be responsible to the Syndicate for any profits made by him or such firm or company as a result of such contract or dealing.

8. The Board of Syndicate Managers shall in all things administer, manage and control the property, rights, affairs, concerns, business and undertaking of the Syndicate, and make
20 or cause to be made for the Syndicate any description of contract which the Syndicate may by law enter into, and do or cause to be done anything which the Syndicate as a whole can do, or cause to be done, the whole however subject to the restrictions and provisions contained in Article 9. hereof.

9. The Board of Syndicate Managers may borrow money for and incur liabilities on behalf of the Syndicate upon such terms and conditions as they deem expedient, provided however that no loans may be effected nor other liabilities incurred except
30 upon the condition assented to by the creditors of such loans or other liabilities that neither the Syndicate Managers nor any other members of the Syndicate shall be personally liable for the repayment of such loans or liabilities, and that the creditors of such loans or liabilities shall be entitled to look only to the assets of the Syndicate, or the proceeds thereof, for repayment. Nothing herein contained, however, shall be construed so as to prevent any member of the Syndicate who is willing to do so, from personally guaranteeing or rendering himself liable for the
40 payment of any loan or other liability of the Syndicate.

10. The Board of Syndicate Managers may, from time to time, in their discretion distribute among the members of the Syndicate (pro rata in accordance with their respective holdings of part-interest) the profits and other assets of the Syndicate.

11. The Depositary shall deal with all the property, rights and assets of the Syndicate from time to time in its

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10 custody in accordance with the orders and instructions of the Board of Syndicate Managers, provided that in all cases in which the Depository is ordered or instructed by the Board of Syndicate Managers to do in respect of such property, rights and assets, or any part of them, anything which under the provisions hereof requires the approval of any proportion of the members of the
10 Syndicate, then the Depository before doing such things shall require evidence satisfactory to it that such approval has been obtained.

20 12. (a) The reasonable remuneration of the Depository for its services, whether rendered under or as a result of this agreement, or in connection with any of the property, rights and assets of the Syndicate from time to time in the custody of the Depository, and all expenditures and liabilities made or incurred
20 by the Depository under or as a result of this agreement, or in connection with such property, rights and assets, shall be paid by the Syndicate together with interest at the rate of six per-cent. (6%) per annum on the amount of such remuneration and ex-
penditures from the date when such remuneration shall be pay-
able, or from the date of such expenditures, and such remunera-
tion, expenditures and liabilities shall be a first charge or lien
upon the property, rights and assets from time to time in the
custody of the Depository, and the Depository shall have the right
to retain such property, rights and assets until payment of such
30 remuneration, expenditures and liabilities. The Depository shall be entitled to apply any moneys of the Syndicate from time to
time in its hands towards the payment of such remuneration
expenditures and liabilities.

40 (b) The Depository, in relation to these presents, or in respect of any matter or thing arising out of these presents, may act on the opinion or advice of or information obtained from any lawyer, valuer, surveyor, broker, auctioneer, or other expert, employed in good faith by it, and shall not
40 be responsible for any loss occasioned by acting or not acting thereon, and shall be entitled to take legal or other advice and employ such assistance as may be necessary to the proper discharge of its duties, and to pay proper and reasonable compensation for all such legal and other advice or assistance as aforesaid.

(c) Any such advice, opinion or information may be sent or obtained by letter, telegram or cablegram, or otherwise,

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and the Depositary shall not be liable for acting on any advice, opinion or information purporting to be conveyed by any such letter, telegram or cablegram, or otherwise, although the same containing some error or shall not be authentic.

10 (d) The Depositary shall be at liberty to place all bonds, stocks, share certificates, debentures or other securities or deeds or other documents of title, or records, from time to time placed in its custody, in any safe or receptacle selected by the Depositary, or with any bank or banking company, or with any lawyer or firm of good repute, or any custodian in any part of the World, and the Depositary shall not be responsible for any loss incurred as a result of so doing, and the Depositary may pay all sums required to be paid in this connection.

20 (e) The Depositary shall not be responsible for any misconduct on the part of any attorney, banker, lawyer, agent or other person appointed by it hereunder or bound to supervise the proceedings of any such appointee.

30 (f) The Depositary shall not be required to give security for its conduct or administration and shall not be responsible for the acts, omissions, defaults, errors, fraud, fault or misconduct of any agents whom it may in good faith employ in the exercise of the powers or duties conferred upon it hereunder nor for loss occasioned by its own acts, omissions or defaults, unless such acts, omissions or defaults constitute a breach of trust knowingly and intentionally committed by the Depositary.

40 (g) The authenticity of all acts, requests, resolutions and directions of the Syndicate and /or of the Board of Syndicate Managers and / or of any officer or officers of the Syndicate shall be deemed for the protection of the Depositary to be conclusively proven by a certificate signed by any person being, or by the Depositary believed to be, a Syndicate Manager or officer of the Syndicate.

13. The Depositary may resign as Depositary hereunder by giving notice in writing to the Board of Syndicate Managers of its intention so to do and such resignation shall take effect thirty (30) days after the delivery of such notice to the Board, or on such earlier date as a successor Depositary shall be appointed as hereinafter provided.

14. The Depositary may be removed from office hereunder by a resolution approved by the votes of members holding a majority of the issued part-interests of the Syndicate.

15. In the event of the resignation or removal of the Depositary from office hereunder a successor Depositary
10 (which shall be an incorporated company) shall be appointed by the members of the Syndicate in general meeting assembled and upon such appointment being made all the powers, duties, liabilities and functions of the Depositary hereunder shall vest in and become incumbent upon the successor Depositary to all intents and purposes and all the property, rights and assets in the custody of the Depositary shall be placed in the custody of the successor.

16. The By-laws set out in Schedule "Y" hereto annexed
20 shall be the By-laws of the Syndicate. Such By-laws, and any other By-laws which may hereafter come into force and effect, may be added to, amended, repealed or re-enacted at any time by resolution passed at a general meeting of members called for the purpose, or by resolution passed at a meeting of the Board of Syndicate Managers, but any addition, amendment
30 repeal or re-enactment made by the Syndicate Managers shall only have force and effect until the next annual general meeting of members of the Syndicate, or until a special general meeting of members of the Syndicate called during the interval for the purpose of confirming the same, and in default of confirmation at such annual or special general meeting, any such addition, amendment, repeal or re-enactment shall have no force or effect thereafter.

17. It is understood and agreed that in consideration of the transfer to the Depositary by Sweezey of the rights and interest transferred—

40 (a) Sweezey shall be entitled to receive forthwith as fully paid up and non-assessable Six Hundred (600) part-interests of the Syndicate;

(b) Messrs. Newman, Sweezey & Co., Limited and Dominion Securities Corporation Limited shall jointly have the right to subscribe or procure subscribers for or underwrite any and all bonds, debentures, shares and other securities which may hereafter be issued by Beauharnois Light Heat and Power Company or any other company promoted by, or directly or

indirectly controlled by or for the Syndicate, at fair and reasonable prices for such securities, having in view the market conditions prevailing at the time of such issue.

18. This agreement may be modified, amended or added to in any manner and to such effect as may be approved by the
10 members of the Syndicate holding a majority of the outstanding part-interests of the Syndicate, but no change or modification of the Depositary, including its remuneration and compensation, shall be made without its, the Depositary's, express written consent, and no change or modification shall be made to the provisions of sub-paragraph (c) of paragraph 17 hereof without the express written consent of the said Newman, Sweezy & Co., Limited and the said Dominion Securities Corporation Limited. All modifications, amendments or additions to this agreement
20 approved by a majority of the members of the Syndicate shall be notified to the Depositary forthwith.

19. This agreement shall continue in full force and effect until all the assets of the Syndicate shall have been distributed or otherwise disposed of.

IN WITNESS WHEREOF the parties hereto have executed these presents as of the date firstly above written.

30 IN THE PRESENCE OF:—

H. M. Knight. R. O. Sweezy.
Marquette Investment Corporation,

By M. W. Steele
Hugh B. Griffith.

(SEAL).

40 SCHEDULE "Y".

THE BEAUHARNOIS SYNDICATE.
BY-LAWS.

Fiscal year. BY-LAW No. 1.

The fiscal year of the Syndicate will end on the thirty-first day of December in each year, but the first fiscal year shall end on the thirty-first day

of December 1928 and shall comprise the period between the twelfth day of May 1927 and the thirty-first day of December 1928.

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BY-LAW No. 2.

- 10 General Meetings of members. (a) The annual general meeting of the members of the Syndicate shall be held at such time, on such date not more than three months after the end of each fiscal year commencing with the fiscal year ending on the thirty-first day of December 1928 as the Syndicate Managers may determine, at the chief place of business of the Syndicate, or at such other place in Canada as the Syndicate Managers may determine.
- 20 Special general meetings. (b) Special general meetings may be called at any time by the President or on resolution of the Board of Syndicate Managers, and must be called upon written request representing at least one-fourth of the outstanding part-interests of the Syndicate, and shall be held at the chief place of business of the Syndicate or at such other place as may be fixed by the notice calling the same.
- 30 Notices. (c) Notices of general meetings (whether annual or special) shall indicate the time and place of the meeting, and shall be given by letter mailed to each member at least ten days before the date of the meeting to the address shown on the books of the Syndicate, or to the last known address, and it shall not be necessary to register such letters nor to make any newspaper or other publication of the notice. Notices of special general meetings must specify the business to be transacted thereat, and no other business shall be transacted thereat without the unanimous consent of all the members of the Syndicate.
- 40 Quorum. (d) The quorum at any general meeting of members shall be a representation personally or by proxy of a majority of the issued part-interests of the Syndicate, provided there be at least two members entitled to vote present in person. At any meeting which is attended by less than a quorum,

10 a majority of the part-interests represented may adjourn the meeting for a period of not more than thirty days without further notice, and if a quorum be represented at such adjourned meeting, any business can then be transacted which could have been transacted at the meeting as originally called.

Proxies (e) Each member may vote either in person or by written proxy. No person shall act as proxy unless he is a member entitled to vote, but persons not members may be appointed to represent corporations holding part-interests in the Syndicate and to vote on such part-interests for such corporations.

20 Casting Vote. (f) In case of a tie the Chairman of the Meeting shall have a casting vote in addition to such other votes as he may have as a member.

Officers of meetings. (g) The President, or in his absence a Vice-President (in order of seniority), or in the absence of any Vice-President, the chairman chosen by the meeting, shall preside at all meetings of members of the Syndicate and of Syndicate Managers. The Secretary of the Syndicate, or in his absence, such person as is chosen by the presiding officer, shall act as secretary of all meetings of members and of Syndicate Managers.

30

Waivers. (h) A written waiver of notice of any meeting or of the purposes of any meeting, whether signed before, at or after the meeting, shall be effective as due notice of that meeting to all intents and purposes to the persons executing such waiver.

40 Minutes of meetings. (i) Minutes shall be kept of the proceedings at each meeting of members and shall be signed by the Chairman and Secretary of the meeting, and such minutes when so signed shall be conclusive proof of the proceedings at that meeting.

Decision of members. (j) Except where otherwise provided in the agreement constituting and governing the Syndicate, all questions which it is required or desired should be decided by members of the Syndicate

10 shall be decided by a majority of votes cast at any general meeting of members at which a quorum is present, but any consent, approval or othering of a general meeting provided such consent. approval or other decision is evidenced by a written instrument or instruments signed by all the members of the Syndicate.

Syndicate
Managers.

BY-LAW No. 3.

Election and
removal.

20

(a) The Board of Syndicate Managers shall be elected at each annual general meeting of members to hold office for one year or until their successors are elected. The first Syndicate Managers named in the agreement constituting and governing the Syndicate shall hold office until the first Annual General Meeting. Any Syndicate Manager may be removed from office at any time upon a resolution of the members at a general meeting, and a successor may be elected by the members at a general meeting. Elections of Managers do not need to be by ballot.

30 Meetings of
Syndicate
Managers.

(b) Meetings of Syndicate Managers shall be held at such times and places as may be deemed convenient and may be called by the President or Vice-President, or by a majority of the Syndicate Managers then in office, but a meeting shall be held immediately after each annual general meeting of members at which the officers of the Syndicate will be elected for the ensuing year, or until their successors are elected.

40 Notices.

(c) Notices of meetings of Syndicate Managers shall be given by letter posted at least one day before such meeting, but when it is deemed to be urgent the Syndicate Managers may be summoned at any time before the meeting by telegram or telephone, or in any other practicable manner. No notice is necessary for the meeting of Syndicate Managers to be held immediately after each annual general meeting of members.

Voting Power. (d) Syndicate Managers can only vote in person and each Syndicate Manager will have one

vote without reference to the number of part-interests which he holds. The Chairman shall both have the right to vote as a Syndicate Manager and shall also have a casting vote in case of a tie.

10 Quorum. (e) The quorum for meetings of Syndicate Managers shall be three Syndicate Managers.

Written notes. (f) Any Syndicate Manager's vote may be obtained in writing over his signature before or after the meeting, or (if unanimous) without any meeting being called, and shall then be valid and effective to all intents and purposes.

20 Waivers (g) A written waiver of notice of any meeting or of the purposes of the meeting, whether signed before, at or after the meeting, shall be effective as due notice of that meeting to all intents and purposes to the Syndicate Managers executing the same.

30 Vacancies. (h) Any vacancy or vacancies occurring on the Board of Syndicate Managers, whether by death, disqualification, retirement or otherwise, may be filled for the remainder of the term by a majority of the Syndicate Managers still in office, whether such majority constitute a quorum of the Syndicate Managers or not.

Remuneration. (i) The members shall decide from time to time the remuneration (if any) of the Syndicate Managers.

Officers. BY-LAW No. 4.

40 Election. (a) The Syndicate Managers, after each annual meeting of members, shall elect the officers of the Syndicate for the ensuing year, or until their successors are elected, but any officer may at any time be removed from office by a vote of the members at a general meeting and a successor may be elected by a vote of the members at a general meeting.

Personnel. (b) The officers of the Syndicate shall be a President who must be a member and a Syndicate Manager, and a Secretary and a Treasurer, neither

10 of whom need be a member or a Syndicate Manager, and one or more Vice-Presidents may be elected from amongst the Syndicate Managers, and any two of these offices (except the offices of President and Vice-President) may be held by one and the same person. The Syndicate Managers may also appoint such other officers and assistants as they deem expedient and may confer upon such officers such powers and allot to them such duties as the Syndicate Managers consider advisable.

20 President. (c) The President shall preside at all meetings of members and of Syndicate Managers, and shall perform all the duties which would be incidental to the office of President of an incorporated company.

Vice-
President. (d) The Vice-President, or Vice-Presidents, if elected, shall (in the order of seniority if there be more than one) perform all the duties of the office of President whenever the President is absent or for any reason unable to act as President.

30 Secretary. (e) The Secretary shall keep proper records of all meetings of members and of Syndicate Managers and shall have charge of all the books and records of the Syndicate (except insofar as the Syndicate Managers may otherwise arrange), and shall give notice of all meetings of members and of Syndicate Managers, and shall attend to such other duties as may be assigned to him by the Syndicate Managers from time to time.

40 Treasurer. (f) The Treasurer shall have charge of all moneys and securities of the Syndicate (except insofar as the Syndicate Managers may otherwise arrange), and shall keep full and accurate accounts of all receipts and disbursements and shall attend to such other duties as may be assigned to him by the Syndicate Managers from time to time.

Vacancies. (g) Any vacancy or vacancies occurring among the officers may be filled by the Syndicate Managers for the balance of the term.

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Remuneration. (h) The Syndicate Managers shall decide from time to time what remuneration (if any) the various officers shall receive as such.

Capital of the Syndicate. BY-LAW No. 5.

10 Certificates. (a) Certificates for part-interests shall be in such form as the Syndicate Managers may determine and shall be signed by the President or a Vice-President and the Secretary or the Treasurer, and the Syndicate Managers may by resolution authorize any Syndicate Manager to sign in place of any of the said officers.

20 Transfers of part-interests. (b) The part-interest transfer books may be closed before meetings of members and before payment of dividends, for such periods and after such notice as may from time to time be determined by the Syndicate Managers.

Bills of Exchange. BY-LAW No. 6.

30 All promissory notes and all cheques and other bills of exchange to be signed, drawn, accepted or endorsed by or on behalf of the Syndicate shall be signed, drawn, accepted or endorsed by such person or persons as may from time to time be authorized by resolution of the Board of Syndicate Managers, whether the persons so authorized be officers or Syndicate Managers or not, but any bills of exchange may be endorsed for collection or for deposit on account of or to the credit of the Syndicate by means of a rubber stamp, or in any other convenient way, the whole however subject to the limitation and restrictions set out in Article 9. of the agreement constituting and governing the
40 Syndicate.

Auditors. BY-LAW No. 7.

An auditor or auditors of the affairs of the Syndicate shall be appointed at each annual general meeting of members to hold office until the next annual general meeting, and an auditor or auditors to hold office until the first annual general

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10

meeting shall be appointed as soon as practicable after the coming into force of these By-laws by the Syndicate Managers. No Syndicate Manager or officer of the Syndicate shall be appointed auditor. When any vacancy occurs in the office of auditor before the end of the term, that vacancy may be filled by the Syndicate Managers for the balance of the term, but while any such vacancy continues the remaining auditor or auditors, if any, shall continue to act.

This is Schedule "Y" referred to in the annexed agreement between Robert Oliver Sweezy and others and Marquette Investment Corporation.

20

PLAINTIFF'S EXHIBIT P-2

*Copy of letter from the Defendant to the late
C. Winfield B. Sifton.*

Plaintiff's
Exhibit
—
P-2
Copy of letter
from
E. O. Sweezy
to C. Winfield
B. Sifton
6 Sept. 1927

Letterhead of
NEWMAN, SWEEZEY & COMPANY, LIMITED
Investment Bankers
136 St. James Street

Montreal, 6th September, 1927.

30 W. B. Sifton, Esq.,
Mallorytown, Ont.

My dear Wynn —

This introduces Hugh B. Griffith, who is the Secretary of our Power Syndicate, and also a partner in our firm. He is very familiar with all the details of the Power proposition, and is calling on you in case there is anything you might discuss to advantage at this time, and also in case you are unable to come to Montreal.

40

My own time is so occupied this week with a number of things that I fear I will be unable to get up to Brockville, and I would like very much to be acquainted with whatever information may be of benefit to us in this matter.

With best regards, I am,

Yours sincerely,

"R. O. Sweezy"

ROS.HMK

Plaintiff's
Exhibit
—
P-3
Copy of letter
from
E. O. Sweezy
to the late
C. Winfield
B. Sifton
28 Sept. 1927

PLAINTIFF'S EXHIBIT P-3

*Copy of letter from the Defendant to the late
C. Winfield B. Sifton.*

10

Letterhead of
R. O. SWEEZEY (B SC. M E I C)
Consulting Engineer,
136 St. James St.

Montreal 28th Sept., 1927.

20 W. B. Sifton, Esq.,
Mallorytown, Ont.

My dear Wynn—

I am sorry I have been away for a few days and delayed
in sending you the letter I promised.

30 As I am somewhat in a hurry at the moment, and as the
letter will take a little thinking over, I am just sending you the
cheque for \$5,000 in the meantime for your retaining services,
and when I come back to Town in two or three days I will write
the other letter.

I am obliged to you for your memorandum, which came
duly to hand, and I am very well pleased with the progress you
are making.

It is likely I shall be in Ottawa to-morrow, and may seize
the opportunity to have a talk with the Senator.

40

Yours very truly,

“R. O. Sweezy”

ROS.HMK

Plaintiff's
Exhibit
—
P-4
Copy of letter
from
E. O. Sweezy
to the late
C. Winfield
B. Sifton
15 Oct. 1927

PLAINTIFF'S EXHIBIT P-4

*Copy of letter from the Defendant to the late
C. Winfield B. Sifton.*

10

NEWMAN, SWEEZEY & COMPANY, LIMITED
Investment Bankers
136 St. James Street

Montreal 15th Oct., 1927.

W. B. Sifton, Esq.,
Mallorytown, Ont.

20 Dear Sir —

I apologize to you for the delay in writing you, as I promised I would some time ago.

This letter is to confirm our conversation in which I agreed to pay you Five Thousand Dollars as a retaining fee, in connection with the St. Lawrence and Beauharnois Power situation, which amount has already been sent you.

30 It is agreed between us that we pay you One Hundred Dollars a day and expenses (when employed away from your home) for such time as we may require your services as our work and efforts proceed.

It is further agreed between us that when our plans have been passed and approved by Dominion Government with the aid of your counsel and efforts, we shall pay you the sum of Fifty Thousand Dollars (\$50,000).

40

Yours truly,

“R. O. Sweezy”

“R. O. S.”

PLAINTIFF'S EXHIBIT P-5

*Copy of letter from the late C. Winfield B. Sifton
to the Defendant.*

10

Letterhead of
WINFIELD B. SIFTON

Telephone & Telegraphs
Brockville, Ont.

Assiniboine Lodge
Mallorytown

Oct 17/27.

Copy

20 R. O. Sweezey, Esq.
136 St. James St.
Montreal

Dear Bob,

I beg you to acknowledge your letter of Oct. 15th confirm-
ing arrangement between us, and agree and approve same as
stated by you.

30 I think your last paragraph is slightly ambiguous. It is of
course understood that I shall use my best endeavours on your
behalf, and shall act subject to yr. instructions. Having done so,
my understanding is that upon the plans being passed and ap-
proved by the Dominion Govt. the additional fee of \$50,000 shall
become due and payable to me. I don't think it will be possible
now or hereafter to produce evidence that such passing of plans
will be due to the "aid of counsel and efforts" from any parti-
cular person. I think therefore that it would clarify our under-
standing if this phrase were eliminated.

40

Yrs. Tly,

(Sgd.) "W. B. S."

PLAINTIFF'S EXHIBIT P-6

*Copy of letter from the Defendant to the late
C. Winfield B. Sifton.*

10

COPY

NEWMAN, SWEEZEY & COMPANY, LIMITED
Investment Bankers
136 St. James Street

Montreal 19th Oct., 1927.

20 W. B. Sifton, Esq.,
Mallorytown, Ont.

Dear Sir —

I have your letter of October 17th, which for purpose of clearer understanding I quote herewith:—

30 “It is, of course, understood that I shall use my best endeavours on your behalf, and shall act subject to your instructions. Having done so, my understanding is that upon the plans being passed and approved by the Dominion Government, the additional fee of \$50,000. shall become due and payable to me. I do not think it will be possible now, or hereafter to produce evidence that such passing of plans will be due to the aid of Counsel and efforts from any particular person. I think therefore it would clarify our understanding if this phrase were eliminated.”

40 I fully agree with your views as expressed in the above, and for this reason it clarifies my letter to you of the 15th instant.

Yours faithfully,

“R. O. Sweezy”

ROS.HMK

Plaintiff's Exhibit

P-7
Copy of letter from the late C. Winfield B. Sifton to R. O. Sweezey 23 Oct. 1927

PLAINTIFF'S EXHIBIT P-7

Copy of letter from the late C. Winfield B. Sifton to the Defendant.

10

COPY

Lodge Oct 23/27

Dear Bob,

Many thanks for yr letter of Oct. 19th with which I am now in complete agreement.

Yrs. tly.

“W. B. S.”

Plaintiff's Exhibit in Warranty on Discovery

20

PLAINTIFF'S EXHIBIT P.W-8 IN WARRANTY ON DISCOVERY

P.W.-8
Correspondence, cheque and Voucher No. 101
W. B. Sifton to H. B. Griffith
13 Dec. 1927

Correspondence, cheque and Voucher No. 101.
WINFIELD B. SIFTON

30 Telephone & Telegraph
Brockville, Ont.

Assiniboine Lodge
Mallorytown

Dec. 13/27.

Dear Hugh

	My expenses last week were	
	Ritz, Montreal, Sunday aft & Evening. Monday & Tues.	
	Dec 4/5/6. Ry tickets & expenses Ottawa to Mtl.,	
	Montreal to Toronto & incidentals 2 days	\$74.33
40	King Edward Toronto, Dec 7 .Extra Expense of Ry Tic-	
	kets & stop off at Battle Creek. Entertainment Tor-	
	onto & incidentals 1 day	\$64.77
	Battle Creek 1 day Dec. 8 expenses & incidentals	\$10.—
	Total 4 days	<u>149.10</u>

Yr tly,
Winfield B. Sifton

Dec. 12/27.

Dear Hugh

Plaintiff's
Exhibit
in Warranty
on Discovery

P.W.-8
Corres-
pondence,
cheque and
Voucher
No. 101
W. B. Sifton
to H. B.
Griffith
13 Dec. 1927
(continued)

On checking my a/cs I find \$29.31 miscellaneous telegrams
& L. D. Phone calls from Brockville during last months for a/c
your syndicate which I have not included in my travelling ex-
10 penses.

Yr tly,
Winfield B. Sifton

No 9

Montreal, Dec. 17 1927

To the BANK OF MONTREAL

Pay to W. B. Sifton or order
20 exactly one hundred seventy eight dollars forty one cents
\$178.41

Marquette Investment Corporation
Hugh B. Griffith R. O. Swezey

Ledger No. 6
Dec. 23 1927
B. of M., Montreal

The Bank of Nova Scotia
Montreal

Excise Stamp
30

ENDORSEMENT

Pay to the order of the Bank of Nova Scotia, Brockville,
Ont. for a/c Payée.

Winfield B. Sifton.

101

40 MARQUETTE INVESTMENT CORPORATION

Amount \$178.41

Date Dec. 17th 1927
Pay to W. B. Sifton

	Distribution	
212.03	Legal-Ottawa	178.41
	Total	\$178.41

Payment authorized G

PLAINTIFF'S EXHIBIT P-W-8 IN WARRANTY ON DISCOVERY.

Correspondence, cheque & voucher No. 164.

Plaintiff's Exhibit in Warranty on Discovery

P.W.-8
Correspondence, cheque & voucher No. 164, W. B. Sifton to H. B. Griffith
4 Feby. 1928

10 Telephone & Telegraph
Brockville, Ont.

Assiniboine Lodge
Mallorytown

Feb. 4/28.

Dear Hugh,

As stated in formal receipt for \$1500 mailed to you to-day, same has been credited to fees a/c, leaving my last expense
20 a/c up to Jan. 21st amount \$537.07 unpaid.

Since then my expense a/c to date has been,

Went from Toronto to Montreal Sunday night, Jan. 22.

Mon. Jan. 23 Montreal 1 day at Ritz

Tues. Jan. 24 Montreal & went to Ottawa in afternoon
1 day.

Wed. Jan. 25 Ottawa 1 day at Chateau.

30 Thurs. Jan. 26 Toronto 1 day at King Edward.

Fri., Sat., Sun. Jan. 27, 28, 29. In Ottawa. I consider that no charge for fees should be made for these days.

Mon. Jan. 30 to Sat. Feb. 4 — Five days at Chateau.

Sat. returned to Brockville.

In all 9 days in your service.

I now have the detailed statement of Ottawa Hotel Bill
40 for week Jan. 15/21 referred to as "not yet to hand" in my lost expense a/c. I enclose same herewith. It totals \$173.20. I have circled in red the details which are chargeable against Mrs. Sifton, who was in Ottawa 3 days of that a/c totalling \$69.92.

Week Jan. 15/21. Total of my a/c	\$173.20
Less	69.92
	<hr/>
	\$103.28

I also enclose detailed bill for week Jan. 22/28. It totals \$248.40. I have circled in red the details which are chargeable against Mrs. Sifton, who was in Ottawa the night of the 26 the 27 & 28, & my own luncheon party, totalling \$108.50.

Plaintiff's Exhibit in Warrant on Discovery
P.W.-8
Correspondence, cheque & voucher
No. 164,
W. B. Sifton to H. B. Griffith
4 Feby. 1928
(continued)

10	Week Jan. 22/28. Total of my a/c	\$248.40
	Less	\$108.50
		\$139.90

I think we had better let this Chateau Bill stand until we get together in Ottawa. If you will be good enough to bring my expense a/c & these enclosed hotel bills up we can settle it finally then, otherwise we will soon be in an awful muddle.

I have not yet had the bill Jan. 28 to Feb. 4.

20

I have now had & paid the Biltmore a/c \$19.30, which is included in the total below.

Leaving the Chateau Bills aside for the moment, my expenses excluding same, for the nine days were \$236.30, for which I would be pleased to receive cheque.

Yours truly,
Winfield B. Sifton.

30

Dear Hugh,

Feb. 13/28.

Since last account, as follows:

Mon. Feb. 6)
 Tues. Feb. 7) Toronto King Ed. 2 days.
 Wed. Feb. 8)
 Thur. Feb. 9) Ottawa Chateau, 2 days.
 Fri. Feb. 10) Montreal Ritz, 1 day.
 Sat. Feb. 11) Ny Belmont, 1 day.
 Sun. Feb. 12) Montreal Ritz, 1 day.

40

The Chateau Bill is not paid.

Total including both our tickets to N.Y. \$235.40 for which I would be pleased to receive cheque.

Yours truly,
Winfield B. Sifton.

Mon. Feb. 20/28.

Plaintiff's
Exhibit
in Warrant
on Discovery

Dear Hugh,

My expenses last week were \$21.25 to Ottawa, two days only, not including Hotel Bill, which we have not yet settled.

10

Yours truly,
Winfield B. Sifton.

P.W.-8
Corres-
pondence,
cheque &
voucher
No. 164,
W. B. Sifton
to H. B.
Griffith
4 Feby. 1928
(continued)

March, 10/28.

Dear Hugh,

Since last a/c rendered my services & expenses have been as follows:—

20	Mon. Feb. 20)	
	Tues. Feb. 21)	Ottawa Chateau, 3 days.
	Wed. Feb. 22)	
	Thurs. Feb. 23)	
	Fri. Feb. 24)	Montreal Ritz, 2 days.
	Sat. Feb. 25)	
	Sun. Feb. 26)	New York Biltmore, 2 days.
30	Tues. Feb. 28)	
	Wed. Feb. 29)	Montreal Ritz, 4 days.
	Thurs. March 1)	
	Fri. March 2)	
	Sat. March 3.	Toronto K. Ed., 1 day.
	Sun. March 4)	
	Mon. March 5)	Montreal Ritz, 2 days.
40	Thurs. March 8	Montreal Ritz, 1 day.

In all 15 days.

The Hotel Bill at Chateau for 3 days remains for adjustment & is not included in my expenses herewith.

Total, including Hotel Bills Ry, Fares & expenses Taxis & incidentals, \$529.70 for which I would be obliged to receive your cheque.

Yours truly,
Winfield B. Sifton.

March, 10/28.

Dear Hugh,

My accounts against Newman, Sweezey & Co. outstanding to date are:

Plaintiff's Exhibit in Warranty on Discovery

P.W.-8
Correspondence, cheque & voucher No. 164, W. B. Sifton to H. B. Griffith
4 Feby. 1928
(continued)

		Expenses	Fees
10	a/c of Feb. 4	\$236.30	\$ 900.00
	a/c of Feb. 13	\$235.40	700.00
	a/c of Feb. 20	\$ 21.25	200.00
	a/c of Mar. 10	\$259.70	1500.00
		<u>\$1022.65</u>	<u>\$3300.00</u>

20 Added to which there is a balance of fees outstanding as at Feb. 1st of \$2100.

Total therefore	Fees	\$5,400.
	Expenses	1,022.65
	Total	<u>\$6,422.65</u>

It would be a convenience to me if you could let me have a cheque on %.

Yours truly,
Winfield B. Sifton.

30

No. 61 Montreal, March 22, 1928.

To the
BANK OF MONTREAL,

Pay to W. B. Sifton or order,
Exactly One Thousand dollars, no cents.

40

Marquette Investment Corporation,
R. O. Sweezey. Hugh B. Griffith.

\$1,000.00.
(.02 Excise stamp).

Ledger No. 6. — Mar. 27, 1928. — B. of Montreal

ENDORSEMENT.

Pay to the Bank of Nova Scotia for % Payee only Winfield B. Sifton.

WHEREAS the Vendor has been organized as an unincorporated syndicate under and in virtue of a Memorandum of Agreement made in duplicate as of the twelfth day of May 1927 by and between Robert Oliver Swezey as party thereto of the first part and Marquette Investment Corporation as party thereto of the second part; and

Plaintiff's
Exhibit
in Warrant
on Discovery

P.W. 3
Agreement
between The
Beauharnois
Syndicate
and The
Beauharnois
Power
Syndicate

4 April 1928
(continued)

10 WHEREAS the Purchaser has been organized as an unincorporated syndicate under and in virtue of a Memorandum of Agreement made in duplicate as of the fourth day of April 1928 by and between F. Stuart Molson, Ivan L. Ibbotson, Hilda Knight, L. Clare Moyer and Robert Haldenby as parties hereto of the first part and said Marquette Investment Corporation as party thereto of the second part;

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

20 That the Vendor and the Purchaser in consideration of the mutual covenants herein contained have agreed together as follows:

1. The Vendor hereby sells, assigns and transfers to the Purchaser all the Vendor's undertaking, assets and rights of whatsoever nature and wheresoever situate, including but without in any way limiting the generality of the foregoing, the rights and interests referred to in the said Memorandum of Agreement made as of the twelfth day of May 1927 as "the rights and interests transferred";

30

TO HAVE AND TO HOLD the said undertaking, assets and rights hereby sold, assigned and transferred as the absolute property of the Purchaser in full ownership with the right to take possession thereof forthwith.

2. The said sale, assignment and transfer hereby made have been made for and in consideration of ten thousand (10,000) fully paid Part-Interests of the Purchaser which prior to the time of the execution hereof have been allotted to the Vendor and/or its nominees by the Purchaser.

40

3. The Purchaser hereby assumes and promises to pay, fulfill and carry out to the complete exoneration of the Vendor all the liabilities and obligations of the Vendor of whatsoever nature in existence at the date hereof.

4. The Vendor hereby waives any privilege, lien or charge to which it might be entitled to secure the fulfilment by the Purchaser of the latter's undertakings as contained in the preceding paragraph 3. hereof.

5. The Vendor undertakes and agrees that all times and from time to time when thereto required by the Purchaser it the Vendor will execute and do and cause to be executed and done at the expense of the Purchaser all such further acts, deeds, transfers, conveyances, assurances and things as may be necessary or useful for the purpose of carrying into effect the intents and purposes of this agreement.

Plaintiff's Exhibit in Warrant on Discovery

P.W.-3 Agreement between The Beauharnois Syndicate and The Beauharnois Power Syndicate 4 April 1928 (continued)

10 6. The benefits of this agreement shall enure to and this agreement shall be binding upon the successors and assigns of each of the parties thereto.

AND TO THESE PRESENTS INTERVENED, Marquette Investment Corporation a company duly incorporated by Letters Patent of the Province of Quebec, hereinacting by R. O. Swezey, its President and F. S. Molson, its Secretary, hereto duly authorized in virtue of a resolution of its Board of Directors a certified copy whereof is hereto annexed and signed for identification by the parties, the said Intervenant being the party of the second part in each of the said two agreements, namely, the Memorandum of Agreement dated as of the twelfth day of May 1927, and the Memorandum of Agreement dated the fourth day of April 1928 and being referred to in each of the said agreements as the "Depositary".

30 Which said Intervenant hereby acknowledges that it has taken communication of the foregoing agreement between the Vendor and the Purchaser and that the undertaking, assets and rights hereby sold, assigned and transferred are in its custody and it hereby covenants and undertakes that the same will be held and dealt with by it henceforth in trust for and on behalf of the Purchaser and upon and subject to all the trusts, provisions and conditions in the said Memorandum of Agreement of the fourth day of April 1928 between the Purchaser and it the said Intervenant.

40 IN WITNESS WHEREOF the said Vendor and the said Purchaser and the said Intervenant have executed these presents on the date firstly above written.

In the presence of:

The Beauharnois Syndicate,

By—(Sgd.) R. W. Steele,
Vice-President.

As witness to the signature of all the parties with the exception of R. O. Swezey (Sgd)

& (Sgd) Hugh B. Griffith,
Secretary-Treasurer.

Winfield B. Sifton,
Barrister.
Assiniboine Lodge,
Mallorytown, Ont.

The Beauharnois Power Syndicate,

No. 82

Montreal, April 16 1928

Plaintiff's
Exhibit
in Warrant
on Discovery

P.W.-8
Corres-
pondence,
cheque &
voucher
No. 191
W. B. Sifton
to H. B.
Griffith
6 April 1928
(continued)

To the BANK OF MONTREAL

Pay to R. O. Sweezey or order

10 Exactly eleven thousand four hundred eighty four dollars eighty seven cents

\$11,484.87
Excise Stamp

Marquette Investment Corporation
Hugh B. Griffith R. O. Sweezey

ENDORSEMENT.

For deposit only R. O. Sweezey, per H. M. Knight.

20 MARQUETTE INVESTMENT CORPORATION

191

Amount 11,484.87

Date Apl 16th 1928
Pay to R. O. Sweezey

Distribution

212.02	Legal-Quebec	2000.00
212.03	Do -Ottawa	5000.00
212.01	Do -General	4484.87

30 Total \$11,484.87

Payment authorized G

Plaintiff's
Exhibit
at Enquete

P-27
Letter from
H. B. Griffith
to Colonel
Victor Sifton
19 June 1928

PLAINTIFF'S EXHIBIT P-27 AT ENQUETE

Letter from H. B. Griffith to Colonel Victor Sifton.

NEWMAN, SWEEZEY & COMPANY, LIMITED

40

Investment Bankers
136 St. James Street

Montreal 19 June, 1928.

Colonel Victor Sifton,
18 Wellington St. East,
Toronto, Ont.

Dear Sir —

I have been attempting with the assistance of Mr. Moyer to arrive at a statement of Marquette Investment Corporation's

account with Mr. W. B. Sifton, and find that we owed him on account of fees, up to the time of his death, and expenses up to June 2nd, the sum of \$10,094.95. I understand that you are an executor of your Brother's Estate, and at the request of Sir Clifford Sifton I enclose herewith our cheque for \$10,094.95.

- 10 Would you be kind enough to acknowledge receipt of this on account of Winfield's Estate, and in such form that we may be protected from any subsequent claim through having made the payment to you personally.

In respect to the Expense Account June 3rd to June 10th, I will pay directly such of the hotel bills as I receive, and would appreciate your advising me of any accounts which are sent direct to you.

- 20 Will you please let me know if you will require a detailed statement of the amount enclosed herewith.

Yours truly,

Hugh B. Griffith

HBG.HMK
Enclosure

PLAINTIFF'S EXHIBIT P-9 ON DISCOVERY

30

Letter from R. O. Sweezy to Victor Sifton.

R. O. SWEEZEY

(B. SC, M. E. I. C.)

136 St. James St.

Montreal, July 14/28

Dear Victor,

- 40 You may wonder why I have not written as promised in regard to confirming my agreement with Win. The delay is due to my secretary's absence on her holidays and she has the private file well locked up. I am afraid now that I shall be leaving before she returns and there may be a further delay of some three weeks.

Yours sincerely

R. O. Sweezy

PLAINTIFF'S EXHIBIT P-33 AT ENQUETE

Order in Council P.C. 422.

ADDENDUM

10

TO
VOTES AND PROCEEDINGS
Friday, March 8, 1929

V 22—2

ORDER IN COUNCIL IN RESPECT TO THE APPROVAL
BY THE DOMINION GOVERNMENT OF THE PLANS
OF THE BEAUHARNOIS LIGHT, HEAT AND
POWER COMPANY

20

Friday, March 8, 1929
P.C. 422

Certified to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor General on the 8th March, 1929.

The Committee of the Privy Council have had before them a Report, dated 8th March, 1929, from the Minister of Public Works, submitting:

30

That the Beauharnois Light, Heat & Power Company was incorporated by chapter 72 of the Statutes of Quebec, 1902, amended by chapter 77 of the Statutes of Quebec 1910 and further amended by chapter 113 of the Statutes of the same Province of 1928;

That section 11 (a) of the amending statutes of 1928 reads as follows:

40

“The Company may build a new canal or feeder from any point on the feeder mentioned in section 9 of this Act (or on Lake St. Francis within two miles in a southwesterly direction along the shore from the mouth of such feeder) to any point on (Lake St. Louis, at or within one mile and a half in a westerly direction along the shore of Lake St. Louis from the junction of the St. Louis River with Lake St. Louis, the distances above mentioned to be measured in both cases from the centre line of the new canal), and for that purpose, and for the

10 purpose of enlarging the existing feeder, may expropriate such lands as may be necessary, not exceeding in all six arpents in width. It may, if found advisable, use any part of the bed of the St. Louis river for such canal or feeder, subject to first providing a new bed for the said river, and it may acquire by expropriation the land necessary to that end.

The powers of expropriation hereby granted shall be exercised, only subject to the provisions of (sections 21 to 25 inclusive, of chapter 46 of the Revised Statutes, 1925).

20 The Company shall not enter into possession of any property of the Crown, for the purpose of exercising any power conferred by this Act or otherwise, without first having obtained the right so to do from the Lieutenant-Governor in Council. Nothing in the present Act shall be construed as authorizing the company to violate rights now held by any other person or company for the operation of plants producing electrical energy."

PROVINCIAL LEASE

30 That the Company, under date of June 23, 1928, was granted an emphyteutic lease by the Provincial Government of Quebec of

"The rights of the Province of Quebec to such part of the hydraulic powers of the St. Lawrence River that can be developed between Lake St. Francis and Lake St. Louis, through a derivation canal on the right (southern) shore, having a maximum flowing capacity of 40,000 cubic feet per second, the Province reserving the ownership and the free disposition of the surplus."

40 The main provisions of the lease are as follows:

1. The present emphyteutic Lease is granted for a period of seventy-five (75) years to be computed from the 23rd June, 1928, and to end on the 23rd June, 2003.

2. The lessee shall pay to the lessor an annual rental of \$20,000.00 for the first five years, and of \$50,000.00 for each of the subsequent years until the expiration of the term. Said rental shall be due and payable in advance on or before the 23rd June

of each year, the first payment becoming due and payable at the date of the signature of the present lease for the current year.

3. The lessee shall pay to the lessor, over and above the annual rental hereinabove stipulated, an annual supplementary charge or royalty of one dollar (\$1.00) for each horse-power-
10 year (HP year), such power to be measured at the meters or wattmeters of the generating station. The horse-power will be equivalent to 6534.96 k.w.h.

8. The lessee shall install at its plant hydraulic motors having the following capacity:

(a) At the expiration of the first five years following the signature of the contract, provided the plans be approved by the competent authorities within a year,
20 and at the expiration of the first four years from the date of such approbation if it is given after a year has elapsed: 100,000 H. P.

(b) At the expiration of the sixth year: 200,000 H. P.

(c) At the expiration of the seventh year: 300,000 H.P.

(d) At the expiration of the tenth year: 500,000 H.P.

30 The first instalment of the annual supplementary charge (clause 3) will become due and payable six months after the production of each of such powers and after their respective development.

12. This lease is granted without prejudice to the rights of third parties or to Federal and Provincial laws concerning navigation, mines, fisheries and the driving of logs.

40 Furthermore, before beginning any work on the premises hereby demised, the lessee shall, according to the provisions of chapter 46 of the Revised Statutes of Quebec, 1925, and to those of the present clause, submit to the lessor for his approbation, copies of all plans including elevations, profiles, sections or all other like drawings, showing and describing the projected mills, dams, power-houses, wharves, piers and other buildings, and similarly, as well as of modifications and improvements thereof during the lease, and taking care to give full particulars with regard to the capacity of works and machinery and its produc-

tion, together with all information that the lessor may deem useful or necessary. Moreover, the lessee shall supply and furnish the lessor with copies of all data it may already have, or that it may obtain in the future concerning the flow and levels of the river.

10 No work in the bed of the St. Lawrence River intended for maintaining as they now are either the level of Lake St. Francis, or of the flow of the river St. Lawrence between Lake St. Francis and Lake St. Louis, or the authorized flow of the hydro-electric plants established between Lake St. Francis and Lake St. Louis may be executed before it has been proven, to the satisfaction of the Minister of Lands and Forests, that the plans and specifications and a memorandum of these works and of their mode of operation have been approved by the Federal Govern-
20 ment and before the said plans, specifications and memoranda have been approved by the Lieutenant-Governor in Council of the Province of Quebec in conformity with section II, chapter 46 of the Revised Statutes of the Province of Quebec, 1925. Such approvals shall have been obtained before July 1st, 1939. In case of new concessions of hydraulic power being made between Lake St. Francis and Lake St. Louis, the lessee may permit the new concessionnaire to use, modify or replace the works provided compensation is made.

30 13. The present concession is granted with the understanding that the lessee who is presently negotiating with the Federal Government, shall obtain from the latter, insofar as its rights are concerned, the authorization to divert a flow of 40,000 cubic feet of water per second.

In case the approbation required from the Federal Government be not obtained within twelve months from the signature of the present lease, said lease may be cancelled by the Lieutenant Governor in Council and the Lessee shall not be entitled to any compensation or indemnity from the Provincial Government.
40 However, his deposit shall then be returned to him.

16. Unless dispensed with by competent authority, the lessee shall erect and maintain at all times and seasons durable and efficient fishways.

17. The lessee shall provide the dam, according to needs, with convenient log-slides or gates and erect, if necessary, guiding piers and booms above the dam to bring the logs to the gates or the log-slides.

PRESENT APPLICATION BEAUHARNOIS
COMPANY

10 That the Beauharnois Light, Heat & Power Company has
asked for the approval of its proposed development and in con-
nection therewith made application for all such authority from
the Dominion Government as may be necessary to divert from
Lake St. Francis to Lake St. Louis and use an initial flow of
40,000 cubic feet of water per second, and, pursuant to the provi-
sions of section 7, chapter 140, Revised Statutes of Canada, 1927,
the Navigable Waters Protection Act — the Company has ap-
plied for the approval of the plans and site of works proposed
to be constructed in the St. Lawrence River with respect to the
diversion of the flow of water mentioned above (Plans of the
works consisting of 12 sheets and descriptions and plans of the
20 site thereof in booklet form, annexed);

That the Company in depositing its application submitted
the basis of an agreement with the Dominion Government as
follows:—

30 (a) When making its initial installation, the Company
will construct its power canal to such plans and specifications
and will operate its power development in such a manner that
the canal when completed will conform to the navigation standards
as set out in paragraph 111 of the main report and paragraph
13 of Appendix C of the report made by the International Joint
Board of Engineers 1926-1927.

40 (b) The capital amount properly chargeable to navigation
in this connection as calculated by the International Joint Board
of Engineers will be approximately Sixteen million dollars
(\$16,000,000) and will be paid by the Company. The Company
will also install such remedial works as may be necessary to avoid
injury to existing power developments and will maintain the
level of Lake St. Francis at such elevation as may be required
for navigation.

(c) At any time that the Government may demand, and
after three years' notice the Company undertakes to install in
connection with its power canal, such locks and other necessary
works as may be required to make the power canal available for
through navigation for vessels of a size and draught as large
as any vessels which will be able to use the new Welland Canal
upon its completion, provided—

- 10
- i. That concurrently with the installation of such locks the Company shall have the right to enlarge its canal and to divert through it and utilize for the development of power all the flow of the St. Lawrence River between Lake St. Francis and Lake St. Louis with the exception of water required for flottage through the existing Soulanges Canal, and with the exception of that quantity of water to the user of which existing power plants are now legally entitled.
- ii. That the cost of such locks and other improvements to be borne by the Company shall not exceed Eighteen Million Dollars (\$18,000,000).
- 20
- iii. That in any event the Company shall not be obliged to install such locks and other works above referred to until such time as will enable the Company to complete such installation concurrently with the final completion of the remainder of the St. Lawrence deep waterway.

30

(d) Should the Company desire to enlarge its canal and increase the flow of water through it prior to the time at which the Government shall notify it to install the locks above referred to the Company shall have the right to enlarge its canal and divert through it and utilize for the development of power all the flow of the St. Lawrence River between Lake St. Francis and Lake St. Louis with the exception of water required for flottage through the existing Soulanges Canal and with the exception of that quantity of water to the user of which existing power plants are now legally entitled, if at the same time it either constructs the locks above referred to, or alternately, at the option of the Government, deposits with the Government suitable guarantees to ensure the installation of the locks when they are required.

40

(e) The Company is prepared to make such agreements as may be necessary for the purpose of ensuring that after the completion of the locks above referred to the Dominion of Canada will be entitled to the use without charge to it of the canal and other works for navigation purposes.

PROTESTS

That protests were filed with the Department in connection with the application of the Beauharnois Light, Heat and Power Company, as follows:

1. Canada Steamship Lines, Limited.
2. Canadian Light & Power Company.
3. Cedars Rapids Manufacturing Company.
4. Dominion Marine Association.
- 10 5. Great Lakes & Atlantic Canal Power Co. Ltd., jointly
with Transportation & Power Company, Limited.
6. Montreal Light, Heat & Power Consolidated.
7. The Shipping Federation of Canada.
8. The Soulanges Power Company.
9. Miss Albina Bisson.

HEARING

20 That a hearing was held in the office of the Minister of
Public Works on January 15, 1929, at which the various pro-
testants were allowed to submit their representations against the
project from the point of view of navigation;

AMENDMENT OF APPLICATION

30 That at the hearing the Company amended its applica-
tion in the following manner:

40 “The application of the Beauharnois Light, Heat
and Power Company now pending before the Governor
in Council is purely and simply for the approval of plans
for hydraulic development which will be subject to a con-
dition that not more than 40,000 cubic feet per second shall
be diverted from the river — from Lake St. Francis, to
be returned to Lake St. Louis, and used for power pur-
poses by the Company between these two points; and any
condition that the Government may exact, in any wording
satisfactory to the Government, involving that limitation,
is accepted in advance by the applicant. If the engineers
think that the plans should be altered to meet this declara-
tion the Company will submit to any such alteration.”

REFERENCE TO SUPREME COURT

That in view of the combination of the two questions of
power and navigation, it was deemed advisable to refer to the

Supreme Court of Canada, a series of questions to the end of determining the respective rights of the Dominion and Provincial Governments in the development of power. The Supreme Court has recently submitted the result of its consideration of the various questions asked. The conclusions of the Court do not furnish sufficient ground to establish a well defined line of action with respect to power but as the question of fully protect-
10 ing navigation is the dominant issue so far as the Dominion Government is concerned, it is found that favourable consideration may be given to the proposal of the Beauharnois Light, Heat & Power Company, which, with certain modifications, may be utilized for the requirements of navigation in that stretch of the river.

REPORT OF COMMITTEE OF ENGINEERS

20 That a Committee of Engineers composed of K. M. Cameron, Chief Engineer, Department of Public Works, Duncan W. McLachlan, of the Department of Railways and Canals, who was Chairman of the Canadian Section of the Joint Board of Engineers, L. E. Coté, Chief Engineer, Department of Marine, and J. T. Johnston, Director of the Dominion Water Power and Reclamation Service, Department of the Interior, have made a careful study of the project, together with the objections made by the protestants of the hearing of January 15, 1929;

30 That the report of the Committee of Engineers deals with the four divisions to which the inquiry was addressed:

(a) The effect of works on existing canal and river navigation.

(b) The effect of work on present power development.

(c) The effect of works on future navigation.

40 (d) The effect of works on future power development.

(a) With regard to the effect of works on existing canal navigation the Committee finds that the regulating works proposed by the Company in the Coteau Rapids combined with the 40,000 cubic feet per second diversion do not provide adequate regulation, according to the plans filed. An extension of these works would permit them, when satisfactorily operated, to protect existing navigation and the levels of Montreal Harbour.

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P.C. 422
8 March 1929
(continued)

The Committee finds that so long as the flow through the Soulanges section is prevented from varying, there will be no adverse effect on navigation below, but if a variation in flow in the future is permitted it will necessitate a regulating dam about at the foot of Lake St. Louis and, under such circumstances, all interests developing power in the Soulanges section should
10 be assessed for the construction of such a work.

With respect to the effect of works on river or rapids navigation, the Committee finds that the diversion of 40,000 cubic feet per second will adversely affect navigation in the Soulanges section and that the works proposed by the Company for rectification purposes in this section are not satisfactory.

The Committee finds, however, that with modifications therein, there is a reasonable likelihood of the present condition
20 being largely recovered. It is pointed out by the Committee that these works are largely experimental are relatively costly, and, in view of the possibility of the balance of power being developed in a short time, the expenditure involved is likely to be lost before many years.

In respect to ice conditions and navigation, the Committee does not find any reason to believe that there will be an increase in quantity of ice formed which would advance the date of closing of navigation in the river or delay the date of opening of
30 navigations, and has been unable to see from the point of view of navigation that it will be adversely affected on that account.

If remedial works for preserving 14-foot navigation are operated as intended, the water levels at the head of Lake St. Francis, where the International boundary leaves the St. Lawrence River, will not be affected.

(b) The 40,000 cubic feet per second diversion might be
40 authorized without adversely affecting the present power developments for which the Federal Government is responsible, i. e., The Canadian Light, Heat and Power Company; The Provincial Light and Power Company, and The Montreal Cottons Company.

There would be some adverse effect upon the plant of the Cedars Rapids Manufacturing and Power Company, which derives its basic rights from the Provincial Government. The Committee considers the protection of the Company's rights as primarily the responsibility of the Provincial Government.

(c) The effect of works on future navigation—

A summary of the schemes for deep water navigation is:—

10 (a) Works necessary for navigation as a river development prior to the installation of power, estimated at \$79,780,000.

 (b) Lateral canal for navigation alone on the north side, estimated at \$41,633,000.

 (c) Lateral canal for navigation alone on the south side, estimated at \$38,565,000.

20 (d) To add to a previously constructed power development in the river the works necessary to allow deep water navigation between Lake St. Francis and Lake St. Louis, estimated at \$31,769,000.

 (e) Power canal proposed from Hungry Bay to Melocheville, if given a width of 600 feet, depth of 27 feet and suitable velocity and made usable as a navigation canal, can be completed as a through route between Lake St. Francis and Lake St. Louis by the addition of works estimated at \$21,600,000.

30 Comparing the Hungry Bay-Melocheville combined power and navigation canal with the river navigation scheme of the Joint Board, which is the next cheapest and estimated at \$31,769,000, the Committee find there will probably be five bridges on the south or Hungry Bay route, as against three on the river or north route. There will be two canal entrances on the Hungry Bay-Melocheville route both of which can be entered under excellent conditions as against four canal entrances on the north or river route, all of which are made from river stretches with some cross currents.

40

 On the Hungry Bay-Melocheville route there will be two lift locks required; on the north route there will be three locks required.

 In so far then as the diversion of 40,000 cubic feet per second from Lake St. Francis via the Hungry Bay-Melocheville route is concerned, the conclusion of the Committee is that it will not make deep water navigation via that route, or any route de-

veloped to date, more costly, or difficult, provided suitable safeguarding regulations are imposed.

(d) The effect of works on future power development—

10 The Committee states that the diversion of 40,000 cubic feet per second may not increase the cost of future power development, depending on whether or not this project stands by itself or becomes part of a co-ordinated project.

In all future projects regulations designed to preserve the opportunity of building deep navigation works on either side of the river ought to be imposed on applicants for the development of power.

20 The Committee concludes that, having regard to the application under the Navigable Waters Protection Act, now under consideration, the Committee are of the opinion that the site and works proposed in the plans and application filed by the said Company, will not impede or interfere with navigation on the St. Lawrence River if the conditions recommended by the Committee which conditions are hereinafter incorporated are met by the Company, and that having consideration to the interests of the country as a whole, the Committee is of the opinion that if the works are constructed in accordance with such application and plans subject to the said conditions, the same can be effi-
30 ciently utilized in connection with, and as part of any feasible and economical scheme for the deep waterway development of the St. Lawrence River.

40 That the Chief Engineer of the Department of Public Works, together with his assistant engineers after a careful study of the proposed scheme, has recommended the approval of the application from the standpoint of navigation, subject to the conditions hereinafter set out, in which recommendation the Deputy Minister of Public Works has concurred.

That the Department of Justice, on examination of the application from the legal point of view, has stated that all the requirements of section 7 of the Navigable Waters Protection Act have been complied with and that the said application may now properly be submitted to the Governor General in Council for approval.

After a careful examination of all the points raised at the hearing held in connection with the application, as amended, the

Minister reports that the approval of the plans and site of the proposed works can be recommended, subject to the following regulations and conditions:

Conditions

10 (1) In any question which may arise from the application of this approval the settlement thereof shall be governed by full recognition of the dominant interest of navigation and the necessity of reserving therefor all or any requisite part of the natural flow of the St. Lawrence River.

20 (2) The works approved, or which may hereafter be approved, or designed, or made, shall at no time raise the natural level of water in the River St. Lawrence above the international boundary, or in any way contravene the terms of the Boundary Waters Treaty of 1909, or the Treaty of Washington of 1871.

(3) The works approved, or any modifications therein, which may hereafter be made or approved, shall be operated in conformity with the requirements of navigation on the St. Lawrence River and the diversion of water shall not at any time exceed the maximum quantity of 40,000 cubic feet per second.

(4) Notwithstanding the approval herein contained the Minister of Public Works may at any time

30 (a) order any additions to, improvements, alterations, or changes in substituting for or modifications or removals of works constructed or in course of construction or proposed or required to be constructed by the Company pursuant to this approval, and,

40 (b) at any time require the Company to construct and maintain such further or other works as the Minister may consider are required fully to preserve or restore and maintain the navigation on the St. Lawrence River, and may from time to time require the Company to make such changes or modifications in the said works or to remove the same or any part thereof, or to substitute other works in their stead, as he may in his judgment consider necessary for such purpose, and

The Company shall comply with, observe and perform all orders and requirements under clauses (a) and (b) hereof.

(5) The Company shall construct and maintain its canal so as to give a clear width of 600 feet on the bottom a depth of 27 feet at low stage, and so as to afford average velocities of not more than 2.25 feet per second under any conditions of operation.

10 The radius of curvature shall not be less than 5000 feet and one embankment shall form a prism on the north side of the canal. The Company shall construct and maintain the embankments, walls and retaining structures in an approved manner generally in accordance with the standards of the International Joint Board of Engineers report. Such protection lining as will be required to preserve slopes when the canal is used for navigation shall be furnished.

20 The dam and all other works of the Company, upon and along the Canal, including the Canal itself, and the embankments, walls and retaining structures, and the sub-structures for the movable spans mentioned in clause 10, shall at all times be maintained in a proper state of repair by the Company, so that the Canal and every part thereof shall be constantly available for the purposes of navigation throughout the period of the above recited lease or any renewal thereof so far as the dam and works situate upon Provincial Crown property are concerned and for all time so far as works situate the property of the Company are concerned. For the purposes of these conditions "navigation" means
30 local navigation throughout the reach of the canal and through navigation when the locks and appurtenant works mentioned in clause 7 are completed.

(6) Whenever the Governor in Council so declares, the right of public navigation within and along the proposed canal or any portion thereof to the same extent and in manner similar to that provided in the case of the new Welland Ship Canal shall thereafter exist and be recognized by the Company.

40 (7) Whenever the Governor in Council shall decide to construct locks and appurtenant works to connect Lake St. Louis with the canal reach for navigation purposes, His Majesty shall have the right, by his servants or agents, to enter upon and use any part of the applicants' lands buildings, property or works which may be required for the purposes of such construction, and for the operation and maintenance of such locks and appurtenant works when completed, and the applicants shall convey to His Majesty the King in the right of the Dominion of Canada, free of all costs or encumbrance, the title to the necessary land suf-

10 sufficient for the site of such locks and appurtenant works, and no claim for any indemnity whatsoever owing to loss or inconvenience to works operations, installations or distribution of power will be made by the Company arising out of the construction of temporary or permanent works by His Majesty, either at the entry works, along the course of the stream, or at or below the proposed works.

(8) The Company shall provide, maintain and operate, when required by and to the satisfaction of the Governor in Council, all aids to navigation made necessary by the Company's works, and shall submit to all regulations in respect to the operation of the Company's works as may be promulgated in the interest of navigation.

20 (9) The Company shall grant to His Majesty sites for all aids to navigation other than those mentioned in the preceding section which may be required for the use and convenience of shipping using the canal and for public wharves, and shall keep and maintain such sites free and unobstructed, and shall give to His Majesty and his agents free and unobstructed access at all times to such sites, and the Company on demand shall provide and deliver free of charge to His Majesty at such point as he may designate adequate and suitable electric power for operating, repairing, lighting and otherwise maintaining the canal and appurtenant works up to but not exceeding 3,500 horse-power
30 maximum demand and in case additional power should be required the Company shall supply same at a rate not to exceed that paid by the customer having the lowest contract price with the Company.

40 (10) The Company shall provide, operate, maintain and light all bridges over the canal to the satisfaction of the Governor in Council, it being understood that the Company may initially install fixed spans but with substructures sufficient and suitable for carrying movable spans and when in the opinion of the Governor in Council it becomes necessary for navigation, the Company shall at the request of the Minister remove the fixed spans and the Minister may at the cost of His Majesty in the right of the Dominion install movable spans on such substructures.

(11) The Company shall not commence the construction of the works until detailed plans of construction and all necessary information respecting the said works have been submitted to and approved of by the Minister, provided that such plans and information shall be submitted within one year.

(12) No work in the St. Lawrence River shall be undertaken until a programme of construction shall have been submitted to and approved by the Minister.

10 (13) The construction and operation of the works of the Company as are now, or as may hereafter be approved, ordered, or required, shall be at the sole cost and expense of the Company and shall be subject to such further regulations as the Minister may from time to time deem necessary.

(14) The works shall be constructed by the Company subject to the approval of an Engineer or Engineers authorized for such purpose by the Minister and the decision of the said engineer or engineers shall be final and conclusive upon all questions that may arise in connection with such construction.

20 (15) The Minister, or his duly authorized representative, shall have full and free access at any and all times to the works of the Company and shall have free control of the operation of the compensating or regulating sluices wherever situated, shall have the right to measure the discharge of the various channels and passages, and to adjust the flow of water in the interest of navigation. The Company shall take and keep such records of the flow of the St. Lawrence River, or the waters thereof, as the Minister or his representative shall deem necessary, and shall calibrate
30 or cause to be calibrated to the satisfaction of the Minister such turbines penstocks, sluices or other water passages as the Minister may require, and shall furnish at such times and in such manner and in such form and based on ratings satisfactory to the Minister certified copies of its records of flow and its records of operation.

40 (16) The Company shall furnish and deliver to the Minister immediately after the construction of the proposed works has been completed) such complete general and detail tracings of all parts of said works as actually built as may be required by the Minister, or his representative. Such plans shall show all dimensions, nature of material and other appurtenant information and shall be made on tracing linen and shall be provided with proper titles, headings and numbers.

(17) Should remedial works become necessary in the opinion of the Minister in the interest of navigation, because of surge conditions in the river below caused by the development of the Soulanges section for power, the Company will pay such proportionate cost of said works as may be required by the Governor in Council.

(18) The Company shall not set up any claim

(a) for damages or for loss of property should any remedial works built under this approval become an impediment to future improvement of the section and require removal, or

10

(b) for damages should the works or any part thereof no longer be required for the purpose for which they were constructed and be put to other approved use, or

(c) for damages should any works or things ordered or required to be done by the Company under the provisions of paragraph 4 or any other paragraph hereof prove to be defective or insufficient for the purposes intended.

20

(19) The Company shall provide gates in its power house of such capacity as will discharge 40,000 c.f.s. under the most adverse conditions of head and tail water level to be anticipated and to the satisfaction of the Minister.

(20) His Majesty shall at any time be entitled to acquire and take over:—

30

The canals, works, buildings, erections or other property of the Company constructed under or pursuant to or in lieu of the works shown in the plans approved by this Order in Council, and the lands upon which the same are made or constructed, or so much of or such part of such works buildings, erections, property or lands as in the opinion of the Governor in Council may be necessary, paying such compensation as may be agreed between the parties, or as may be fixed by the Exchequer Court of Canada in case of failure to agree, but in fixing such compensation consideration shall not be given to any rights or privileges acquired by the Company under or by virtue of this Order in Council; and consideration shall be given to the relief which the Company would thereby obtain from the obligations imposed on the Company by condition (5) hereof.

40

(21) The approval hereby granted is given upon and subject to the condition that in case it should be judicially determin-

ed that His Majesty in the right of the Dominion is entitled to any of the power now or hereafter to be developed in connection with the works the subject of this approval or any works hereafter to be constructed by virtue hereof by the Company or which His Majesty may construct then and in such event the Company shall pay to His Majesty in the right of the Dominion such compensation by way of annual rental as the Governor in Council may from time to time determine, and shall comply with all rules and regulations which may be made by the Governor in Council with respect to the rentals to be paid to the Government, the sale of power, the regulation of price thereof and the other matters now referred to in the regulations respecting Dominion Water Powers.

(22) The Company shall commence its work within one year after the approval contemplated in paragraph 11 of these conditions, and shall complete its authorized works within five years from the date of such approval.

(23) The Company shall save the Dominion Government harmless should the construction of the works affect rights heretofore existing above, below or comprised within the area of the proposed works, the Company to be responsible for and to compensate for any damage which may be caused by the works to other companies or interests owning or operating water-power on the St. Lawrence River including Lake St. Francis, and the Company shall settle, pay and fully provide for the claims of riparians and other persons who may sustain any loss or damage in consequence of the construction of the said works or any of the works which the Company may require to construct and maintain for the purpose of restoring and maintaining the navigation of the St. Lawrence.

(24) The Company shall, before commencing construction of any part of the approved works, procure the execution by the Province of Quebec of an agreement with and to the satisfaction of the Dominion Government, whereby the Province will undertake and agree that should the said dam or appurtenant works or any part thereof become the property of the Province under any provision of the said lease, or otherwise, the Province will either transfer the same to the Dominion or will maintain the same or cause the same to be maintained in a proper state of repair, so that there shall always be a minimum depth of twenty-seven feet of water in the said Canal. and so that the same and every part thereof shall always be available and in proper condition for the maintenance of navigation in the said Canal.

(25) In case of failure by the Company to observe or perform any of the provisions and conditions upon which this approval is granted, or to proceed with and complete such works and things as may be ordered or required by the Minister under Clause 4 hereof, or under any other authority in that behalf, the Minister may, by notice in writing specifying generally the
10 particulars of alleged failure, require full and complete observance and performance in that regard within a period named in said notice, or may stipulate the respective times and manner in which the observance and performance of the provisions and conditions herein mentioned and the carrying out of such works, and things, shall be commenced, carried on and completed, and if such notice is not complied with within the time or any of the respective times so specified, His Majesty may jointly, severally or in the alternative,

20 (a) take over and operate the whole or any part of the works compensating the Company for the value thereof, but such compensation not to include any allowance for forcible taking or based upon the approval hereby granted,

(b) proceed with and complete or maintain and repair the whole or any part of such works and things and recover the full cost thereof from the Company by suit in the Exchequer Court of Canada, as for a debt due from
30 the Company to the Crown in the right of the Dominion,

(c) cancel this approval,

all of the remedies specified in clauses (a) (b) and (c) hereof to be additional to, and without prejudice to any other remedies open to His Majesty in the premises, and to all or any proceedings in the courts available to the Crown. Any action by His Majesty under
40 this paragraph shall not be deemed an infringement of the rights of the Company.

(26) The approval hereby granted shall inure only to the benefit of the applicant or its assigns, and shall endure only for the period of the said emphyteutic lease or any renewal thereof. Upon the termination of the said lease or of the rights granted thereunder or in case there should be at any time a reversion to the Crown of the rights granted thereunder the approval hereby granted shall cease and determine and in no event shall the ap-

proval hereby granted or any rights dependent upon or connected therewith pass to the Crown in the right of the Province. No assignment of the approved works or of the approval hereby granted, or or any of such rights, shall be made without the approval of the Governor in Council first had and obtained.

- 10 Should the Company make any such assignment without such approval, the Government may take over and operate the whole or any part of the works without compensation.

(27) Any proprietary, legislative or executive powers, rights, authorities or privileges now or hereafter vested respectively in His Majesty, the Parliament of Canada, the Governor in Council or any Minister or Officer of the Dominion Government shall not be in any way prejudiced or impaired by, and may be exercised in conjunction with, in substitution for or in addition to the powers, rights, authorities and privileges reserved to
20 or conferred upon the Dominion by these conditions or the agreement incorporating the same.

(28) It is clearly stipulated and understood that nothing is hereby granted except approval of the proposed works under the provisions of the Navigable Waters Protection Act upon and subject to these conditions.

The Committee, on the recommendation of the Minister of
30 Public Works, submit for Your Excellency's approval, under Section 7, Chapter 140, Revised Statutes of Canada, 1927 — the Navigable Waters Protection Act — (subject to the foregoing conditions and to such additions, improvements, alterations, changes, substitutions modifications or removals as may be ordered or required thereunder) the annexed plans of works, and the side thereof, according to the descriptions and plans attached, in booklet form, which works are proposed to be constructed by the Beauharnois Light, Heat & Power Company, with respect to
40 the diversion of 40,000 cubic feet of water per second from Lake St. Francis to Lake St. Louis, in connection with a power canal to be built by the said Company along the St. Lawrence River between the two lakes mentioned; the said approval to take effect only after an agreement incorporating the conditions enumerated above and satisfactory to the Minister of Public Works of Canada has been executed between the Beauharnois Light, Heat & Power Company and His Majesty the King, as represented by the said minister.

In connection with the foregoing, the Committee submit for Your Excellency's information the following documents which are hereto annexed:—

“Study of Remedial and Control Works”.

10 by Messrs. Brown, Hogg and Lee, Consulting Engineers;

“Supplementary Memorandum Regarding Ultimate possibilities of proposed Hydro-Electric Power development of the St. Lawrence River between Lake St. Francis and Lake St. Louis.”

by F. B. Brown, M.Sc., Consulting Engineer, Montreal;

20 “Report of proposed Hydro-Electric Power Development on the St. Lawrence River between Hungry Bay on Lake St. Francis and Melocheville on Lake St. Louis.”

by F. B. Brown, M.Sc., Consulting Engineer, Montreal.

Report, dated 30th January, 1929, of Messrs. Cameron, McLachlan, Johnston and Cote, on the project.

E. J. LEMAIRE,
Clerk of the Privy Council.

30

PLAINTIFF'S EXHIBIT P-34 AT ENQUETE

Order in Council P.C. 1081.

Privy Council
Canada

P.C. 1081.

40 Certified to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor General on the 22nd June, 1929.

The Committee of the Privy Council have had before them a report, dated 17th June, 1929, from the Minister of Public Works, submitting as follows:

That an Order in Council — P.C. 422 — was passed on 8th March, 1929, granting the application of the Beauharnois Light, Heat and Power Company, under Section 7, Chapter 140,

Plaintiff's
Exhibit
at Enquete
P-34
Order
in Council
P.C. 1081
22 June 1929
(continued)

Revised Statutes of Canada, 1927 — the Navigable Waters Protection Act — for the approval of the plans and site of works proposed to be constructed with respect to the diversion of 40,000 cubic feet of water per second from Lake St. Francis to Lake St. Louis, in connection with a power canal to be built by the said Company along the St. Lawrence River between the two lakes
10 mentioned, the said approval, however, being granted subject to certain conditions, and to such additions, improvements, alterations, changes, substitutions, modifications or removals as may be ordered or required thereunder, and to take effect only after an agreement in incorporating the conditions of approval and satisfactory to the Minister of Public Works has been executed by the Beauharnois Light, Heat and Power Company and His Majesty the King as represented by the said Minister;

20 That the agreement referred to, incorporating the conditions of approval, has been submitted to the Minister of Public Works, and is satisfactory to him, clauses 3, 7, 10, 24, and 26 having been extended so as to clarify their meaning and remove any possibility of doubt as to the intention thereof.

The Minister, therefore, recommends that the agreement between the Beauharnois Light, Heat and Power Company and His Majesty the King, required pursuant to the approval granted by Order in Council (P.C. 422) of March 8, 1929, be approved
30 in the form attached, and that the Minister of Public Works be authorized to execute it.

The Committee concur in the foregoing recommendation and submit the same for approval.

(SEAL)

(Sg.) E. J. Lemaire
E. J. Lemaire,
Clerk of the Privy Council.

PLAINTIFF'S EXHIBIT P.W.-4 IN WARRANTY
ON DISCOVERY

*Copy of agreement between Beauharnois Power Syndicate and
Beauharnois Power Corporation Limited.*

10

MEMORANDUM OF AGREEMENT made in triplicate
at the City of Montreal in the Province of Quebec this 31st day
of October One thousand nine hundred and twenty-nine;

BY AND BETWEEN

20

THE BEAUHARNOIS POWER SYNDICATE (here-
inafter called the "Syndicate") an unincorporated syndicate or-
ganized and existing under and in virtue of an agreement made
at the City of Montreal on the Fourth day of April, 1928 by and
between F. Stuart Molson and others of the First part and Mar-
quette Investment Corporation of the second part;

Party of the First Part.

AND

BEAUHARNOIS POWER CORPORATION LIMITED
(hereinafter called the "Corporation") a company incorporated
by Letters Patent issued under the Companies' Act of the Dom-
inion of Canada;

30

Party of the Second Part.

AND

MARQUETTE INVESTMENT CORPORATION (here-
inafter called the "Depositary") a company incorporated by
Letters Patent issued under the Quebec Companies' Act;

Party of the Third Part.

40

WHEREAS the Corporation has an authorized Capital
Stock consisting of —

(a) five Management Preferred Shares without
nominal or par value, the holders of which have the exclu-
sive right for a period of ten years from and after the date
of the Letters Patent of the Corporation to elect and re-
move the Directors thereof, the holders of each of which
Management Preferred Shares has otherwise the same
rights in respect thereof as if he were the holder of One
Common Share and which Management Preferred Shares

at the end of the said Period of ten years shall automatically be converted into Common Shares;

10 (b) 4,999,995 Common Shares without nominal or par value; of which 1,799,995 are Class "A" Common Shares and 3,200,000 are Class "B" Non-Voting Common Shares; and

WHEREAS the said five Management Preferred Shares have been subscribed for by or on behalf of Newman, Swezey & Company, Limited and Dominion Securities Corporation, Limited at One Dollar (\$1.00) per share and have been issued to them and/or their nominees.

NOW THEREFORE THIS AGREEMENT WITNESSETH:

20

That in consideration of the undertakings and agreements hereinafter expressed the syndicate and the Corporation have agreed together as follows:

30 1. The Syndicate agrees to sell, transfer and deliver to the Corporation and/or its nominees and the Corporation agrees to buy, receive and pay for all the undertaking and assets of whatsoever nature (except any unpaid balances and any uncalled balances for which the Syndicate Members may be liable to the Syndicate in respect of the Part-Interests of the Syndicate held by them respectively) of the Syndicate.

40 2. The said transfer of the undertaking and assets of the Syndicate to the Corporation shall be made without any representations or warranty whatsoever as to the title to the assets or otherwise the intention being that the Syndicate shall sell, transfer and deliver and the Corporation buy, receive and pay for all the Syndicate's right, title and interest in and to such undertaking and assets, but without any warranty of any kind on the part of the Syndicate.

3. The consideration for the said sale and transfer shall be —

(a) the sum of Four million seven hundred and fifty thousand dollars (\$4,750,000) in lawful money of Canada payable to the Syndicate by the Corporation at the time and upon the conditions hereinafter mentioned; and

(b) the assumption by the Corporation of all the liabilities and obligations of the Syndicate (except its liabilities and obligations to its Members as such:

and

10 (c) the undertaking by the Corporation to defray the expenses (to an amount not exceeding ten thousand dollars (\$10,000.00) of the winding-up of the affairs of the Syndicate and the distribution of its assets among its Members.

4. The said sum of Four million seven hundred and fifty thousand dollars (\$4,750,000) shall be paid by the Corporation to the Syndicate upon the transfer and delivery of the said undertaking and assets of the Syndicate to the Corporation.

20 5. The obligation of the Syndicate hereunder to sell, transfer and deliver and of the Corporation hereunder to buy, receive and pay for, shall be conditional upon the following conditions having been fulfilled not later than the First day of November, 1929, or such later date as the Syndicate may from time to time approve by resolution of the Syndicate Managers (which may be passed before, on or subsequent to the said First day of November, 1929;

30 (a) That the necessary approval shall have been obtained under The Watercourse Act of the Province of Quebec of the site and plans of the Beauharnois Light, Heat and Power Company in order to permit that Company to commence the construction of its proposed power development;

40 (b) That the agreement between the Dominion of Canada and the Province of Quebec required by Condition No. 24 of the Order in Council of the Dominion of Canada dated March 8th, 1929 respecting the Beauharnois Light, Heat and Power Company and any subsequent Order or Orders in Council which may have been passed modifying, extending or affecting the same shall have been executed;

(c) That the requisite approval and permission of the Quebec Public Service Commission shall have been obtained in order to permit the said Beauharnois Light, Heat and Power Company to commence the construction of its proposed power development; and

(d) That the Syndicate and / or the Corporation shall have acquired the ownership or control of all the outstanding

shares of the Beauharnois Light, Heat and Power Company free from all liens, charges or encumbrances.

And if all the conditions set out in this paragraph 5, shall not have been fulfilled on or before the First day of November, 1929 or such later date as may be approved by the
10 Syndicate as hereinabove in this paragraph 5 provided, then this agreement shall be and become of no force and effect.

If all the conditions set out in this paragraph 5 shall have been fulfilled on or before the First day of November, 1929, or such later date as may be approved by the Syndicate as hereinabove in this paragraph 5 provided, then the transfer of the assets and undertaking of the Syndicate herein provided for shall be made as soon thereafter as the Corporation shall have
20 Bonds provided for in the agreement hereto annexed as Schedule "A" sufficient moneys to make payment of the cash consideration herein provided for.

6. Provided the said undertaking and assets of the Syndicate are transferred to and paid for by the Corporation as hereinabove provided, the Syndicate agrees to subscribe for at One dollar (\$1.00) per share One million (\$1,000,000) Class "A" Common Shares without nominal or par value of the Corporation, such shares to be allotted and issued to or to the nominees of
30 the Syndicate, the said shares to be paid for at the time of the transfer and delivery of the undertaking and assets of the Syndicate to the Corporation and / or its nominees and the payment of the said sum of Four million seven hundred and fifty thousand dollars (\$4,750 000) by the Corporation to the Syndicate.

7. The undertakings of the Syndicate hereunder are given and made upon the understanding and conditions that the Corporation will enter into an agreement with Newman, Swezey & Company, Limited and Dominion Securities Corporation, Limited respecting the subscription for and purchase by said
40 Newman, Swezey & Company, Limited and Dominion Securities Corporation, Limited, of certain Collateral Trust Bonds and Common Shares of the Corporation and respecting the arrangements in regard to the purchase of certain First Mortgage Bonds of the Beauharnois Light, Heat and Power Company, the whole substantially in the form of the agreement annexed hereto as Schedule "A" or to like effect.

Plaintiff's
Exhibit
in Warranty
on Discovery

P.W.-4
Agreement
between The
Beauharnois
Power
Syndicate,
Beauharnois
Power
Corporation
Limited
and Marquette
Investment
Corporation
31 Oct. 1929
(continued)

PLAINTIFF'S EXHIBIT P-W-5 IN WARRANTY
ON DISCOVERY.

10 *Copy of agreement between Beauharnois Power
Syndicate and Marquette Investment Corporation.*

INDENTURE made in triplicate at the City of Montreal
in the Province of Quebec this Seventeenth day of December,
One thousand nine hundred and twenty-nine;

BY AND BETWEEN:—

20 THE BEAUHARNOIS POWER SYNDICATE (here-
inafter called the "Syndicate") an unincorporated syndicate
organized and existing under and in virtue of an agreement made
at the City of Montreal on the Fourth day of April One thou-
sand nine hundred and twenty-eight between F. Stuart Molson
and others of the First part and Marquette Investment Corpo-
ration of the second part;

Party of the First Part;

A N D : —

30 BEAUHARNOIS POWER CORPORATION LIMITED
(hereinafter called the "Corporation") a company incorporated
by Letters Patent issued under the Companies' Act of the Do-
minion of Canada;

Party of the Second part;

A N D : —

MARQUETTE INVESTMENT CORPORATION (here-
inafter called the "Depositary") a company incorporated by
Letters Patent under the Quebec Companies' Act;

40 Party of the Third Part;

WHEREAS the Parties hereto entered into a Memorandum of Agreement dated the thirty-first day of October One thousand nine hundred and twenty-nine providing for the transfer herein contained and the subscription for shares herein made;

NOW, THEREFORE, THIS INDENTURE WITNES-
SETH as follows:

1. The Syndicate hereby sells, transfers and makes over to the Corporation and the Corporation hereby purchases and accepts all the undertaking and assets of whatsoever nature of the Syndicate, except any unpaid balances and any uncalled balances for which the Syndicate Members may be liable to the Syndicate in respect of the Part-Interests of the Syndicate held
10 by them respectively.

2. The sale and transfer hereby made are so made without any representations or warranty whatsoever as to the title of the said undertaking and assets or otherwise, the intention being that the Syndicate sells and transfers and the Corporation purchases and accepts all the Syndicate's right, title and interest in and to such undertaking and assets, but without any warranty of any kind on the part of the Syndicate.

20 3. As part consideration for the said sale and transfer the Corporation has paid to the Syndicate the sum of Four million seven hundred and fifty thousand dollars (\$4,750,000) the receipt whereof is hereby acknowledged, and as further consideration for the said sale and transfer the Corporation as hereby assumes and undertakes to pay all of the liabilities and obligations of the Syndicate except its liabilities and obligations to its Members as such, and hereby undertakes to defray the expenses to an amount not exceeding Ten thousand dollars (\$10,000) of the winding up of the affairs of the Syndicate and
30 the distribution of its assets among its Members.

4. The Syndicate hereby subscribes at One dollar (\$1.00) per share for One million (\$1,000,000) Class "A" Common Shares (without nominal or par value) of the Corporation and has paid to the Corporation the purchase price thereof namely, One million dollars (\$1,000,000), the receipt whereof is hereby acknowledged by the Corporation, and the Corporation hereby undertakes that the said shares have been allotted and will be
40 issued to or to the nominees of the Syndicate.

5. The Depositary hereby acknowledges to have taken communication of the terms, provisions and conditions of this Indenture and acknowledges that the assets of the Syndicate are in its custody as Depositary of the Syndicate and covenants and agrees that the same will be held and dealt with by it in accordance with the instructions which may from time to time be given to it by the Corporation.

Special Committee.
ORDERS OF REFERENCE
House of Commons

Wednesday, June 10, 1931.

Defendant's
Exhibit
in Warrant
at Enquete

D.W.-2
Extract
of Report
of Special
Parliamentary
Committee on
Beauharnois
Power Project
19 Nov. 1931
(continued)

10

Resolved, That Messrs. Dorion, Fiset (Sir Eugène), Gardiner, Gordon, Jacobs, Jones, Lennox, Mackenzie (Vancouver Centre), Stewart (Lethbridge) be a Committee to investigate from its inception the Beauharnois project for development of hydro-electric energy by the use of the waters of the St. Lawrence River so far as the matters referred to are within the jurisdiction of the Parliament of Canada, and without restricting the generality of the foregoing words in particular to investigate the matters referred to in the speech made in the House of Commons, by Mr. Robert Gardiner, the honourable member for Acadia, on the 19th day of May last, as reported on pages 1875-1887 of Hansard, and to report from time to time their observations and opinions thereon; with power to send for person, papers and records.

Attest.

Arthur Beaudesne,
Clerk of the House.

30

Monday, June 15, 1931.

Ordered, That the said Committee be given leave to print, from day to day, the minutes of proceedings and evidence taken, and also such representations, arguments and papers submitted as may be directed by the said Committee to be printed, for the use of the said Committee and Members of the House, not to exceed 600 copies in English and 200 copies in French.

40

Ordered, That the said Committee be given leave to sit while the House is in session.

Ordered, That the said Committee be granted to leave to employ counsel for the purpose of assisting the investigation of the matters referred to them by the House.

Attest.

Arthur Beaudesne,
Clerk of the House.

Defendant's
Exhibit
in Warrant
at Enquete

D.W.-2
Extract
of Report
of Special
Parliamentary
Committee on
Beauharnois
Power Project
19 Nov. 1931
(continued)

Monday, June 29, 1931.

10 *Ordered*,—That the said Committee be given power to employ a secretary to assist counsel to the Committee in the investigation now proceeding, until the Final Report of the said Committee is presented to the House.

Ordered,—That the said Committee be given power to employ a firm of auditors to assist in the investigation now proceeding, until the Final Report of the said Committee is presented to the House.

Attest.

Arthur Beauchesne,
Clerk of the House.

20

REPORTS TO THE HOUSE

FIRST REPORT

House of Commons,

Reports
to the House
of Commons
First Report
15 June 1931

Monday, June 15, 1931.

30

The Special Committee on the Beauharnois Power Project have the honour to present the following as their First Report:—

40 Your Committee recommend that they be given leave to print, from day to day, the minutes of proceedings and evidence taken, and also such representations, arguments and papers submitted as may be directed by the Committee to be printed, for the use of the Committee and members of the House, not to exceed 600 copies in English and 200 copies in French.

Your Committee also recommend that they be given leave to sit while the House is in session.

All of which is respectfully submitted.

W. A. Gordon,
Chairman.

SECOND REPORT

Monday, June 15, 1931.

10 The Special Committee on the Beauharnois Power Project have the honour to present the following as their Second Report:—

Your Committee recommend that leave be granted them to employ counsel for the purpose of assisting in the investigation of the matters referred to them by the House.

All of which is respectfully submitted.

W. A. Gordon,
Chairman.

20

THIRD REPORT

Monday, June 29, 1931.

The Special Committee appointed to investigate the Beauharnois Power Project beg leave to present the following as their Third Report.

30 Your Committee recommend that they be given power to employ a secretary to assist counsel to the Committee in the investigation now proceeding, until the Final Report of the Committee is presented to the House.

Your Committee further recommend that they be given power to employ a firm of auditors to assist in the investigation now proceeding, until the Final Report of the Committee is presented to the House.

All of which is respectfully submitted.

40

W. A. Gordon,
Chairman.

FOURTH REPORT

Tuesday, July 28, 1931.

The Special Committee appointed to investigate the Beauharnois project beg leave to present the following as a Fourth Report.

Defendant's Exhibit in Warrant at Enquete

D.W.-2
Extract of Report of Special Parliamentary Committee on Beauharnois Power Project 19 Nov. 1931 (continued)

Second Report to the House of Commons 15 June 1931

Third Report to the House of Commons 29 June 1931

Fourth Report to the House of Commons 28 July 1931

1. On the 10th day of June, 1931, the House of Commons adopted the following Resolution; that Messrs. Dorion, Fiset (Sir Eugène), Gardiner, Gordon, Jacobs, Jones, Lennox, Mackenzie (*Vancouver Centre*), Stewart (*Lethbridge*), be a committee to investigate from its inception the Beauharnois project for the development of hydro-electric energy by the use of the waters of the St. Lawrence River so far as the matters referred to are within the jurisdiction of the Parliament of Canada, and without restricting the generality of the foregoing words in particular to investigate the matters referred to in the speech made in the House of Commons by Mr. Robert Gardiner, the honourable member for Acadia, on the 10th day of May last, as reported on pages 1875-1887 of Hansard, and to report from time to time their observations and opinion thereon; with power to send for papers, persons and records. Honourable W. A. Gordon was on the 15th of June, 1931, appointed Chairman of the Special Select Committee.

2. (1) The Committee sat from the 15th day of June, 1931, to the 22nd day of July, 1931, held on most of these days more than one session and examined 35 witnesses.

(2) On the 1st of July, the members of the Committee visited and inspected the site of the works.

There were filed with the Committee 129 exhibits.

3. Soulanges Section—St. Lawrence River

(1) The Soulanges section of the St. Lawrence River is that portion thereof lying between Lake St. Francis and Lake St. Louis which are some 14½ miles apart, and between which there is a fall of 83 feet. The average normal available flow of the river through this section is in the vicinity of 230,000 cubic feet per second for 50 per cent of the time, making possible a development of 2,000,000 horse power of commercial electric energy at 85 per cent load factor. The site is in close proximity to the City and Port of Montreal, and is conveniently located on what must soon be a waterway capable of accommodating ocean-going vessels. It has therefore great possibility for industrial development if cheap power is available.

(2) It is apparent that the Soulanges section thus presents an opportunity for hydro-electric development almost if not quite unique on the face of the globe. It is one of the greatest national resources in Canada, and in its natural state of great potential value.

4. History

(1) About the year 1800, Edward Ellice, the Seigneur of Beauharnois, erected a small "moulin Banal" at the mouth of the St. Louis River and in order to increase the flow of the river, in 1807 built a small feeder, four miles in length, from Lake St. Francis to the head waters of the River. This constituted the first diversion in the Soulanges section of the St. Lawrence River for power purposes. Whatever water rights were incidental to this feeder later passed into the hands of a family named Robert and apparently formed the basis of the application for power rights hereinafter mentioned. Details concerning the Robert 'rights' may be found in a judgment delivered in the Exchequer Court of Canada in the case of Robert vs. the King (9 Exchequer Court Reports). Reference may be had also to Exhibit No. 29, a memorandum prepared by Mr. R. C. Alexander.

10

(2) In 1855 the Government of the Province of Canada built a dyke, known as the Hungry Bay Dyke, as a protection against floods. It rebuilt the control gates of the feeder and in 1883 the Government of Canada deepened and widened the feeder and installed new gates in the dyke at the feeder entrance, considerable sums of money having been appropriated for this purpose.

20

(3) In 1902, J. B. Robert, as the grantee of the representatives of Edward Ellice, brought action against the Crown for a declaration of his rights and judgment was pronounced on the 17th October, 1904, deciding that Robert held substantial rights in the feeder. A compromise was arrived at by which the feeder was leased to the heirs of J. B. Robert by the Department of Public Works under date of the 28th December, 1909, for a period of 21 years. This was authorized by Order in Council, P. C. 2168, of the 9th December, 1909.

30

(4) In 1902 by Quebec Statute 2 Edward VII, Chapter 72 of the 26th March, 1902, the Beauharnois Light Heat and Power Company was incorporated with the power to enlarge and extend the feeder. As a consequence of the finding of the Exchequer Court that J. B. Robert was not the owner of the feeder, in 1910 another Provincial Act was passed giving the Company the right to build a new canal or feeder from any point on the original feeder to any point on the St. Louis River at or near the town of Beauharnois. This Company thus became possessed of certain rights in respect of the diversion of water for power

40

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Extract
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(continued)

Fourth Report
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28 July 1931
(continued)

purposes from Lake St. Francis. The shares of the Beauharnois Light, Heat and Power Company were all owned by W. H. Robert and other members of the Robert family. On the 3rd February, 1927, Mr. R. O. Sweezey obtained from the Roberts an option of all the issued capital stock of the Company and the Company's rights.

10

The Robert Interests

(5) W. H. Robert and the other Robert heirs received for the 2,000 shares of the Beauharnois Light, Heat and Power Company and such other rights, if any, as were then outstanding in them.

20

- (1) Cash \$1,520,000.
- (2) 200 fully paid part interests in the Beauharnois Syndicate.
- (3) 21,000 Class A shares of the Beauharnois Power Corporation.
- (4) 100 fully paid part interests in the Beauharnois Syndicate transferred from R. O. Sweezey account, which became 200 part interests in the Beauharnois Power Syndicate.

30

(6) In addition to the above-mentioned 400 part interests in the Power Syndicate owned by the Roberts, W. H. Robert held a further three hundred units in his own name on which he owed \$10,000 as at December 17th, 1929. For the 700 part interests, referred to above, the Robert heirs received, on the dissolution of the Syndicate, cheques aggregating \$95,000, together with 28,000 shares of the Class A Common stock of the Beauharnois Power Corporation Limited.

40

(7) In the same year, Mr. Sweezey applied to the Quebec Legislature for an amendment to the Act incorporating the Company permitting the construction of a canal between Lake St. Francis and Lake St. Louis. This application was refused.

(8) On the 17th March, 1927, the Beauharnois Light, Heat and Power Company applied to His Excellency the Governor General in Council for approval of a proposal to build a power canal "which can be readily adapted for thirty foot navigation requirements also" from a point on Lake St. Francis

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Extract
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(continued)

Fourth Report
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28 July 1931
(continued)

near the mouth of the St. Louis feeder to Lake St. Louis and to use so much of the water of the St. Lawrence River as can be taken through the proposed canal without interfering with navigation and without interfering with existing prior rights in the River St. Lawrence.” This application was not pressed.

- 10 (9) On the 17th January, 1928, the Beauharnois Light, Heat and Power Company applied to His Excellency the Governor General in Council “ for approval under the Navigable Waters Protection Act of its plans and site of proposed works herein described and for the right to divert forty thousand cubic feet per second (40,000 c.f.s.) from Lake St. Francis.”

- 20 (10) In March, 1928, by Statute of the Province of Quebec (18 George V Chapter 113), a new section, 11A, was added to the original Act of incorporation giving the Company the right to build a new canal from any point within two miles in a southwesterly direction from the mouth of the St. Louis feeder to any point on Lake St. Louis within one and a half miles in a westerly direction along the shore of Lake St. Louis from the mouth of the St. Louis River and giving the Company the right to expropriate lands not exceeding six arpents in width.

- 30 (11) On the 27th April, 1928, Mr. Swezey and his associates obtained the passing of an Order in Council by the Executive Council of Quebec authorizing the granting to the Beauharnois Light, Heat and Power Company of an emphyteutic lease, which lease was subsequently executed on the 23rd June, 1928, and which grants to the Beauharnois Light, Heat and Power Company the rights of the Province of Quebec to such part of the hydraulic power of the St. Lawrence River as can be developed between Lake St. Francis and Lake St. Louis through a derivation (six diversion) Canal on the right (southern) shore of a maximum flowing capacity of forty thousand cubic feet per second (40,000 c.f.s.), (the Province reserving the ownership and the free disposition of the surplus) for a period of 75 years from the 23rd June, 1928, at an annual rental of \$20,000 for the first five years and \$50,000 for each of the subsequent years and an additional payment of \$1 for each horse power year revisable after each period of ten years from the date the plant will have been put in operation. The Company agrees that at the expiration of the first five years it will have installed 100,000 h.p.; at the expiration of the sixth year, 200,000 h.p.; at the expiration of the seventh year, 300,000 h. p; and at the expiration of the tenth year, 500,000 h. p. The

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lease is granted without prejudice to Federal and Provincial laws concerning navigation, mines, fisheries and the driving of logs and also upon the understanding that the lessee “who is presently negotiating with the Federal Government shall obtain from the latter in so far as its rights are concerned, the authorization to divert a flow of forty thousand cubic feet per second (40,000 c.f.s.)” and in the event of the approval of the Federal Government not being obtained within twelve months, the lease may be cancelled by the Lieutenant Governor in Council.

Defendant's Exhibit in Warrant at Enquete

D.W.-2
Extract of Report of Special Parliamentary Committee on Beauharnois Power Project
19 Nov. 1931
(continued)

Fourth Report to the House of Commons
28 July 1931
(continued)

(12) Having obtained the amendment to its Charter and the lease from the Province of Quebec, the Company pressed its application to the Governor General in Council and on the 15th January, 1929, a hearing was held by the then Minister of Public Works and two other members of the Dominion Government, at which were considered protests from shipping companies and power interests.

(13) The application originally contemplated the diversion of the whole flow of the St. Lawrence River. To meet the opposition to the application at this hearing, Mr. Aimé Geoffrion, K. C., who appeared for the applicant, amended the application to read as follows:

The application of the Beauharnois Light Heat and Power Company now pending before the Governor in Council is purely and simply for the approval of plans for hydraulic development which will be subject to a condition that not more than 40,000 cubic feet per second shall be diverted from the river — from Lake St. Francis, to be returned to Lake St. Louis, and used for power purposes by the Company between these two points; and any condition that the Government may exact, in any wording satisfactory to the Government involving that limitation, is accepted in advance by the applicant. If the engineers think that the plans should be altered to meet this declaration the Company will submit to any such alteration.

(14) It should be noted that notwithstanding the limitation to the 40,000 c.f.s. the plans of the Company and the works so far as constructed clearly show and the officers of the Company and of the Department of Public Works admit that at all times there has been in contemplation the diversion of the whole flow of the River by the Company.

10 (15) A Committee of Departmental Engineers was constituted, composed of Mr. K. M. Cameron, Chief Engineer of the Department of Public Works, Mr. D. W. McLachlan, Engineer in charge of the St. Lawrence Waterway Project, Mr. J. T. Johnstone, Director Dominion Water Power and Reclamation Service and Mr. Louis E. Cote, Chief Engineer of the Department of Marine, and on the 30th January, 1929, made a report which is part of Exhibit No. 17, in the file of the Public Works Department 804-1-D.

Defendant's Exhibit in Warrant at Enquete

D.W.-2
Extract of Report of Special Parliamentary Committee on Beauharnois Power Project
19 Nov. 1931
(continued)

Fourth Report to the House of Commons
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(continued)

(16) Certain paragraphs of this report are as follows:

20 83. The 40 000 c.f.s. diversion project can be authorized without injury to existing navigation, *if the plans submitted are subject to modification and to regulations embodying the restrictions referred to in this report.*

30 89. Having regard to the application under the Navigable Waters Protection Act, now under consideration, your Committee are of the opinion that the site and works proposed in the plans and application filed by the said Company will not impede or interfere with navigation on the St. Lawrence River if the conditions attached hereto are met by the Company and, having consideration to the interest of the country as a whole we are of the opinion that if the works are constructed in accordance with such application and plans subject to the said conditions the same can be efficiently utilized in connection with and as part of any feasible and economical scheme which the Government of Canada may eventually decide upon for the deep waterway development of the St. Lawrence River.

40 14. The works proposed by the Beauharnois Company consist of the following:

1. A canal extending from Hungry Bay, at the foot of Lake St. Francis to Melocheville, at the head of Lake St. Louis, said canal being contained between banks which are 1,100 feet apart where hard materials are encountered, and 4,100 feet apart, where soft materials are encountered.
2. A power house at Melocheville equipped with ten 50,000 H. P. units.

- 10 3. Regulating works at Thorn Island and at Léonard Island. These are designed to hold up the level of Lake St. Francis, when a diversion of 40,000 c.f.s. from that Lake is made.
4. A series of works in the four rapid stretches of the river between Thorn Island and the head of Lake St. Louis. These are designed to maintain existing depths in channels, and also to maintain existing levels at the head and foot of the Cedar Rapids works.

15. The works proposed by the Beauharnois Company affect in varying degrees canal navigation river navigation, power developments, and future plans for a deep waterway.

- 20 (17) The Committee expressed disapproval of the remedial works and channel improvements and in Paragraph 28 stated that the Committee while offering the suggestions aforementioned can only recommend approval of these works subject to modifications to meet conditions as experience shows them to be necessary. In Paragraph 31, the Committee says, " the design of remedial works for use in the Rapids below Grande Island is not yet worked out in a satisfactory manner." It will thus be seen that the approval of this Committee was qualified and that certain of the plans were not in their view sufficient.

30 (18) On the 8th March, 1929, Order in Council P. C. 422 was approved by His Excellency the Governor General on the report from the Minister of Public Works. This Order in Council recites the application of the 17th January 1928, the deposit of plans, the grant of the emphyteutic lease and the report of the aforementioned Engineers.

40 (19) It sets out twenty-eight conditions, subject to which the recommendation for approval is made.

(20) The Committee, on the recommendation of the Minister of Public Works, submitted for His Excellency's approval, under Section 7, Chapter 140, Revised Statutes of Canada, 1927 — the Navigable Waters Protection Act — (Subject to the foregoing conditions and to such additions, improvements, alterations, changes, substitutions, modifications or removals as may be ordered or required thereunder). the annexed plans of works and the site thereof according to the descriptions and

plans attached in booklet form, which works were proposed to be constructed by the Beauharnois Light, Heat and Power Company *with respect to the diversion of 40,000 c.f.s. from Lake St. Francis to Lake St. Louis* in connection with a power canal to be built by the said Company along the St. Lawrence River between the two lakes mentioned.

10

(21) By reference to the large plan submitted with the application, and referred to in the Order in Council P. C. 422, and which is Exhibit No. 2A, it will be observed that there are two cross sections shown, one at Mileage 144-3 which shows a width between the embankments of about 1,100 feet, this being typical of the rock section of the work. This cross section also shows a width at the bottom of the deep section of the canal of something over 1,000 feet. In the cross section which is given as typical for each section, at Mileage 152-0 the width between the embankments is shown as about 4,100 feet, and the bottom of the deep section, approximately 27 feet, is shown as having a width of about 500 feet.

20

(22) Subsequently on the 29th July, 1929, modified plans were submitted to the Department of Public Works by the Company, and for these there were on the 22nd August 1930, certain other plans substituted. None of these has as yet received the approval of the Minister of Public Works, although the Chief Engineer of the Department has recommended them for approval. Plans submitted on the 22nd August, 1930, did include plans for the remedial works, but such plans were subsequently withdrawn and as the matter now stands there is not before the Department for approval any plan or plans of these remedial works.

30

(23) On the 10th February, 1931, the Beauharnois Light, Heat and Power Company applied to the Quebec authorities for a lease of a further 30,000 cubic feet per second and has now obtained this right.

40

(24) On the 25th June, 1929, an agreement was entered into between the Beauharnois Light, Heat and Power Company and His Majesty represented therein by the Minister of Public Works of Canada, Exhibit No. 43, which agreement incorporates the terms and conditions of P. C. 422.

(25) On the 6th November, 1929, the Governor in Council passed three Orders in Council, numbers P.C. 2201, 2202 and

2203, authorizing the transfer of three waters power leases from the Montreal Cotton Company to the Beauharnois Light, Heat and Power Company, and on the 3rd December, 1929, three agreements were entered into between the Montreal Cotton Company, the Beauharnois Light, Heat and Power Company, and His Majesty represented therein by the Minister of Railways and Canals of Canada (Exhibits 7A, 8A and 9A) by virtue of which the Beauharnois Light, Heat and Power Company acquired with the consent of His Majesty the right to use and divert into the canal to be built 13,072 cubic second feet presently used by the Cotton Company at or near Valleyfield under an effective head of about 10 feet.

(26) A difficulty may arise in connection with the three leases by reason of the fact that the Department of Public Works takes the position that under the Order in Council P.C. 422 there is only authority to grant an opening in the Hungry Bay dyke sufficient to take 40,000 cubic feet a second (See Evidence Page 363).

(27) On the 5th December, 1929, the Lieutenant Governor in Council of Quebec passed an Order in Council authorizing the diversion of this 13,072 feet.

(28) On the 20th March, 1930, the Charter of the Beauharnois Light, Heat and Power Company was further amended by enactment 20 George V, Chapter 136 (Quebec), which extended the expropriation powers of the Company so that for the purpose of building its new canal it might "expropriate such lands as may be necessary, not exceeding in all 21 arpents in width."

(29) In the final result, the Beauharnois Light, Heat and Power Company appear to have obtained from the Dominion of Canada Orders in Council purporting to authorize the diversion of 53,072 cubic second feet, subject to their obtaining permission to breach the Hungry Bay Dyke sufficiently for that purpose, and subject also to compliance with the conditions of the Orders in Council and the approval of plans.

(30) They have also obtained from the Province of Quebec a 75 year lease for 40,000 cubic second feet, authority from the Lieutenant Governor in Council of Quebec to acquire the use of 13,072 c.s.f. and in 1931 the right to use an additional 30,000 c.s.f.

5. Corporate Organization

10 (1) There were two syndicates prior to the incorporation of the Beauharnois Power Corporation Limited, the present holding company, the first being the Beauharnois Syndicate and the second the Beauharnois Power Syndicate. These will be referred to, sometimes, for convenience as the First Syndicate and the Second Syndicate, respectively.

The First Syndicate

(2) About the 12th May, 1927, Mr. Sweezey organized the Syndicate known as the Beauharnois Syndicate, having 5,000 units or part interests. This Syndicate existed until the 4th April, 1928, at which date the holdings were as follows:—

	Member	Number of part interests	Issue price		Amount
			\$	c.	
	Blaiklock, S. Turnstall	25	100.00		2,500
	Credit Generale du Canada	800	37.50		30,000
	Dobell, Wm. M.	50	100.00		5,000
	Geoffrion, Aime P.	200	100.00		20,000
	Griffith, Hugh B.	150	100.00		15,000
30	Ibbotson, Ivan L.	25	100.00		2,500
	Molson, F. S.	350	45.71		16,000
	Moyer, L. Clare	800	37.50		30,000
	McGinnis, Thos. A.	100	100.00		10,000
	Newman, Henry	50	100.00		5,000
	Newman, Sweezey & Co., Ltd., In Trust	1,050	42.86		45,000
	Robert, Wm. H.	100	100.00		10,000
	Shortt, Dr. Adam	10	100.00		1,000
	Stadler, John	100	100.00		10,000
	Sutherland, Wm.	25	100.00		2,500
40	Steele, R. W.	250	100.00		25,000
	Sweezey, R. O.	900			30,000
	Kenny, T. Fred	15	100.00		1,500
		<u>5,000</u>			<u>261,000</u>

(3) The units subscribed for in the name of the Credit Generale du Canada were subscribed and held for Senator Donat Raymond.

Defendant's Exhibit in Warrant at Enquete

D.W.-2
Extract of Report of Special Parliamentary Committee on Beauharnois Power Project 19 Nov. 1931 (continued)

Fourth Report to the House of Commons 28 July 1931 (continued)

(3A) 1,000 of the units in the name of Newman, Sweezy & Company, Limited, were held for Frank P. Jones and 50 for Fred M. Connell. The Honourable Walter G. Mitchell had a half interest in Mr. Jones' holdings.

10 (4) The units in the name of L. Clare Moyer are said to have been subscribed on behalf of the late Winfield Sifton. Senator Wilfrid L. McDougald states that on the 18th May, 1928, he agreed to acquire them, the transaction being completed about the end of that month.

(5) The units in the name of R. W. Steele were held for the Dominion Securities Corporation.

20 (6) The price to subscribers Raymond and Moyer was \$37.50 per unit and Frank P. Jones acquired 800 of his and Mr. Mitchell's units from Newman, Sweezy & Company, Limited, at the same price.

(7) Of the 900 units in the name of R. O. Sweezy, 600 were issued pursuant to the syndicate agreement for consideration other than cash and the balance of 300 subscribed for at \$100 per unit.

30 (8) The 350 units subscribed by F. S. Molson were at an average price of \$45.71 per unit.

(9) The Newman, Sweezy & Company, Limited, units were at an average price of \$42.86 and all other subscribers paid at the rate of \$100 per unit.

(10) The average price of the 4,400 units sold for cash was \$59.32.

The Second Syndicate

40 (11) On the 4th April, 1928, the Beauharnois Power Syndicate was organized and acquire the assets of the Beauharnois Syndicate, the consideration being two units of the new Syndicate for each one unit of the old Syndicate with the right to unit holders to subscribe for as many units in the new Syndicate as each already held therein at \$100 per unit, being the par value thereof.

(12) The members of the Beauharnois Power Syndicate holding 100 or more units or part-interests, as on the 17th December, 1929, were as follows:—

	Members	Number of Part Interests	Defendant's Exhibit in Warrant at Enquete
	Gerald E. F. Aylmer & E. J. Mackell	100	
	S. Turnstall Blaiklok	100	
10	A. L. Caron	221	
	Fred M. Connell	200	
	H. V. Cullinan & D. M. Carmichael	250	
	William M. Dobell	200	
	Dominion Securities Corporation Ltd.	1,492	
	John P. Ebbs	5,200	
	Aimé Geoffrion	800	
	Hugh B. Griffith	600	
	Hanson Brothers Inc.	110	
	C. J. Hodgson & Co.	175	
20	Angus W. Hodgson	740	
	J. Charles Hope	130	
	Jones Heward & Co.	210	
	Thomas A. McGinnis	450	
	F. Stuart Molson	465	
	F. W. Molson	100	
	Montreal Trust Co.	8,000	
	Henry Newman	395	
	Newman, Swezey & Co. Ltd.	410	
	O'Brien & Williams	101	
30	Joseph H. Paull	100	
	W. C. Pitfield & Co. Ltd.	152	
	Hon. Donat Raymond	351	
	Ritchie (R. L.) and Gilmore (K. F.) in trust	350	
	Wm. H. Robert, Joseph A. Robert, Miss Sarah M. Robert, personally, and as executors of the late Sarah Robert	200	
	William H. Robert	366	
	William Sutherland	100	
	Robert O. Swezey	1,000	
40	Part interest holders of less than 100 part interests	1,932	
		<u>25,000</u>	

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All of these with the exception of part interests exchanged for holdings of part interests in the first syndicate, and the 2,000 part interests that were used to purchase the shares of the Sterling Corporation, and also except 200 units issued to the Robert heirs, were paid for at the rate of \$100 per part interest. These 2,000 units are included above in the holdings of John P. Ebbs.

The 5,200 units in his name were held for Hon. W. L. McDougald, and will be referred to hereafter.

12A) The capital of the Beauharnois Syndicate consisted of 30,000 units at the par value of \$100 each, of which 25,000 were issued.

10

(13) The tangible assets of the first or Beauharnois Syndicate totalled not over \$261,000 as on the 4th April, 1928.

Beauharnois Light, Heat and Power Company

14) This Company has been in existence since 1902, as previously mentioned. The control passed to Mr. Swezey and his associates on or about the 3rd February, 1927. Under the agreement of that date (Exhibit No. 60) and according to the Minutes of the meeting of the directors held on that day, Mr. H. B. Griffith was elected a Director and Secretary of the Company. It was not, however, until the 13th June, 1927, that a Board of Directors consisting of Mr. Swezey and his associates including Mr. R. W. Steele, representing the Dominion Securities Corporation, took charge of the Company's affairs.

Beauharnois Power Corporation Limited

15) This Company was incorporated on the 17th September, 1929, by the Ottawa legal firm of McGiverin, Haydon and Ebbs by letters patent under the Dominion Companies Act. It was granted wide powers of acquisition and development of natural resources and in connection with the production, use, distribution or disposal of energy, power, water light or heat.

16) The authorized capital stock is five Management Preferred shares without nominal or par value; 1,799,995 Class A Common shares without nominal or par value and 3,200,000 Class B non-voting Common shares without nominal or par value.

40

(17) The holders of the five Management Preferred shares during the ten years succeeding the date of the letters patent have the exclusive right to vote for the election of Directors of the Company. At the expiry of this period these automatically become Class A Common Shares.

(18) At a meeting of the Company on the 31st October 1929 held at the office of Messrs. McGiverin, Haydon and Ebbs in the City of Ottawa, a proposed memorandum or agreement, dated the 31st October 1929, between the Beauharnois Power

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Syndicate, the Marquette Investment Corporation and the Beauharnois Power Corporation Limited, was submitted for the acquisition by the Company or its nominees of all the undertakings and assets of the Syndicate except unpaid or uncalled balances in respect of purchase of units or part interests of the Syndicate. The consideration was

10

- (a) \$4,750,000 cash
- (b) the assumption by the Company of the liabilities and obligations of the Syndicate and
- (c) the undertaking by the Corporation to defray expenses not exceeding \$10,000 of the winding up of the affairs of the Syndicate and the distribution of its assets amongst the members.

20

The Syndicate, on the other hand, agreed to subscribe at \$1 per share for 1,000,000 Class A Common shares of the Company.

(19) It was resolved that this memorandum of agreement be approved and executed on behalf of the Company.

30 (20) The Directors present at this meeting were O. F. Howe, and D. K. McTavish, Barristers of Ottawa, and the Misses Belle Fraser, Lila Brennan, Edythe H. O'Malley, Bessie Con-
niffe, Lillian Dell, Elsie M. Burritt, Gwen Gunderson, Kathleen Harvey and Mary H. Kelly, stenographers, all of the City of Ottawa.

40 (21) At this same meeting, according to the minutes, there was authorized a proposed agreement, dated the 31st October 1929, between Beauharnois Power corporation Limited of the first part and Newman, Sweezey & Company, Limited and the Dominion Securities Corporation of the second part, providing for the creation and issue of thirty year 6 per cent collateral trust sinking fund bonds of the Company to the authorized principal amount of \$30,000,000 and for the sale to Newman, Sweezey & Company, Limited and the Dominion Securities Corporation of the said bonds, together with 770,000 Class A Common shares of the Company for the price of \$27,000,000 and accrued interest of said bonds. This agreement was subsequently ratified by the shareholders at a meeting held on the same day and at the same place, the above named Directors being all of the shareholders and all being present.

(22) The agreement were subsequently executed and carried out. The Beauharnois Power Syndicate was dissolved as of the 17th December, 1929, its tangible assets at that time consisting of the amount paid in — aggregating for the two Syndicates \$1,561,000. This includes unpaid balances of subscriptions which on the final settlement were deducted from the 10 amounts payable to the individual members and \$20,000 par of units issued to Robert in part payment for Robert's rights.

(23) The tangible consideration received in respect of the 25,000 part interests issued by the Beauharnois Power Syndicate may be shown thus:

Particulars	Part Interest	Amount
		\$
20 Issued to members of Beauharnois Syndicate for the acquisition of the undertaking of that Syndicate.....	10,000	261,000
Issued for cash consideration	13,000	1,300,000
Issued for the capital stock of Sterling Industrial Corporation Limited.....	2,000
	<u>25,000</u>	<u>1,561,000</u>

30 For purposes of exactness, it should perhaps be noted that the above amount of \$1,300,000 includes \$20,000 in respect of 200 part interests of Beauharnois Power Syndicate issued as fully paid to the Robert Heirs in part consideration of the purchase of the shares of Beauharnois Light, Heat and Power Company, etc.

(24) As a result of the agreement above mentioned, the Syndicate members receive for each part interest \$150, and 40 Class A shares of the Beauharnois Power Corporation Limited, which Class A shares are set up in the books of the Company at \$1 per share and have had a market value as high as \$17 per share, the low price being \$4 per share.

(25) On the above basis the cash profit paid to the members of the Syndicate would amount to \$2,189,000, to which should be added 1,000,000 Class A shares, which were purchased by an additional \$1,000,000.00 part of the consideration for the transfer of the Syndicate assets. The above mentioned \$2,189,000 was

paid out of \$27,000,000 received from the sale of the bonds and shares under the agreement with Newman, Sweezy and Company, Limited, and the Dominion Securities Corporation.

10 (26) *The Marquette Investment Company* is a company controlled by Newman, Sweezy & Company, Limited, and organized for the purpose of acting as trustee and depository and dispersement agent of the Beauharnois Syndicate. (Exhibit No. 59).

Subsidiary Companies

(27) There are also the following wholly owned subsidiaries of the Beauharnois Power Corporation Limited, in addition to the *Beauharnois Light, Heat and Power Company*, namely:—

20 *The Beauharnois Construction Company*, having charge of the actual work of construction under contract; and the

Beauharnois Transmission Company, having to do with the actual transmission lines and the transmission of the electric energy to be produced; the

30 *Beauharnois Land Company*, in which is vested the lands of the Company, including land acquired in addition to all that required for actual canal construction and which it is hoped to dispose of for industrial sites, residence and other purposes in connection therewith, the

Beauharnois Railway Company, organized to build and operate the construction railway; the

40 *Marquette Construction Company*, a Delaware corporation, organized to purchase in the United States and lease to the Canadian Construction Company certain machinery which it is hoped to return duty free to the United States after use on the canal, where it is said to be more readily saleable.

6. Authority for Construction Work

(1) According to Mr. Henry, actual construction on the north embankment was commenced on the 7th August, 1929, in the vicinity of Lake St. Francis, and on the south embankment on the 23rd April, 1930.

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(2) Condition 11 of Order in Council P. C. 422 provides that the Company shall not commence the construction of the works until detailed plans of construction "..... have been submitted and approved of by the Minister....."

10 (3) The work as it is being carried out is not in accordance with the plans referred to in this Order in Council in certain important respects, viz.:

(1) The banks are about 3,300 feet apart, whereas the original plans show a width of about 1,100 feet in the rock section and 4 100 feet in the earth section.

20 (2) The width at the bottom of the navigation part of the canal is shown in the original plan, Exhibit N. 2A, in one place as considerably less than 600 feet, and in another at considerably more, whereas the actual 27 foot channel is being dug at a bottom width of 600 feet.

(3) The entrance to the canal from Lake St. Francis according to the last plan fyled on the 22nd August, 1930, and as actually being excavated, is some 3,000 feet northerly and nearer the head of the Cedar Rapids than shown on the Plan, Exhibit No. 2A.

30 (4) The remedial works shown on the original plans have not been approved either by Order in Council or by the Minister.

(5) The Hungry Bay dyke has been breached and a substitute feeder for the old St. Louis feeder dug on the south side of the proposed canal wholly without governmental authority.

(6) Certain questions have been raised as to the rights to pass Order in Council P. C. 422:

40 (1) Does the Navigable Waters Protection Act give the Governor General in Council the right to authorize the diversion of the water from a navigable river?

(2) Can any of the powers given under that Act to the Governor General in Council be delegated to a Minister, or to anyone ?

(3) Is the right of the Governor General in Council limited to the approval of plans already submitted, i.e., can the Governor General in Council approve of plans to be submitted in the future.

(4) Can the Governor General in Council approve of the plans after the work has been done or partly done, or in the alternative is his power limited to approval of work the plans of which have been submitted before the commencement of the work.

10 (7) Your Committee finds as a fact that the work of construction is proceeding according to plans which have not received the approval of the Governor in Council or of the Minister of Public Works.

7. Hungry Bay Dyke

(1) The Province of Canada in 1856 and subsequent year, constructed a dyke along the shore of that part of Lake St. Francis known as Hungry Bay. This dyke at Confederation passed to the control of the Dominion of Canada, and it has since been maintained through the agency of the Federal Department
20 of Railways and Canals. It will be necessary before water can be diverted to the canal from Lake St. Francis that permission be obtained from the Crown in the right of the Dominion of Canada to breach this dyke.

(2) An application was made on the 29th day of July, 1929 for a conveyance to the Company of that part of the dyke opposite the lands owned by the Beauharnois Company to the extent of 9,064 feet measured along the dyke. This application is now pending.

30

8. Ambiguity in Order in Council

(1) Condition Number 3 of Order in Council P. C. 422 provides that "the diversion of water shall not at any time exceed the maximum quantity of 40,000 cubic feet per second." If this means that at no time can the quantity of water diverted exceed 40,000 cubic feet per second, it is doubtful whether 500,000 h.p. can be developed by the use of that quantity of water, even adding thereto the 13,072 cubic feet obtained by assignment of the Montreal Cotton Company's lease.
40

(2) Your Committee is of the opinion that any ambiguity in this respect should be removed.

9. Control of Water

(1) The present plans do not provide for the control of the water at the entrance to the proposed canal. It has been stated in evidence that for this purpose and for reasons of safety, some method of control should be adopted, whether by way of a dam and gates, or a control lock at this point.

(2) Considerable time was spent by Mr. Henry in an endeavour to establish that proper control could be maintained by the Dominion authorities at the gates leading to the water wheels.

10 (3) Your Committee was impressed with the idea that there should be some means of control at the entrance to the canal.

10. Site of Works

(1) The topography of the locality and the ground at the site of the works are of such a character as to render possible and of comparatively easy attainment the large power development contemplated at a quite reasonable cost.

20 (2) Your Committee is of the opinion that from the physical standpoint a power development on the south shore of the Soulanges section of the St. Lawrence River is fundamentally sound and that with proper safeguards and regulation a navigable canal can be developed synchronously with the power development and utilized as a link in the St. Lawrence Great Waterway, at a reasonable cost to the Dominion of Canada for locks and bridges.

30 (3) While the present plans are not in accordance with the proposals of the International Joint Board for this section of the river mentioned in their Report of 1926, nevertheless, in view of the amount of money already expended, and of the possibility, as we believe, of the utilization of this canal for navigation purposes, we think that from the navigation standpoint the scheme should not be abandoned.

11. Robert A. C. Henry — Vice President and General Manager

40 (1) Mr. Henry is an engineer of considerable imagination. He first became interested in the canalization of the Soulanges section of the St. Lawrence River as early as 1922 or 1923. He then discussed the project with Senator McDougald.

(2) This resulted in an arrangement between them by which Mr. Henry was to make an investigation, Senator McDougald agreeing to finance him up to \$10,000. As a result, a Company called the Sterling Industrial Corporation, Limited, was formed in the office of Messrs. McGiverin, Haydon and Ebbs (Exhibit No. 63). The incorporators were Honourable

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Andrew Haydon, John Parsons Ebbs, and Mary Hilda Kelly, Belle Fraser and Lila Brennan, stenographers of the City of Ottawa. By the letters patent dated the 5th July, 1924, the Company was empowered to carry on the business of an electric light, heat and power company in all its branches and incidentally thereto has wide powers. The authorized capital consist of 500
10 shares without nominal or par value and the letters patent provide that the Company shall carry on business with a capital of \$2,500, of which only five shares have ever been issued.

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(3) On the same day — the 5th July 1924 — this Company made application to the Department of Railways and Canals for the right to divert from the St. Lawrence River 30,000 c.s.f. at Lake St. Francis and to use the same for power purposes. On the 7th July, 1924, a similar application was made to the Department of Public Works. The Company never acquired any rights
20 and so far as its Minutes show never attempted to do anything other than file these applications. To each was attached a plan, Exhibit No. 62, dated Ottawa, 20th June, 1924, and signed John B. McRae, engineer, and having this note on its face, "This plan has been traced from plans made by the Department of Railways and Canals."

(4) Mr. Henry joined the Department of Railways and Canals in 1912 as Inspecting Engineer of Railways and Structures. He remained in various capacities with the Department
30 until 1923 when he joined the Canadian National Railways on the 1st March of that year as Director of Bureau of Economics. He remained with the Railways until the 14th February, 1929, when he was appointed Deputy Minister of Railways and Canals, on the recommendation of the Prime Minister, by Order in Council, P. C. 192 (Exhibit 76). He held this position until the 10th March, 1930 and was appointed General Manager of the Beauharnois Power Corporation, Limited, by agreement, dated the 10th March, 1930. His appointment to the Beauharnois
40 Company had evidently been under discussion for some time for Senator McDougald says (Evidence, page 960) that there was an arrangement with him (McDougald) and Mr. Sweezey that Mr. Henry would go in with Beauharnois as soon as he could get away from the Canadian National Railways and that that was some time in 1929 and prior to the 13th January of that year, so that Mr. Henry accepted the position of Deputy Minister at a time when he had an arrangement to go in with Beauharnois. Senator McDougald says he was surprised when he saw a report in the newspaper of Mr. Henry's appointment as Deputy Mi-

nister — so surprised that he telephoned from London to Canada “because my understanding with Mr. Henry before I left Canada was that he would take up his duties with the Beauharnois Company with Mr. Swezey and myself just as soon as he could make arrangements to get away from the National Railways.”

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- 10 (5) It is worthy of note that the three Orders in Council numbered respectively 2201, 2202 and 2203, approving of the transfer of the leases from the Montreal Cotton Company all dated the 6th November, 1929, each contain the following:—

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The Minister, on the advice of the Chief Engineer of the Department, *concurred in by the Deputy Minister*, recommends that authority be given, etc.

- 20 (6) Evidence was submitted that Mr. Henry had not been consulted about any matters pertaining to Beauharnois. His position, however, was to say the least, quite anomalous.

- 30 (7) The beneficial ownership of the Sterling Industrial Corporation Limited was and always has been in Senator McDougald and Mr. Henry until the transfer thereof to the Beauharnois Power Syndicate pursuant to the agreement dated the 18th December, 1928. By that agreement, Mr. Henry and his partner, Senator McDougald, were to receive 2,000 units in the Beauharnois Power Syndicate, conditional on the passing of P.C. 422. It was not until August, 1929, that the actual interests of Senator McDougald and Mr. Henry were agreed upon at 50 per cent each but each affirm that it was always understood that they were partners in the transaction, so that during all of the time Mr. Henry was Deputy Minister of Railways and Canals, he had a very substantial interest in the Beauharnois Power Syndicate or, after the 17th December, 1929, in the Beauharnois Power Corporation Limited, an interest out of which he made quite substantial profits as will hereafter appear. He was Deputy Minister of Railways and Canals at the time of the passing of the Order in Council P.C. 422, and was deeply interested in securing the approval of the plans of the Beauharnois project and your Committee is asked to believe that he took no active interest in securing the approval of the Governor in Council. One can easily imagine, however, that in his position as Deputy Minister he threw no obstacle in the way, once the obstacle or nuisance value of the Sterling application had been determined.

- 40 (8) Mr. Henry, at his appointment to the Managership of the Beauharnois Power Corporation Limited, also obtained

8,995 shares of that Company at \$1 per share. Your Committee is also satisfied that Mr. Henry participated to some extent at least in the withdrawal of Company's funds for political purposes.

10 (9) Mr. Henry's connection with Senator McDougald, and their success in despoiling the Company of a large sum of money or money's worth for something that on the evidence was entirely worthless, does not commend him to your Committee as a fit and proper person to continue in the management of this great public utility.

12. Mr. R. O. Sweezy

20 (1) Mr. Sweezy seems to have been the principal promoter of the Beauharnois project. He is now President of the Beauharnois Power Corporation Limited, and is a civil engineer by profession.

(2) In 1912 he was engaged by the Royal Securities Corporation to investigate certain waters powers, and in 1913 was instructed by the present Lord Beaverbrook, the then President of the Royal Securities, to investigate the water power now known as Beauharnois. A copy of his report is filed as Exhibit No. 123.

30 (3) Mr. Sweezy states that in 1925 or 1926 Mr. Narcisse M. Cantin brought the matter again to his attention and it is stated by Mr. Cantin in his evidence, and not denied by Mr. Sweezy, that from the 4th April, 1925, to December of 1926, Mr. Sweezy was chief engineer of the Transportation and Power Corporation Limited, the Cantin company.

40 (4) As early as the 14th October, 1926, Mr. Sweezy had conceived the idea of forming a syndicate to take up the Beauharnois project, and his ideas of how to go about it are outlined in a letter written by him to Mr. Alderic Raymond, brother of Senator Raymond, on that date. In this letter he states: "To place ourselves in possession of all the rights essential to this undertaking we should pursue the following course:—

"1. Acquire the Robert rights which are fundamental in regard to an initial grant which he holds to divert 40,000 c.f.s. He also holds rights granted by charter to expropriate for the proposed canal route. Numerous other incidental rights are included in his holdings which he is anxious to sell, though he wishes to participate partially in the organization syndicate.

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2. Acquire the control of the St. Lawrence Waterways and Power Company stock, which is available to us, and upon which we have already a substantial hold.

10 3. Enlist with our syndicate two or three individuals, who in addition to providing some cash as their fair share, can assist us in getting our rights extended or enlarged so as to develop the entire available flow of the St. Lawrence of this point. As the whole situation is entirely within the Province of Quebec, our influence has to be exerted only in Canadian political circles—that is at Ottawa and at Quebec. He further says: "In connection with personnel of syndicate, I have in mind the individuals we should enlist with us. I have hesitated to accept anyone definitely until certain that each and every one is persona grata to all others."

20 (5) Asked as to who the persons he had in mind were, he at first could not remember. When later recalled and confronted with his answers on a former occasion under oath, he admitted that they were Senator Raymond, Honourable W. G. Mitchell, and Frank P. Jones, the latter of whom was desirable only for his ability to help with the finances.

30 (6) It is obvious therefore, that from the very threshold of this undertaking he had in mind that he had to associate with him men who could exert influence in political circles at Ottawa and at Quebec. How well he succeeded remains to be seen.

(7) He states that he had talks with Senator McDougald, "and I was trying to get from Senator McDougald his view as to what the difficulties would be in overcoming the political work to be done." This was probably in 1925 or 1926.

40 (8) Mr. Sweezey succeeded in enlisting the help of all these gentlemen, first Senator Raymond, who was a subscriber for 800 part interests or units in the first syndicate though the Credit Generale du Canada; Honourable Walter Mitchell, who was an equal partner with Mr. Jones in the units purchased by Mr. Jones from Newman, Sweezey & Company; and Mr. Jones himself; and ultimately Senator McDougald, who agreed to join the ranks on the 18th May, 1928.

(9) On the formation of the first syndicate Mr. Sweezey obtained 600 part interests for his activities up to that time, and he subscribed and paid for 300 units at \$100 per unit. On the transfer of the assets to the second syndicate, his holdings doubl-

ed in number, and at the period of distribution, as of the 17th December, 1929, he appears by the books to have been the holder of 1,000 part interests.

10 (10) Mr. Sweezey's idea from first to last seems to have been that in order to secure the approval of the authorities at Quebec and Ottawa, it was necessary to deal with a lavish hand with his own moneys and those of the companies concerned. In pursuance of this idea he proceeded to employ a formidable array of legal talent, resulting ultimately in the payment up to the 31st December, 1930, of so called legal fees amounting to \$436,000.

20 (11) The bills of some of these legal gentlemen show that the work was not a strictly legal nature, and consisting to a certain extent of lobbying, and in fact one fee of \$50,000 to Senator Haydon's firm was made contingent upon the Beauharnois Light, Heat and Power Company obtaining approval of its plans.

(12) Mr. Sweezey was also, in association with Mr. H. B. Griffith and at least two other unnamed directors, the instrument by which approximately \$300,000 of Company funds were misused, as he alleges for campaign purposes. This is surely contrary to the purposes for which these moneys were borrowed from the public through the issue and sale of the Company's bonds.

30 (13) Your Committee considers that Mr. Henry as General Manager and Mr. H. B. Griffith, as Secretary-Treasurer, and Director of the Beauharnois Light, Heat and Power Company, and other subsidiaries, are involved in this misuse of Company funds. Mr. Sweezey's further activities in respect to campaign funds will be dealt with in a separate paragraph.

40 (14) According to the evidence of Senator McDougald, Mr. Sweezey and he had arranged that Mr. Henry should join the Beauharnois Company and the matter had been discussed prior to the death of the then Deputy Minister Graham Bell, which occurred on the 13th January, 1929. It is, therefore, obvious that Mr. Sweezey must have released him from his arrangement and agreed to Mr. Henry's joining the Department of Railways and Canals at a time when he, Mr. Sweezey, knew that Mr. Henry had arranged to become interested as an employee of Beauharnois and this at a time when Mr. Henry, as the partner of Senator McDougald in the Sterling transaction, had acquired a substantial interest in the Beauharnois Power Syndicate.

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(1) Mr. R. O. Sweezy had admitted in his evidence that he was responsible for the following contributions:—

(2) For contributions for political purposes aggregating 10 \$864,000 and which includes the sum of \$125,000 paid to John Aird Jr., of which mention will be made hereafter. Of this total, approximately \$300,000 were Company funds and the balance was raised by Mr. Sweezy personally and probably at least in part came out of the large profit made on the sale of the Syndicate assets to the Beauharnois Power Corporation, and, therefore, indirectly out of the moneys borrowed on the sale of the Company's bonds. Mr. Sweezy states (Evidence page 821) that he contributed personally to the Liberal Party "somewhere around 20 \$600,000 to \$700,000. This large sum was paid to Senators Haydon and Raymond. On page 822, Mr. Sweezy says that the total contributions to the Liberal party would run up well over \$700,000 and in this there was included a sum stated by Mr. Sweezy to be in the neighbourhood of \$100,000 and by Mr. Griffith to be about \$120,000, which were Company funds.

(3) Mr. Sweezy is unable to state how much was paid to them but he and Mr. Griffith agree that out of the sums paid to Senator Raymond, the Liberal Party of the Province of Quebec was to be taken care of. Mr. Sweezy says that he has no 30 knowledge of how much went to the Province of Quebec nor does he tell how much of the total amount was paid each of these two Senators. He, however, ventures the statement that the amount received by Senator Raymond might have been in the neighbourhood of \$200,000.

(4) On page 822, Mr. Sweezy is asked the question. "Then you spoke of contributions to the Conservative party. What amounts were they and to whom were they paid"? Answer 40 —"They were small amounts. Some of them were to help personal friends whom I had been helping, as a matter of fact, for a number of years in their campaign work." Mr. Sweezy spoke of contributing \$6,000 to the campaign of Mr. Leslie Bell and Mr. Bell in his return under the Dominion Elections Act is said to have published this contribution as required by Section 80 of such Act. Contributions were also made, according to the testimony of Mr. Sweezy and Mr. Griffith, to General McCuaig, understood to be a collector for the Conservative Campaign Fund in Montreal, of \$10,000. Mr. Sweezy is not clear as to whether there were any further contributions to the campaign fund of this party. Mr.

Griffith, however, states that there was a contribution to Mr. Cartier and that the total contributions to Conservative candidates or party organizers were \$25,000. Mr. Sweezey, on the other hand, thinks that the amount was \$30,000 but refers to Mr. Griffith for the correct amount.

10 (5) Contributions were also made to Mr. W. R. P. Parker, President of the Ontario Liberal Association amounting to about \$3,000. There was also a suggestion with reference to a proposed contribution to the Conservative Federal Campaign fund through its organizer, General McRae. This, however, was not made. Asked if the reason for its not having been made was that Mr. Bennett would not accept it, Mr. Sweezey in his reply said "I do not know that but I presume that may be so".

20 (6) There appears also to have been a contribution of \$20,000 to Mr. Cartier on behalf of the Conservative Party of the Province of Quebec, but it does not appear clearly whether this was included in the sum of \$30,000 above mentioned or in addition thereto. This item of \$20,000 appears in a cheque of the Marquette Investment Corporation, dated the 7th March, 1931, payable to cash, endorsed by Mr. Sweezey and charged to accounts receivable, in respect thereto Mr. Sweezey says "I think probably that must be the item contributed to the Conservative Party in Quebec."

30 (7) Asked by Mr. Jacobs who got that money, the answer was "That went to the funds of the Conservative Party." Asked who received the money Mr. Sweezey states "Mr. Cartier, I understand it was on behalf of Mr. Houde's party."

The John Aird Jr. Payment

40 (8) This leaves but one further item to be discussed,—the sum of \$125,000 paid by Mr. Griffith at the direction of Mr. Sweezey to Mr. John Aird, Jr., of Toronto. This sum as to \$120,000 thereof, was procured by a rather ingenious device; Mr. Griffith purchased 8,000 shares of the Marquette Construction Company, at \$5 a share, for \$40,000, and immediately purported to sell them to the Beauharnois Construction Company at \$20 a share, for \$160,000, and took out the difference, \$120,000, in cash which he used to purchase through Newman Sweezey & Company Dominion Bonds of Canada at a par value of \$120,000.

(9) Mr. Sweezey says (Page 823): "I know we made a contribution to some one who represented himself as standing up for an Ontario fund of this kind," and that this representation

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was made to him by Mr. John Aird, Jr. Asked what Mr. Aird said, Mr. Sweezy's answer is: "That he thought a contribution would be in order to the Ontario Conservative Party because we would probably be having a lot more dealings with the Ontario people and that gratefulness was always regarded as an important factor in dealing with democratic governments."

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(10) The delivery of the bonds is said to have taken place some substantial time after the last Ontario general election, and the conversation between Mr. Aird and Mr. Sweezy is said to have occurred some months before the delivery of the bonds, which were handed over on the 6th December, 1929.

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(11) Mr. Aird says in his evidence that the first interview with Mr. Sweezy took place at the Ritz Carlton Hotel, Montreal, in the early Fall of 1929, at a time when the Beauharnois organization was negotiating for a contract for the sale of electric power to the Hydro-Electric Power Commission from whom they obtained a contract for 250,000 h.p. at \$15 per h.p., on or about the 21st November, 1929.

(12) Mr. Aird, evidence page 844) is asked whether the receipt of these bonds was on behalf of any political party, and his answer is "No." Asked on whose behalf it was, his answer is: "On my own." Asked this question: "Was it on behalf of anybody, or was anybody interested but John Aird Junior personally in these particular bonds to the extent of \$120,000"? his answer is: "No, sir, decidedly not."

30

(13) On page 847 of the Evidence there appears the following:

By Mr. Jacobs:

Q. It was not your intention to turn this over to the organization at all?—A. No, I did not give Mr. Sweezy any communication that I was going to do so.

40

Q. You swear to that?—A. Yes.

(14) On page 849, by Mr. Jacobs:

Q. You would swear you did not, directly or indirectly, represent to Mr. Sweezy that you were an emissary of the Conservative political organization in Toronto?
—A. Yes.

Q. You swear to that?—A. Yes, I do.

(15) Mr. Aird states that he belonged to no political organization of any kind and had not taken any interest in party

politics, and also that the arrangement between him and Mr. Sweezy was purely a personal one between the two of them.

10 (16) Whether the truth lies on one side or the other, it is clear there is no evidence before the Committee that would indicate that any of these bonds have reached any political organization, or any person authorized to receive campaign funds.

(17) Mr. Aird's statement is supported by the evidence of various Bank officials as per details set out hereunder. Mr. Aird further stated that the coupons were personally collected by Mr. Aird. (Evidence Page 974).

20 (18) The evidence establishes that the \$120,000 par of bonds handed to Mr. Aird by Mr. Griffith on the 6th December, 1929, have been dealt with as follows:

(A) Held for safekeeping or as collateral by the Royal Bank of Canada, the Canadian Bank of Commerce, and the Bank of Nova Scotia	\$ 65,000
(B) Sold	5,000
(C) Exchanged	50,000
	<hr/>
	\$ 120,000

The detail of the bonds exchanged is:—

30 (1) \$10,000 for £3, 100 G.T.P. 1962	£ 3,100
£2,600 held at Canadian Bank of Commerce account Concrete Masonry	£ 2,600
Sold	500
	<hr/>
	£ 3,100

40 (2) \$10,000 for \$11,000 Province of British Columbia 1955	\$ 11,500
Later exchanged for \$11,500 Province of Alberta 1957 —of which held at Canadian Bank of Commerce for sake keeping	\$ 9,500
Held at Royal Bank, account Champlain Construction Co.	2,000
	<hr/>
	\$ 11,500

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 Extract of Report of Special Parliamentary Committee on Beauharnois Power Project 19 Nov. 1931 (continued)

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(3) \$10,000 for \$11,000 Toronto Harbour Commission 1953		\$ 11,000
Held at Canadian Bank of Commerce for sake keep- ing	\$ 5,000	
Exchanged for Eglinton Hunt	1,000	
Sold	5,000	
	<u>\$ 11,000</u>	

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(4) \$10,000 for \$12,000 Province of Saskatchewan 1957		\$ 12,000
Held at Aird, McLeod & Co. as collateral	\$ 4,000	
Held at Royal Bank, account Champlain Construction	8,000	
	<u>\$ 12,000</u>	

30

(5) \$10,000 for \$12,000 Hydro-Electric Power Com- mission 1957		\$ 12,000
Held at Royal Bank, account Champlain Construction	\$ 12,000	
	<u>\$50,000</u>	

Summary of Sales		
Bonds originally obtained from Griffith	\$ 5,000	
Grand Trunk Pacific £500 say	2,500	
Toronto Harbour Commission	5,000	
	<u>\$ 12,500</u>	

40 Mr. Aird's evidence is that the proceeds of bonds sold were expended for his personal purposes.

(19) Neither Mr. Swezey nor Mr. Griffith pretended to speak with exactitude as to the actual amount of moneys contributed for political purposes. In this connection Mr. Swezey says: "It was a very distasteful thing to me and I personally preferred not to know or remember much about it."

(20) Your Committee considers that return should be made immediately of any moneys improperly taken from the companies' funds for political subscriptions by those responsible for their extraction.

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D.W.-2 Extract of Report of Special Parliamentary Committee on Beauharnois Power Project 19 Nov. 1931 (continued)

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10 (21) It is also to be observed that no pretence is made that the personal subscriptions were because of the adherence of Mr. Sweezy to any particular party and we are of the opinion that they were shamelessly, wastefully and needlessly made for the express purpose of obtaining favourable consideration of the Company's proposals to the Government.

(22) That Mr. Sweezy was solicited for these contributions appears on page 822 of the Evidence, when in answer to Mr. Lennox he states: "I could not deliver that amount of money in one fell swoop. I had to scratch it up where I could from time to time." Further on, in speaking of the \$10,000 campaign fund to General McCuaig, Mr. Lennox remarked: "You did not treat us very generously." Mr. Jacobs: "The fact that the party is in power is some indication." Witness: "They did not press me so hard, sir."

20 (23) The evidence on Page 826:

By Mr. Lennox:

Q. You said Senators Raymond and Haydon were designated as the proper persons to whom you should pay this fund? Who designated them?" Answer: "Nobody specifically designated them; I just happened to know it; they came and told me they were."

30 14. Senator Haydon

(1) The first connection of Senator Haydon with the Beauharnois project appears to be in 1924, when his firm incorporated for Senator McDougald and Mr. Henry the Sterling Industrial Corporation on the 5th July of that year and made the application of that Company to the two departments of the Government for the right to divert 30,000 c.f.s.

40 (2) His firm was retained by Mr. Sweezy for the Beauharnois Power Syndicate in the fall of 1928 under somewhat peculiar circumstances.

(3) Senator Haydon has been a member of the Senate since March 11th 1924, and was known to Mr. Sweezy to be a member of the Liberal Party who collected campaign funds. The retainer was of an unusual character. The firm demanded in excess of \$30,000 per year but Mr. Sweezy demurred and finally arranged that the firm of McGiverin, Haydon and Ebbs would be paid the sum of \$50,000, conditionally upon approval of its application by the Governor in Council. On October 3rd, 1928, this

firm received a cheque from the Marquette Investment Company for \$7,500 for legal services. On page 728, Mr. Sweezy says in an interview with Mr. McGiverin, "However, by a compromise I agreed that if the thing got through, I would prefer to pay on that basis; if it went through I would pay him \$50,000, and a retainer for three years at \$15,000... it is human nature to work
10 harder at a price." Asked, in the event of failure what would happen, Mr. Sweezy's answer was "Well, he would have his expenses. At least I presumed that he would have to have his expenses... I was sure he would charge me something for it." This arrangement was apparently made, according to Mr. Sweezy, some time prior to the 2nd October, 1928 (Evidence Page 729).

(4) On the 2nd October, 1928, a transfer was made to Mr. Ebbs of the Haydon firm, from Mr. Clare Moyer of the interest Mr. Moyer then held in the Beauharnois Power Syndicate for
20 Senator McDougald.

(5) Mr. Ebbs, Senator Haydon's partner, acted as Syndicate Manager for some time representing Senator McDougald. The Order in Council was approved, Senator Haydon's firm was paid \$50,000 and thereafter received several cheques in pursuance of the arrangement made with Mr. Sweezy by which that firm was to be paid a retainer of \$15,000 per year.

(6) Senator Haydon was a man of note and standing in
30 his party and was recognized as one of the official organizers of the Liberal party in Canada. Senator Haydon became the recipient from Mr. Sweezy and the Beauharnois Company of sums of money for campaign purposes, said to be in excess of half a million dollars, and it is also to be noted that throughout this firm did not render any detailed bill for professional services, as shown by the vouchers (Exhibit Nos. 85 to 87 inclusive).

(7) In these circumstances, your Committee is of opinion
40 that the acceptance of the above mentioned contingent retainer and of the \$50,000 involved and of the campaign funds by Senator Haydon cannot be defended and is strongly condemned.

15 Senator Raymond

(1) Senator Raymond was appointed to the Senate on the 20th December, 1926. He, voluntarily, after the permission of the Senate had been granted, appeared before the Committee on the afternoon of the 16th July, 1931, and stated that he had subscribed on the 1st April, 1927, at the suggestion of Honour-

10 able Mr. Mitchell and Mr. Frank P. Jones, for 800 units of the
Beauharnois Syndicate at a price of \$30,000, which he paid. These
became 1,600 units in the second syndicate and as was his right,
he subscribed for 1,600 further units, in the name of J. R. Le-
fevre, and made his holdings 3,200 units. On the whole trans-
action he realized as of the 17th December, 1929, \$529,600 profit
and 14,040 shares of Class A stock of the Beauharnois Power
Corporation, Limited. Senator Raymond sold all his originally
acquired units at the same time that Mr. Frank P. Jones sold
his at \$550 per unit, and later Senator Raymond bought from
W. G. Mitchell 350 units and from R. T. Fuller one unit in the
Beauharnois Power Syndicate and he held these at the dissolu-
tion of the Syndicate on the 17th December, 1929. His total profit
was as above mentioned. He states that neither at Quebec nor at
Ottawa did he exert or attempt any political influence on behalf
of the Beauharnois applications. His evidence is that he “did
20 nothing to push the deal.” On page 794 of the evidence, Senator
Raymond was asked:—

Q. Then are we to understand you to say, that
having this interest in this project and knowing that there
was a very strong opposition and a big fight being put up,
you never turned a hand to help it at all? A. I do not
know if there was anything in my power to do towards
helping it.

30 Q. Well, you could help?—A. I thought the only
help that I could give was to put my money in.

Q. I may take it then, from what you say, that we
have your unequivocal statement that at no time did you
attempt to exert your personal influence on behalf of this
project?—A. At no time.

(2) At the conclusion of his evidence one of the mem-
bers of the Committee expressed the view that he ought to be
commended for his frankness in giving his evidence. It was,
however, later disclosed in evidence that according to the bill of
40 Messrs. Geoffrion and Prud'homme, Counsel for the Beauharnois
Syndicate (Exhibit No. 114) from September 10, 1927, to May
23, 1928, there appear some sixteen entries charging for inter-
views with and telephones to and from Senator Raymond. An in-
terview appears to have taken place on one occasion with Hon-
ourable Mr. Mitchell and on another occasion in Ottawa with
Senator McDougald.

(3) On page 391, Mr. Frank P. Jones states “I certainly
asked Senator Raymond over and over again if he could not do
something to get some action.”

10 (4) It transpired when Mr. Sweezy returned to give further evidence that Senator Raymond had received from Mr. Sweezy some \$200,000 of campaign funds for the Liberal party. The commendable frankness would seem to require that Senator Raymond should have disclosed this to the Committee if he wished the Committee to understand that he was stating fairly his connection between the Government and the Beauharnois promoters.

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(5) In view of Mr. Sweezy's attitude throughout and his views as to the necessity for political influence, it is hardly conceivable that Mr. Sweezy would pay this large sum of money over to Senator Raymond unless he at least was satisfied that the Senator's influence had been or would be worth the money and it is remarkable that Senator Raymond did not insist on making some explanation of his position in this regard, in view of his evidence.

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16. Senator Wilfrid Laurier McDougald

30 (1) Senator McDougald was first summoned to the Senate on the 25th June, 1926, but owing to the dissolution of Parliament was not then sworn in and his appointment lapsed. He was again summoned in October of that same year and was sworn in the following year. Since 1922, except for a short interval in 1926 until 1930, Senator McDougald occupied the position of Chairman of the Montreal Harbour Board and, as he stated in evidence, assumed a position of high responsibility in connection with the development of the St. Lawrence Deep Waterway.

(2) In May 1924, the then Dr. McDougald was appointed a member of the National Advisory Committee, whose membership included the Honourable G. P. Graham, as Chairman, and Honourable Clifford Sifton, and several gentlemen interested in existing hydro-electric power developments.

40

(3) On the 20th April, 1928, Senator McDougald was appointed a member of the Special Committee of the Senate to inquire into and report from time to time on the matter of the development and improvement of the St. Lawrence River for the purposes of navigation and production of electric current and power and matters incidental to such a project. That Committee held several meetings in the month of May, 1928, and to which reference will be made more specifically hereafter.

(4) In 1923, Mr. McDougald became associated with Mr. R. A. C. Henry, as has been previously pointed out in this report, and as a result the Sterling Industrial Corporation Limited was incorporated and applications made to the Departments of Public Works and Railways and Canals on the 5th and 7th July, 1924, as already indicated.

10 (5) From this small beginning, the interests of Senator McDougald have expanded until at the time of his giving his evidence he was Chairman of the Board of the Beauharnois Power Corporation, Limited, elected on the 20th of December, 1929, the holder of Management Preferred shares; a director of the Beauharnois Light, Heat and Power Company, the Beauharnois Construction Company, the Beauharnois Land Company, and the Beauharnois Transmission Company.

20 (6) This expansion is almost comparable to the present Beauharnois project as compared with the original St. Louis feeder.

30 (7) The application of the Sterling Industrial Corporation was allowed to lie dormant until some time in 1928. On the 18th of May, 1928, Senator McDougald agreed to take over 800 units of the first syndicate which had been subscribed for by Mr. Clare Moyer on the 4th of April, 1928 the day upon which that syndicate was dissolved, and upon which day a payment of \$15,000 was made by Mr. Moyer, of moneys which he says he received in cash from Mr. Winfield Sifton. A further payment was made on the 18th of May, in an amount of \$15,000 out of moneys which Mr. Moyer says were received by him from Mr. Sifton by way of a bank draft containing no information as to the person who was providing the funds.

40 (8) The 800 units thus acquired by Senator McDougald became 1,600 units on the formation of the second syndicate, and he in the name of Mr. Moyer, subscribed as he had the right to do for 1,600 more units at a price of \$100 per unit, and for which he agreed to pay \$160,000 and on which at the dissolution of the syndicate on the 17th December 1929, he had paid \$80,000.

(9) In the meantime, however, namely on the 2nd October, 1928, these had been transferred from Mr. Moyer to Mr. John P. Ebbs, a member of the Haydon firm, by reason of some instructions from Senator McDougald, about which there seems to be some insolvable mystery, and about which there need not have been any mystery at all if the transactions were an ordinary business one.

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- (10) As previously pointed out, Senator McDougald through his representative, Mr. Ebbs, acquired for the five issued shares of the capital stock of the Sterling Industrial Corporation, Limited, 2,000 part interests in the second syndicate. These units were given for a corporation the rights of which, as has been pointed out by Mr. Cameron, Chief Engineer of the Public
- 10 Works Department, on page 1019 of the evidence “would be of no value”. The agreement was made in the fall of 1928, and the Beauharnois Company considered these shares to be of such value that they still remain endorsed in blank, and have never been transferred on the books of the Company. It can hardly be pretended that this Company had any value, even as suggested, any “nuisance value” or was or could be thought to be any serious obstacle in itself to the application of the Beauharnois Light, Heat and Power Company to the Governor General in Council then pending. If so, there were two former applications in the
- 20 Department, one of which at least was based on an alleged acquisition of the Robert rights which rights were the foundation of the Beauharnois application. Still, the carrying out of the agreement was made conditional upon favourable action by the Governor General in Council, and it is beyond belief that had that Company not been owned by Senator McDougald, who represented himself to be a close friend of the administration, and R. A. C. Henry, soon destined to become Deputy Minister of Railways and Canals or others equally influential, the Beauharnois Power Syndicate would have hardly considered paying for
- 30 it even the nominal amount that had been subscribed as its capital stock, much less 2,000 units, which ultimately became \$300,000 in money and 80,000 shares of the Beauharnois Power Corporation Limited but would doubtless have received the same consideration as was accorded the other prior applicants — namely the privilege of being completely ignored.

- (11) It is suggested that the handing over of this large number of units was in order to induce Mr. Henry to go over to the Beauharnois Company. Why any inducement, other than a doubling of his salary which actually occurred, should have been necessary in order to induce the man who had for at least six or seven years been most anxious to be connected with a Beauharnois project is difficult to understand, and your Committee cannot accept that as the explanation. On the contrary we are convinced that the “nuisance value” consisted in the necessity of a large inducement to Senator McDougald in order that he, a possible obstacle in the attainment of the objects of the syndicate, might become so vitally interested therein that any possible opposition on his part might be obviated.
- 40

10 (12) That Senator McDougald was a factor in the success of this venture is apparent from the Proceedings of the Special Committee of the Senate above referred to, of which he was a member. It appears that on the 31st of May, 1928, he was instrumental in having Mr. Henry, then his partner in the Sterling Company, come before that Committee and answer certain questions. These questions had (See page 215 of the Proceedings) been prepared beforehand by Senator McDougald and submitted to Mr. Henry.

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(13) Mr. Swezey in his evidence makes it very clear that the reason for his having done some of the extraordinary things which he did do was that time was of great importance from the standpoint of financing the enterprise, owing to the threatened financial crisis.

20 (14) On the 25th May, 1928, Mr. Aimé Geoffrion, Chief Counsel for the Beauharnois Syndicate and who according to his bill for professional services had a number of interviews, starting on the 17th December, 1917, with Senator McDougald wrote to Senator McDougald urging that there was "no reason for delaying the application to the Dominion Executive for approval of the Beauharnois plans under the Navigable Waters Act."

30 (15) The last question which Senator McDougald asked Mr. Henry on this occasion, on the 31st of May, 1928, was as follows:

(Page 232 of the Committee's Proceedings).

Hon. Mr. McDougald: The last question which I have, Mr. Henry, is, in your opinion should the improvement of the St. Lawrence Waterway be gone on with as soon as possible, and if so, why?

40 It is to be recalled that thirteen days previously, on his own testimony, Senator McDougald had agreed to become interested in this enterprise to the extent of 800 Part Interests in the Beauharnois Syndicate.

(16) On the 19th of April, 1928, Senator McDougald in a speech delivered by him from his place in the Senate stated: "I want to say here, and to say it with emphasis, that I do not own a dollar's worth of stock in this enterprise, and have no

interest in or association with that Company in any way, shape or form”... “So far as I myself am concerned I cannot add too much emphasis to my denial of the suspicious and aspersions which these despatches” (referring to despatches of the Toronto Mail and Empire and the Globe of April 18, 1928) “have cast upon me as a member of the Advisory Committee, as a member of this honourable body, and as a private citizen.”

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(17) On the 20th of May, 1931, Senator McDougald, in referring to his former statement on this subject, and the date thereof, the 19th of April 1928, made the following statement from his place in the Senate: “Honourable Members of the Senate, before the orders of the day, I rise on a question of privilege. According to the newspapers of this morning my honour and integrity as a member of this House have been attacked in another place, and I desire to draw attention at once to a statement which I made in the Senate in April, 1928, regarding my position in the much-discussed Beauharnois Power Company. Newspaper articles had reflected on myself and other members of the National Advisory Committee reporting on the St. Lawrence Waterways. It was insinuated that our decisions and recommendations were influenced by personal interest in power development on the St. Lawrence. In this house I stated at the time that I had no interest in the Beauharnois Power Company or in the Syndicate. That was absolutely true and correct. I may say at once that up to that time...” (that is April 1928) “I had been invited on many occasions to become a member of that Syndicate but had always declined. After that date I was asked again, and had the whole project investigated from every angle. When I was satisfied that it was a proper project for me as a member of this Senate, as a business man, and as a citizen of Canada, to take a financial interest in, I agreed to do so. Some six months later, in October, 1928, I took an interest in the Beauharnois Syndicate.”

(18) On Page 930 of the Evidence appear these Questions and Answers:

By the Chairman:—

Q. That is not a correct statement, Senator, I suggest to you?—A. I suggest, Sir, that it is a correct statement.

Q. Then your evidence yesterday was wrong, because you bought from Sifton in May?—A. I did not

appear in it until October. Mr. Ebbs was my representative in October, and I became active in it in October.

Q.—Is that your explanation for that statement?—

A. That is my explanation for that statement. I was in the syndicate—

10 Q.—Why, of course you were in the syndicate; here is your evidence?—A. The end of May, 1930, and not when I made the speech in the Senate.

Q. You say in your speech distinctly that in October, 1928, you first took an interest in the Beauharnois Syndicate. Yesterday in your sworn testimony you admitted that you had purchased from Sifton in May, 1928?—A. That is correct.

20 Q. I suggest to you that your statement in the Senate was entirely wrong?—A. It may have been ambiguous, but it was not wrong. What I meant was I came into it in October through Mr. Ebbs. That is the first time I came into it....”

Q. Just before you go on with that, Mr. White, I want to complete the question I was putting to the Senator a moment ago (To the witness). While you were making this ambiguous speech, as you call it now, in the Senate on the 20th May, 1931, of course you were interested with Mr. Henry in the Sterling Industrial Corporation—
A. That is right.

30 (19) Further in his speech on the 20th May, 1931, Senator McDougald said: “I might add that I paid into the syndicate dollar for dollar with every other member of it.”

(20) As previously pointed out in this Report, Senator McDougald, Senator Raymond, and Mr. Frank Jones, bought their units in the first syndicate for many fewer dollars per share than any other of the members, except possibly Mr. Sweezy who got some of his for a consideration other than cash.

40 (21) It is also significant that Senator McDougald received considerable sums of money from the Company for travelling expenses.

(22) How one holding the high offices to which he had been called, as Chairman of the Montreal Harbour Board, member of the National Advisory Committee on St. Lawrence Waterways a Senator of Canada, and a member of the Special Committee of the Senate, above referred to, and as he himself has

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stated, having a high regard for his public duties, should allow his private interest to so interfere with his public duty that he found it necessary, speaking from his place in the Senate to be “ambiguous” and incorrect. It is difficult for your Committee to understand.

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10 (23) Senator McDougald's actions in respect to the Beauharnois project cannot be too strongly condemned.

17. *James B. Hunter, Deputy Minister of Public Works,* and *Mr. Kenneth McKenzie Cameron, Chief Engineer of that Department* were called as witnesses and gave evidence. The Committee desires to say that the evidence of neither of these officers appeared to be given in the manner which one might expect from Departmental Officials.

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18. Present Financial Position

20 (1) The Consolidated Balance Sheet of the Beauharnois Power Corporation Limited and subsidiaries, as of the 31st December, 1930, discloses:—

1.	Capital Stock—	
	5 Management Preferred Shares, no par	\$ 5.00
	1,799,995 Class A Common Shares, no par	1,799,995.00
		<hr/>
		\$ 1,800,000.00
2.	Funded Debt—	
	Collateral trust sinking fund 6% bonds, due	
	1st October, 1959	30,000,000.00
		<hr/>
		\$31,800,000.00

The assets consist of—

	Cost to date of property rights and power development in the course of construction	\$28,768,816.53
40	Securities on deposit with the Quebec Provincial Government and the Hydro-Electric Power Commission of Ontario, etc.	1,021,385.00
	Investments (Brubacher et al)	200,168.00
	Sundry accounts receivable	221,434.67
	Cash and marketable securities held by the Royal Trust Company in escrow	2,325,546.67
	Cash on hand and in bank	186,130.73
		<hr/>
		\$32,723,481.60
	Less sundry liabilities	923,481.60
		<hr/>
		\$31,800,000.00

The item of \$28,768,816.53 is made up as follows—

10	Real Estate	5,189,783.82
	Construction accounts	6,193,497.17
	Equipment and temporary construction less depreciation	3,012,337.33
	Engineering expenses	1,081,431.59
	Interest during construction	1,338,795.43
	Property rights and interest	11,357,888.87
	Miscellaneous	595,082.32
		\$28,768,816.53

Defendant's Exhibit in Warranty at Enquete

D.W.-2
Extract of Report of Special Parliamentary Committee on Beauharnois Power Project 19 Nov. 1931 (continued)

Fourth Report to the House of Commons 28 July 1931 (continued)

20 The item for property rights and interest of \$11,357,888.87 is made up of the items set out in Exhibit No. 127, and consists in part as follows:—

	Issue of 10,000 part interests at \$100 each to members of the Beauharnois Syndicate, as of 4th April, 1928, as part consideration for the taking over of assets and undertaking of Beauharnois Syndicate	\$1,000,000
30	Less net book value of assets acquired	261,000 \$ 739,000
	Issue to J. P. Ebbs, 2,000 part interests Beauharnois Power Syndicate, consideration for acquisition of capital stock of Sterling Industrial Corporation	200,000
40	Amount paid to Beauharnois Power Syndicate 17th December, 1929, as part consideration for the taking over of Beauharnois Power Syndicate undertaking	\$4,750,000
	Less net book value of assets acquired	2,500,000 2,250,000
		\$ 3,189,000

Note this figure represents the profits made by the Syndicates and includes \$1,000,000 which was used to purchase 1,000,000 shares Beauharnois Power Corporation at \$1 per share—the actual cash profit to the Syndicate members being \$2,189,000.

~~SECRET~~

Further items in Exhibit No. 127 are:—

10	Discount of 10% on issue of \$30,000,- 000 Beauharnois Power Corpora- tion Limited, 6% collateral trust sinking fund bonds, due Oc- tober 1, 1959, underwritten at 90	\$ 3,000,000
20	770,000 shares of Beauharnois Power Corporation, Class A Common stock issued to underwriters, on which a book value of \$1 per share was placed	770,000
20	Purchase by Beauharnois Construc- tion Company of 8,000 shares of capital stock of Marquette Con- struction Corporation at \$20 per share	\$ 160,000
	Less issued price	40,000 120,000
		\$ 7,079,000

Defendant's
Exhibit
in Warrant
at Enquete

D.W.-2
Extract
of Report
of Special
Parliamentary
Committee on
Beauharnois
Power Project
19 Nov. 1931
(continued)

Fourth Report
to the House
of Commons
28 July 1931
(continued)

30 An unaudited statement of the 31st of May, 1931, exhibit No. 128, as compared with the Consolidated Balance Sheet as of the 31st December, 1930, disclosed that the property account had increased by \$5,781,185.74 to a total of \$34,550,002.27, as compared with \$28,768,816.53.

The Royal Trust Company escrow fund had been decreased by \$1,430,396.67 for payments made to the Company for outgoings. Cash on hand had decreased by \$113,857.31.

40 (2) In the liabilities the most important increase is a bank loan of \$3,500,000 secured by the hypothecation of \$5,250,000 of bonds of the Beauharnois Light, Heat and Power Company, being part of an issue of \$20,000,000 bonds authorized for temporary purposes on the 15th day of January, 1931. At present the bank loans are, according to Mr. Griffith, about \$6,000,000 secured by the hypothecation of \$9,000,000 of these bonds.

(3) Accrued interest of bonds had been decreased by \$150,000 which means that having regard to the monthly accrual of interest amounting to \$150,000 in the interval between December 31st, 1930, and May 31st 1931, \$900,000 of bond interest had been paid. Miscellaneous accounts payable had increased by \$881,770.75 to an amount of \$1,355,252.35.

(4) As the situation now stands, the promoters of the Beauharnois Project involving the exploitation of a great natural resource have been able to secure to themselves a return of all moneys advanced by them or any of them, a profit of \$2,189,000 in cash and 1 000,000 Class A Common shares, which if saleable at the market quotation would at one time have been worth 10 \$17,000,000 and at to-day's quotation of \$4 per share, would be worth \$4,000,000. This cash profit was paid out of moneys borrowed by the Beauharnois Corporation Limited by the sale of its bonds.

Defendant's
Exhibit
in Warrant
at Enquete

D.W.-2
Extract
of Report
of Special
Parliamentary
Committee on
Beauharnois
Power Project
19 Nov. 1931
(continued)

Fourth Report
to the House
of Commons
28 July 1931
(continued)

(5) According to Mr. Henry, in order to complete the project up to the point where 500 000 h. p. will be produced, they will require a further sale of bonds in a capital amount of \$46,000,000. If this were accomplished the power project would have been constructed completely on borrowed money and the 20 promoters would be in control of this vast enterprise owning 1,620,000 of the Class A shares out of a total issue of 1,799,995 and also the 5 Management Preferred shares which for 10 years give to the under-writers practical control of the Company's affairs and all of this without the present investment of any money.

Your Committee Recommends:

1. That the Parliament of Canada take such action as 30 may be within its power, and without prejudicing the rights of the Province of Quebec, to procure the development of this project in such a manner as will best serve the people of Canada.

2. That should the rights of the Dominion and the Province of Quebec come in conflict, every effort be put forth to arrive at a satisfactory agreement, so that the project may not be imperilled by delay.

3. That definite action be taken to preserve the rights of 40 navigation and the complete jurisdiction of Parliament in respect thereto.

4. That the Order of Reference, the Report of the Committee, the Minutes of Proceedings, the Minutes of the evidence taken, and the exhibits filed, be printed as an appendix to the Journals of the House.

5. That a copy of this report be remitted to the Speaker of the Senate for the information of that House.

~~SECRET~~

6. That such of the Exhibits as have not been read into the record and are not on departmental files were referred to be copied and the originals thereof be returned to the person producing the same.

All of which is respectfully submitted.

10

W. A. Gordon,
Chairman.

Defendant's
Exhibit
in Warrant
at Enquete

D.W.-2
Extract
of Report
of Special
Parliamentary
Committee on
Beauharnois
Power Project
19 Nov. 1931
(continued)

DEFENDANT'S EXHIBIT D.W-1 IN WARRANTY
AT ENQUETE.

Certified copy of Extract from the minutes of the board of directors of Beauharnois Power Corpn. Ltd. held on Nov. 19/31.

20 BEAUHARNOIS POWER CORPORATION LIMITED

D.W.-1
Extract from
the minutes
of a meeting
of the Board
of Directors of
Beauharnois
Power
Corporation
Limited
19 Nov. 1931

Extract from the minutes of a meeting of the Board of Directors held on November 19, 1931

The Secretary reported that no legal retainers had been paid subsequently to August 31st, 1931, and that the only retainer payable by the Company for which there was any contractual obligation was that of Lacoste & Lacoste at One thousand dollars (\$1,000) per annum up to October 1st, 1934.

30

After discussion, on motion duly seconded, it was unanimously Resolved that the action of the officers in discontinuing the payment of retainers other than a retainer to Lacoste & Lacoste, be approved; that the services of Dr. A. Plante and Mr. G. H. Rioux be dispensed with from November 30th, 1931; that the allowance payable to Mrs. W. B. Sifton be discontinued from November 30th, 1931, and that the other matters referred to in the letters of Messrs. P. S. Ross & Sons be submitted to the Advisory Committee for report to the next meeting of this Board.

40

SEAL

Certified a true copy.

L. C. Christie
Secretary.

Beauharnois Light, Heat
and Power Company—
Incorporated 1902.

Plaintiff's
Exhibit
in Warranty
on Discovery

P.W.-9
List
of cheques
paid to
W. B. Sifton
19 Nov. 1931

PLAINTIFF'S EXHIBIT P.W -9 IN WARRANTY
ON DISCOVERY

List of Cheques.

10

MARQUETTE INVESTMENT CORPORATION

Payments made to W. B. Sifton

Date		Voucher no.	Amount
1927			
Sept. 20	Marquette Inv.	64	\$ 128.23
29	do.	69	144.38
Oct. 13	do.	73	92.33
20 29	do.	75	74.00
Nov. 9	do.	82	68.00
16	do.	86	72.00
22	do.	87	127.45
Dec. 7	do.	93	37.50
"	do.	94	221.01
17	do.	101	178.41
22	do.	109	171.25
"	do.	110	1,400.00
1928			
30 Jan. 9	do.	113	290.21
"	do.	117	144.75
16	do.	127	2,000.00
30	do.	137	1,500.00
Mar. 6	do.	153	537.07
22	do.	164	1,000.00
Apr. 12	do.	188	566.25
14	do.	189	114.45
25	do.	195	3,000.00

40

(Photostat Copy)

May 14	do.	218	1,318.25
25	do.	232	1,128.98

\$14,314.52

Plaintiff's
Exhibit
in Warrant
on Discovery

P.W.-9
List
of cheques
paid to
W. B. Sifton
19 Nov. 1931
(continued)

Payment made to R. O. Swezey to reimburse him
for payment made to W. B. Sifton.

Date	Voucher no.	Amount
1928		
Apr. 16	Marquette Inv.	191 <u>\$5,000.00</u>
10	Payment made to Col. Victor Sifton for account of W. B. Sifton.	

1928		
June 19	Marquette Inv.	265 <u>\$10,094.95</u>
20	Payments made to Mrs. W. B. Sifton	

1930		
Feb. 25	Beau. Power Corp.	R120 \$2,000.00
Nov. 8	Beau. L.H. & P.	244 500.00
1931		
Feb. 27	Beau. Power Corp.	M201 3,500.00
June 8	do.	M220 2,000.00
30		<u>\$8,000.00</u>

Payments made to Mrs. W. B. Sifton from
Payroll Account.

Date	Cheque No.	Amount
1931		
40 June 20	Beau. L.H. & P.	954 \$300.00
July 25	do.	1000 300.00
23	do.	1031 300.00
Aug. 25	do.	1082 300.00
Nov. 19	do.	1279 900.00
		<u>\$2,100.00</u>

PLAINTIFF'S EXHIBIT P-10 AT ENQUETE

Letter from C. Sifton to R. O. Sweezy.

10

PLAXTON, SIFTON & Co.
Barristers, Solicitors, &c.

Toronto 2, Canada

16th April, 1932.

Mr. R. O. Sweezy,
c/o Newman, Sweezy & Co. Limited,
Investment Bankers,
136 St. James Street,
Montreal, Quebec.

20

Dear Mr. Sweezy:

Re: Your Agreement with the late
W. B. Sifton

Upon reviewing the affairs of Winfield's Estate, of which I am an executor and for which I act as Solicitor, I notice your letter of 14th July, 1928 addressed to my brother Victor. reading as follows:

30

"You may wonder why I have not written as promised in regard to confirming my agreement with Win. The delay is due to my secretary's absence on her holidays and she has the private file well locked up. I am afraid now that I shall be leaving before she returns and there may be a further delay of some three weeks. Your sincerely, R. O. Sweezy."

Victor left Toronto not long after that and I can find nothing further about the matter.

40

We have always understood that Winfield had an agreement with you, which will entitle his Estate to further money and, as this is the last matter outstanding, I am anxious to clean it up at the earliest possible date.

I would, therefore, appreciate hearing from you as to the exact terms of the agreement and if there is anything outstanding, I would very much appreciate receiving it on behalf of the Estate as soon as possible.

Yours very truly,

CS/PL.

Clifford Sifton

PLAINTIFF'S EXHIBIT P-11 AT ENQUETE.

..Letter from R. O. Sweezey to C. Sifton.

10

R. O. SWEEZEY, (B.Sc, M. E. I. C.)
Consulting Engineer
210 St. James St. W.

Montreal, April 23rd, 1932.

Mr. CLIFFORD SIFTON,
Messrs. Plaxton, Sifton & Co.,
Canada Permanent Building,
Toronto, 2, Ont.

20

Dear Mr. Sifton:—

I apologize for the delay in replying to your letter of April 16th, which came during my absence.

30

In regard to an agreement between myself and your brother — there never was any written agreement as far as I can remember. Our plans changed so much from day to day that we kept putting off a final draft of what we thought would be a satisfactory arrangement. Since your Brother's death, however, we have made payments from time to time to Mrs. Sifton, and I am having a statement of this prepared to send to you.

40

Because of the many political difficulties that we have been having, since last summer I have never felt myself in a position where I could suggest a definite arrangement with Mrs. Sifton to complete with her a plan for compensation for your Brother's activities. The feeling in the Company is that the Beauharnois Corporation does not owe your Brother's estate anything, and I think legally this is correct. I had felt, however, that Mrs. Sifton might be entitled to some stock, but as this has lost its value there is left very little to consider further. However, I shall be glad to have a talk with you on my next visit to Toronto, when I shall make it my business to give you a call.

Yours faithfully,

Received 25/4/32.
Envelope marked personal.

R. O. Sweezey.

PLAINTIFF'S EXHIBIT P-28 AT ENQUETE

Copy of letter addressed to Sweezey.

27th April, 1932.

10 Mr. R. O. Sweezey,
Consulting Engineer,
210 St. James St. West,
Montreal, Quebec.

Re: W. B. Sifton Estate
Re: Agreement with the late W. B. Sifton
Re: \$50,000.00 payable upon the approval
of the Beauharnois Plans by the
Dominion Government

Dear Mr. Sweezey:

20 I have been digging through the record of Winfield's Estate and have come across a series of letters which evidence a clean-cut agreement to pay Winfield Fifty Thousand Dollars (\$50,000.00) upon the approval of the Beauharnois Plans by the Dominion Government without the production of any evidence that such passing of plans was due to his aid or efforts.

I have no doubt that you have your copies of letters, which are as follows:

30 6 Sep. 1927, Letter yourself to Winfield.
28 Sep. 1927, Letter yourself to Winfield.
15 Oct. 1927, Letter yourself to Winfield.
17 Oct. 1927, Copy of letter Winfield to yourself.
19 Oct. 1927, Letter yourself to Winfield.
23 Oct. 1927, Letter Winfield to yourself.

40 Mrs. Winfield Sifton was provided for by a trust established by Winfield for the purpose and is not a beneficiary under his Will. His daughter, Betty, inherits the whole estate but is not entitled to any of the capital assets until the end of a certain period fixed in the Will.

Unfortunately, therefore, payments made to her cannot apply upon any obligation owing to the Estate.

On account of the importance of this matter and of the fact that it has just come to the knowledge of the Executors after the lapse of this considerable period of time, we are anxious to obtain the money and settle up the matter with the least reasonable delay.

Yours very truly,

CS/PL.

PLAINTIFF'S EXHIBIT P-13 AT ENQUETE.

Letter from C. Sifton to R. O. Sweezey.

10

PLAXTON, SIFTON & CO.
Barrister, Solicitor, Ee.
Canada Permanent Building
Bay and Adelaide Streets.
Toronto 2, Canada.

12th May, 1932.

Mr. R. O. Sweezey,
Consulting Engineer,
210 St. James St. West,
Montreal, Quebec.

20

Re: W. B. Sifton Estate
Re: Agreement with the late W. B. Sifton
Re: \$50,000.00

Dear Mr. Sweezey:—

I have been expecting you to call upon me during your visit to Toronto to discuss this matter, as suggested in your letter of the 2nd instant, but have been disappointed by your failure to do so.

30

A careful perusal of the documents discloses a clear-cut undertaking by you to pay to Winfield Fifty Thousand Dollars (\$50,000) upon the happening of an event which took place a long time ago.

40

Inasmuch as Winfield's Estate while owning an interest in frozen assets of considerable value, has had outstanding since his death cash obligations in excess of the amount owing by you to him upon which the Estate has had to pay interest and, in view of the further fact that you alone have been familiar with your obligations to him and his Estate during all this time, we feel that as Executors of his Estate we should obtain the money from you with the least possible delay.

We are willing to make any reasonable arrangement with regard to the actual payment of the amount but we must insist that the matter receive your immediate attention.

Yours very truly,

Clifford Sifton.

CS/PL

PLAINTIFF'S EXHIBIT P-14 AT ENQUETE.

Letter from R. O. Sweezey to C. Sifton.

BEAUHARNOIS POWER CORPORATION LIMITED

University Tower

Montreal.

10

Clifford Sifton, Esq.,
Messrs. Plaxton, Sifton & Co.,
Canada Permanent Building,
Bay & Adelaide Sts.,
Toronto 2. Canada.

13th May, 1932.

My Dear Mr. Sifton:—

—Re: W. B. Sifton Estate—

20

I have your letter of the 12th May, and regret that I was unable to see you in Toronto the day I attended the enquiry. As there was a meeting of the Beauharnois Committee in Ottawa the same night, I had to hustle away on the afternoon train.

30

I may say that the present situation in which the Beauharnois Company finds itself, has left me without any capital whatsoever, and unless the Company is reorganized on a basis in accordance with my ideas, I shall be left with nothing. On the other hand I am hoping to get back into the saddle to carry the enterprise through to its proper conclusion, and had been counting on this happening long before the present date, at which time I had in mind making some arrangement with Mrs. W. B. Sifton, whereby the Company would carry on with her by allowing a certain income on a basis similar to the one which was operative about a year ago.

If you can leave this matter in abeyance until such time as I am in authority, I believe that an arrangement satisfactory to Mrs. Sifton and yourself may be brought about.

40

My getting back into the picture of course is dependent upon several factors, in all of which I am exerting myself to the utmost, but meanwhile it is desirable that this information be treated as confidential.

If I should be in Toronto soon, I shall then remain over to talk with you, otherwise, if you find it convenient to be in Montreal at any time, please give me a call.

Yours very truly,

Received May 14-1932
Plaxton, Sifton & Co.

R. O. Sweezey.

Plaintiff's
Exhibit
—
P-8
Copy of letter
from R. O.
Sweezy
to Clifford
Sifton
11 June 1932

PLAINTIFF'S EXHIBIT P-8

Copy of letter from the Defendant to Clifford Sifton.

June 11th, 1932.

10 Mr. Clifford Sifton,
Executor Estate Winfield Sifton,

Dear Sir,—

In consideration of the executors' undertaking not to press this matter for six months from today, I hereby acknowledge that I owed Winfield Sifton at his death, subject only to approval of Beauharnois plans at Ottawa, the sum of fifty thousand dollars, this being an undertaking I made in connection with Beauharnois Syndicate whose assets and liabilities were assumed by Beauharnois Power Corpn. Ltd.

Yours truly,

“R. O. Sweezy”

PLAINTIFF'S EXHIBIT P-29 AT ENQUETE

Copy of letter from C. Sifton to R. O. Sweezy

Plaintiff's
Exhibit
at Enquete
—
P-29
Copy of letter
from Clifford
Sifton to
R. O. Sweezy
13 June 1932

13th June, 1932.

30 Mr. R. O. Sweezy,
c/o Newman, Sweezy & Co.,
210 St. James St. West,
Montreal, Quebec.

Personal and Confidential

Dear Mr. Sweezy:

I thank you for your kindness to me on Saturday and for your frankness in going over the matter of the obligation to Winfield's Estate and for your admitting the facts.

40 On behalf of the Executors I undertake not to press the matter of the collection of the Fifty thousand Dollars (\$50,000.00) which you acknowledge owing, for a period of six months from the 11th June, in accordance with your handwritten letter which you gave to me on Saturday.

Thanking you again, I remain,

Yours very truly,

CS/PL.

PLAINTIFF'S EXHIBIT P-18 AT ENQUETE

Letter from R. O. Sweezy to C. Sifton.

10

R. O. SWEEZEY
(B.Sc, M.E.I.C.)
Consulting Engineer
210 St. James St. W.

Montreal, 17th June/33

Dear Mr. Sifton,

I regret to say that though I was in Toronto recently I was there only a few hours and was unable to call on you

20 In a few days I expect to be there again however and will make it my business to see you.

Yours sincerely,

R. O. Sweezy

Mr. Clifford Sifton,
Canada Permanent Bldg.
Toronto.

Received June 19 1933.
Plaxton, Sifton & Co.

30

PLAINTIFF'S EXHIBIT P-30 AT ENQUETE

Letter from Sifton to R. O. Sweezy.

July 27, 1933.

Mr. R. O. Sweezy,
Consulting Engineer,
210 St. James Street West
Montreal, Quebec.

Re: W. B. Sifton Estate and
R. O. Sweezy — \$50,000.
Re: Beauharnois.

40

Dear Mr. Sweezy:

I am informed that the new officers of the Beauharnois Co. have been duly elected and am anxious to press the matter of the Estate's claim as promptly and vigourously as possible.

I am not familiar with the Quebec limitations upon Court proceedings but there is some question under our Ontario laws with regard to the limitation of your right of relief over against the Beauharnois Co. after the lapse of six years.

Plaintiff's
Exhibit
at Enquete

P-30
Letter from
C. Sifton to
R. O. Sweezy
27 July 1933
(continued)

In any event the W. B. Sifton Estate still has large cash obligations and the executors are not able to allow this matter to be delayed further.

10 As I see the situation, the Estate claim is against you personally while you would no doubt join the other members of a syndicate, for whom you informed me you had authority to act, and they in turn would no doubt join the Beauharnois Co. which as you informed me took over the assets and assumed the liabilities of the syndicate.

We would however, be perfectly willing to make a new arrangement with your consent, with the Beauharnois Co. to settle this obligation upon reasonable terms of payment and thus avoid the trouble and expense of legal proceedings.

20 While we would greatly regret the necessity of taking proceedings against you in this matter, we would have no other option than to commence such proceedings at the beginning of September next, unless before that time the payment of this claim is satisfactorily provided for.

We sincerely hope therefore, that you will be able to see the new officers of the Beauharnois Co., explain to them the full circumstances connected with this claim and obtain their definite decision as to whether they will recognize the same and proceed to pay it, before the beginning of September next.

30

Yours very truly,

Plaxton, Sifton & Co.
Per

CS:LF

PLAINTIFF'S EXHIBIT P-19 AT ENQUETE.

Letter from R. O. Sweezy to C. Sifton.

R. O. SWEEZEY & COMPANY, LIMITED

210 St. James Street W.

Montreal.

40

September 5th, 1933.

Mr. CLIFFORD SIFTON,
Canada Permanent Bldg.,
Bay and Adelaide Streets,
Toronto, 2, Ont.

Dear Mr. Sifton:—

In regard to the problem of collecting from the Beauharnois Company on behalf of your Brother's Estate, I have been

P-19
Letter from
R. O. Sweezy
to Clifford
Sifton
5 Sept. 1933

giving this considerable thought and am now preparing a memorandum, to be addressed to the President of the Beauharnois Power Corporation. In this connection I would appreciate your sending me a copy of the letter which I wrote your Brother, and in which it was agreed that he should receive Fifty Thousand Dollars (\$50,000) when the Order-in-Council was passed in Ottawa.

The reason I would like to have this letter is that all the Beauharnois Syndicate files are in the possession of the Beauharnois Power Corporation, and I have not access to them.

It seems to me that the indebtedness of the Beauharnois Power Corporation to your Brother can be shown clearly enough, considering that all legal fees were paid by the Syndicate and all liabilities of the said Syndicate were assumed by the subsequent organization, which became the Beauharnois Power Corporation. As a further indication of the Corporation's indebtedness to your Brother's Estate, you will recall that several payments were made to Mrs. Sifton on account, pending the completion of the Order-in-Council approving the engineering details of the work. The then President of the Corporation, including the Secretary, approved these payments in accordance with undertakings that were made to your late Brother.

After I have completed the memorandum to the Beauharnois Power Corporation I should like to submit it to you for advice, as you might possibly offer some valuable suggestion to hastening a settlement of this long delayed matter.

With best regards, I am,

Yours sincerely,
R. O. Sweezey.

ROS.HMK.

PLAINTIFF'S EXHIBIT P-20 AT ENQUETE.

Copy of letter address to Mr. Sweezy.

10

6th September, 1933.

Mr. R. O. Sweezy,
c/o R. O. Sweezy & Co. Limited,
210 St. James St. West,
Montreal, Quebec.

20

Re: W. B. Sifton Estate
Re: R. O. Sweezy \$50,000.00
Re: Beauharnois

Dear Mr. Sweezy:—

I thank you for your letter of the 5th instant re. this matter.

30 I enclose photostatic copies of your letter to Winfield, 15th October, 1927, his reply to you, 17th October, 1927, and your further letter to Winfield, 19th October, 1927, which I think set forth the agreement arrived at.

I would be very glad indeed to do everything in my power to assist in the prompt collection of the monies owing to the Estate and, as I have already said, I feel in duty bound to press on with this matter.

With best regards, I remain,

40 CS/PL.

Yours sincerely,

PLAINTIFF'S EXHIBIT P-22 AT ENQUETE.

Letter from R. A. C. Henry to Mr. Sweezey.

10 BEAUHARNOIS LIGHT HEAT AND POWER
 COMPANY
 Room 405, Power Building
 Montreal.

September 19th, 1933.

R. O. Sweezey, Esq.,
Newman Sweezey and Company,
210 St. James Street W.,
20 Montreal, Quebec.

Dear Mr. Sweezey:—

Your letter of September 15th in regard to the late W. B. Sifton has been duly received. I will bring the matter to the attention of the Board of our next meeting and advise you later in respect thereto.

30

Yours faithfully,
R. A. C. Henry.

RACH:DMA

Dear Mr. Sifton:—

This is the letter I received in reply to my memo. for the attention of the board of Beauharnois.

40

I expect they will meet shortly.

R. O. S.

Received Sept. 25-1933.
Plaxton, Sifton & Co.

PLAINTIFF'S EXHIBIT P-21 AT ENQUETE

Copy of letter address to Mr. Sweezy.

22nd September, 1933.

Mr. R. O. Sweezy,
c/o R. O. Sweezy & Co. Limited,
210 St. James St. West, Montreal, Quebec.

Plaintiff's
Exhibit
at Enquete

P-21
Copy of letter
from Clifford
Sifton to
R. O. Sweezy
22 Sept. 1933

10 Re: W. B. Sifton Estate Re: R. O. Sweezy—\$50,000.00
Re: Beauharnois.

Dear Mr. Sweezy:—

Kindly let me know what progress you have made in this matter.

CS/PL.

Yours very truly,

PLAINTIFF'S EXHIBIT P-26 AT ENQUETE

Letter from R. O. Sweezy to C. Sifton.

R. O. SWEEZEY & COMPANY, LIMITED

20th December, 1933.

Clifford Sifton, Esq.,
Canada Permanent Building,
320 Bay Street, Toronto, Ontario.

Plaintiff's
Exhibit
at Enquete

P-26
Letter from
R. O. Sweezy
to Clifford
Sifton
20 Dec. 1933

Dear Mr. Sifton:—

30 I have your letter of the 19th December, in regard to the
W. B. Sifton Estate claim on Beauharnois.

It is my intention to be in Toronto next Wednesday, the 27th, when I shall have a talk with you on this matter. Meanwhile I am again pressing the Beauharnois Company to get them to act.

ROS:S.

Yours very truly,

Received Dec. 21-1933
Plaxton, Sifton & Co.

R. O. Sweezy.

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Record approved:

WELDON & LYNCH-STAUTON,
Attorneys for Appellants.

ERROL LANGUEDOC, Esq., K.C.,
Attorney for Respondent.

CERTIFICATE OF CLERK OF APPEALS

In the
Court of
King's Bench
Certificate
of Clerk
of Appeals

We, the undersigned, Alphonse Pouliot and Clovis La-
10 porte, K.C., Clerk of Appeals of His Majesty's Court of King's
Bench, for the Province of Quebec, do hereby certify that the
present transcript from pages one to two hundred and seventy-
eight is the record as stated by the parties and as ordered by
judgment of the Honourable Mr. Justice Hall rendered on the
27th November, 1936, for the appeal to His Majesty's Privy
Council in a certain cause lately pending, in the said Court of
King's Bench, between Clifford Sifton et al, (Plaintiffs) Appel-
lants and Robert O. Sweezey, (Defendant) Respondent.

And contains true and lawful copies of the original papers,
20 documents, proceedings and of judgments of His Majesty's Su-
perior Court for the Province of Quebec sitting in the City of
Montreal:

And also true copies of the proceedings of the said Court
of King's Bench (Appeal Side) and the final judgment therein
rendered on the said appeal instituted by the said Appellants.

In faith and testimony whereof, we have, to these presents,
set and subscribed our signature and affixed the seal of the said
30 Court of King's Bench, (Appeal Side).

Given at the City of Montreal, in that part of the Dominion
of Canada, called the Province of Quebec, this day
of in the year of Our Lord one thousand nine
hundred and thirty-seven.

POULIOT & LAPORTE,
Clerk of Appeals.

L.S.

CERTIFICATE

In the
Court of
King's Bench
Certificate

10 I, the undersigned, Honourable Severin Letourneau, one
of the Justices of the Court of King's Bench (Appeal Side) of
the Province of Quebec, do hereby certify that the said Alphonse
Pouliot and Clovis Laporte, K.C., are Clerk of the Court of
King's Bench, on the Appeal Side thereof, and that the initials
"P and L" subscribed at every eight pages and the signature
"Pouliot & Laporte" of the certificates above written, is their
proper signature and handwriting.

20 I do futher certify that the said Pouliot & Laporte as such
Clerk, are the Keeper of the Record of the said Court, and the
proper Officer to certify the proceedings of the same, and that
the seal above set is the seal of the said Court, and was so affixed
under the sanction of the Court.

In testimony whereof, I have hereunto set my hand and
seal, at the City of Montreal, in the Province of Quebec, this
day of _____ in the year of Our Lord one
thousand nine hundred and thirty-seven and of His Majesty's
Reign, the first.

30
L.S.

SEVERIN LETOURNEAU,
J.C.K.B.

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