

43, 1939

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**In the Privy Council**

No. of 1938.

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

BETWEEN

**ROBERT OLIVER SWEZEY,**

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

(Plaintiff-in-Warranty in the Superior Court and  
Respondent in the Court of King's Bench)

**APPELLANT,**

and

**BEAUHARNOIS POWER CORPORATION LIMITED,**

Beauharnois Power Corporation Limited, a body politic and corporate, duly incorporated  
and having its head office and chief place of business at the City and District of Montreal,

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

**RESPONDENT.**

*Supplementary*

**RECORD OF PROCEEDINGS**

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

**LAWRENCE JONES & Co.,**  
Solicitors for Respondent.

**C. A. MARCHAND, PRINTER, MONTEAL.**

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**RESPONDENT.**

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## RECORD OF PROCEEDINGS

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# In the Privy Council

No. of 1938.

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

10

BETWEEN

**ROBERT OLIVER SWEZEY,**

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

(Plaintiff-in-Warranty in the Superior Court and  
Respondent in the Court of King's Bench)

20

**APPELLANT,**

and

**BEAUHARNOIS POWER CORPORATION LIMITED,**

Beauharnois Power Corporation Limited, a body politic and corporate, duly incorporated  
and having its head office and chief place of business at the City and District of Montreal,

30

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

**RESPONDENT.**

40

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**RECORD OF PROCEEDINGS**

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PART I — PLEADINGS AND PROCEEDINGS

No. 1

10

Plaintiff-in-Warranty's Declaration

Canada

Province of Quebec  
District of Montreal  
No. A-126082

SUPERIOR COURT

In the  
Superior Court  
District of  
Montreal  
—  
No. 1  
Plaintiff-in-  
Warranty's  
Declaration  
1st Feb. 1934

HENRY SIFTON, et al., es qual.,

20

Plaintiffs.

— vs —

ROBERT OLIVER SWEEZEY

Defendant.

— and —

30

THE SAID ROBERT OLIVER SWEEZEY,

Plaintiff-in-Warranty,

— and —

BEAUHARNOIS POWER CORPORATION LIMITED,

Defendant-in-Warranty.

40

The principal Defendant, hereby constituting himself and acting as Plaintiff-in-Warranty against the said Beauharnois Power Corporation Limited, Defendant-in-Warranty, as described in the Writ of Summons hereto annexed, declares:—

1. That under and by virtue of a certain agreement entered into at Montreal on the 12th of May, 1927, and the schedules appended thereto he did make over and transfer unto



In the  
Superior Court  
District of  
Montreal  
—  
No. 1  
Plaintiff-in-  
Warranty's  
Declaration  
1st Feb. 1934  
(Continued)

Marquette Investment Corporation, a body politic and corporate with its head office at Montreal, certain rights which he had acquired from William Henry Robert, Joseph Albert Robert and Miss Sarah Mary Robert and that the agreement and schedules in question are in the possession and the hands of the Defendant-in-Warranty which it is hereby called upon to produce at the trial hereof.

10

2. That by another certain agreement, also executed at Montreal on the 12th of May, 1927, between the Plaintiff-in-Warranty and the Marquette Investment Corporation, the terms and conditons upon which the rights aforesaid were transferred to Marquette Investment Corporation were defined and the creation of a certain unincorporated Syndicate, which became known as the Beauharnois Syndicate, was provided for and the rights and powers of the members thereof, including certain members styled "managers" were also set out and determined. The original of this agreement is in the possession of the Defendant-in-Warranty, which is hereby called upon to produce the same at the trial hereof. 20

3. That the said Syndicate was formed for the purpose of procuring money and of developing a hydro-electric undertaking which is now that of the Defendant-in-Warranty.

4. That the said Syndicate was a mere association or partnership and that after the lapse of approximately a year, to wit, on the 4th of April, 1928, by agreement executed at Montreal, it transferred all its rights and obligations to the Beauharnois Power Syndicate which while nominally a second Syndicate was in fact a reorganization of the first, and was created for the purpose of facilitating certain modifications in the structure of the first Syndicate and increasing the number of the members or associates. The said agreement hereto referred to between the Beauharnois Power Syndicate and the Beauharnois Syndicate is in the possession of the Defendant-in-Warranty, which is hereby called upon to produce the same at the trial hereof. 40

5. That on the 12th day of January, 1934, the principal Plaintiffs, Henry A. Sifton et al, did institute an action against the principal Defendant and Plaintiff-in-Warranty, claiming in their quality of testamentary executors of the late Clifford Winfield Burrows Sifton to have and recover the sum of \$53,972.61 with interest thereon (whereof \$3,972.61 is interest on \$50,000.00) upon the alleged ground that the said late C. W. B. Sifton in his lifetime a practising barrister of the Ontario

10 Bar, had been retained by the Defendant and had been promised a fee or reward of \$50,000.00 upon the adoption by the federal government of such Order-in-Council as might be necessary to permit the carrying out of the works projected by the Beauharnois Syndicate, which measure ultimately took form as two Orders-in-Council passed by the Dominion Government, the first known as P. C. 422 on the 8th of March 1929 and the second as P. C. 1081 on the 22nd of June 1929.

In the  
Superior  
Court  
District of  
Montreal  
No. 1  
Plaintiff-in-  
Warranty's  
Declaration  
1st Feb. 1934  
(Continued)

6. The Plaintiff-in-Warranty annexes hereto duly certified copies of the Writ of Summons and Declaration in the principal action taken as aforesaid by the principal plaintiffs against the principal Defendant.

20 7. The said action relies entirely upon an alleged undertaking by the principal Defendant and Plaintiff-in-Warranty, as evidenced by certain letters produced as exhibits, to pay the said C. W. B. Sifton a fee therein referred to upon the passing of the appropriate measures by the Dominion Government as hereinabove set forth.

30 8. Under and by virtue of the terms and conditions upon which the Beauharnois Syndicate, and later the Beauharnois Power Syndicate, into which the former was converted, were brought into existence and form and by virtue of the undertakings of the associates or Syndicate members one with the other and with the Marquette Investment Corporation the Syndicate managers assumed no personal liability for their actions, but on the contrary, were to be protected and indemnified against all costs, charges and expenses whatsoever and saved harmless out of the funds of the Syndicate in respect of any action brought arising out of any deed, act or thing made, done or permitted by such manager in or about the execution of the duties of his office; the whole as shown by the agreements, and more particularly the agreement of the 12th of May, 1927, hereinabove secondly mentioned and referred to.

40

9. That the Plaintiff-in-Warranty was one of the managers of the said Syndicate; that throughout his relationship and dealings and his intercourse and communications whether written or verbal, with the said C. W. B. Sifton he acted solely and entirely in his capacity as such and as representing the Board of Managers of the said Syndicate or Syndicates and within the scope of his and their power with the authorization, concurrence and approval of the Board of Managers of the said Syndicate or Syndicates and consequently in the interest and on the behalf of the said Syndicate or Syndicates themselves.

In the  
Superior  
Court  
District of  
Montreal  
—  
No. 1  
Plaintiff-in-  
Warranty's  
Declaration  
1st Feb. 1934  
(Continued)

10. THAT as a consequence if any valid agreement was made or if any rights either to the sum demanded by the principal action or any other sum became vested in the said C. W. B. Sifton, and subsequent to his death in his executors by reason of the matters and things set out in the principal action, such rights were created and the corresponding obligation or obligations were incurred only for and on behalf of the Beauharnois Syndicate and/or the Beauharnois Power Syndicate and the Principal Defendant and Plaintiff-in-Warranty is under no personal liability in respect thereof or therefor. 10

11. That on or about the 31st day of October, 1929, by agreement executed at Montreal and by a further agreement executed at the same place on December 17th, 1929, all the rights, assets and powers of the Syndicate or Syndicates herein referred to were transferred, made over and assigned unto Beauharnois Power Corporation Limited, the Defendant-in-Warranty, which as part consideration thereof assumed all the obligations of the said Syndicate or Syndicates, including any obligation incurred by the Plaintiff-in-Warranty on their behalf arising from the matters and things set forth in the principal action; which said two agreements are in the possession of the Defendant-in-Warranty, which is hereby called upon to produce them at the trial hereof. 20

12. That by reason of the foregoing, if the principal Plaintiffs' action should be held well-founded in whole or in part, the principal Defendant is entitled to demand that the Defendant-in-Warranty will warrant him against any adjudication or condemnation that may or might be made in said principal action. 30

13. That the Plaintiff-in-Warranty is further entitled to demand that the Defendant-in-Warranty cause the said principal action to cease as against him and to indemnify him against any condemnation to which the said principal action may or might give rise.

40

WHEREFORE the Plaintiff-in-Warranty prays that the Defendant-in-Warranty be ordered to intervene in the action brought against the Plaintiff-in-Warranty by the principal Plaintiffs and cause it to cease; that the Defendant-in-Warranty be condemned to acquit and discharge, warrant and indemnify the Plaintiff-in-Warranty of and against any condemnation or judgment which may be rendered against him by reason of the said principal action in capital, interest and costs both as Plaintiff and Defendant: accrued and to accrue and more particularly

that the Defendant-in-Warranty be condemned to the payment of the costs of this action.

Montreal, February 1st, 1934.

10

E. Languedoc,  
Attorney for Defendant and  
Plaintiff-in-Warranty.

In the  
Superior  
Court  
District of  
Montreal  
—  
No. 1  
Plaintiff-in-  
Warranty's  
Declaration  
1st Feb. 1934  
(Continued)

No. 2

Plaintiffs' Declaration in Principal Action  
(Sifton v. Sweezy)

In the  
Superior  
Court  
District of  
Montreal  
—  
No. 2  
Plaintiff's  
Declaration  
in Principal  
Action  
(Sifton v.  
Sweezy)  
12 Jan. 1934

20

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 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 herewith to form part hereof as Plaintiff's Exhibit No. P-1.

30

2. During the course of the months of September and October 1927, the Defendant retained the services of the said 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 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 hereof as Plaintiffs' exhibits, to wit:—

40

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

In the  
Superior  
Court  
District of  
Montreal  
—  
No. 2  
Plaintiff's  
Declaration  
in Principal  
Action  
(Sifton v.  
Sweezy)  
12 Jan. 1934  
(Continued)

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.	10
Letter from the Defendant to the said C. Winfield B. Sifton dated 19th October, 1927 .....	Exhibit No. P-6.	
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 20  
he was called upon to render under the terms of the said agree-  
ment 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.

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. 30  
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 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 40  
to pay the said amount of \$50,000., although duly bound so to do.

6. The Plaintiffs are entitled to claim from the De-  
fendant 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  
amounts 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.

10 (Sgd) Casgrain, Weldon, Demers & Lynch-Staunton,  
Attorneys for Plaintiffs.

In the  
Superior  
Court  
District of  
Montreal  
—  
No. 2  
Plaintiff's  
Declaration  
in Principal  
Action  
(Sifton v.  
Sweezy)  
12 Jan. 1934  
(Continued)

No. 3

Defendant-in-Warranty's Plea

20 1. As to paragraphs 1 and 2 of the declaration-in-Warranty Defendant-in-Warranty says that the agreements therein referred to are in writing and speak for themselves.

2. As to paragraph 3 thereof the same is denied.

30 3. As to paragraph 4 Defendant-in-Warranty says that the agreement therein referred to is in writing and speaks for itself, and except in so far as the allegations of the said paragraph conform to the said agreement the same is denied.

4. As to paragraph 5 Defendant-in-Warranty admits the institution of the action therein referred to, the allegations whereof are in writing and speak for themselves.

5. As to paragraph 7 Defendant-in-Warranty says that the allegations of the said action speak for themselves.

6. As to paragraphs 8, 9 and 10 the same are denied.

40 7. As to paragraph 11 Defendant-in-Warranty says that the agreement therein referred to is in writing and speaks for itself, and except in so far as the allegations of the said paragraph are in accordance with the said agreement the same are denied.

8. As to paragraphs 12 and 13 the same are denied.

AND DEFENDANT-IN-WARRANTY FURTHER  
SAYS:—

In the  
Superior  
Court  
District of  
Montreal  
—  
No. 3  
Defendant in-  
Warranty's  
Plea  
1 March 1934

In the  
Superior  
Court  
District of  
Montreal  
—  
No. 3  
Defendant in-  
Warranty's  
Plea  
1 March 1934  
(Continued)

9. That under the terms of the agreements referred to in the declaration-in-warranty, and particularly under the terms of the agreement referred to in paragraph 2 of the declaration-in-warranty, it was provided that the Board of Syndicate Managers should in all things administer, manage and control the property, rights, affairs, concerns, business and undertaking of the Syndicate and make or cause to be made for the Syndicate any description of contract which the Syndicate might by law enter into. 10

10. That the letters filed by the principal Plaintiff herein, and referred to in paragraph 7 of the declaration-in-warranty, were never authorized by the Board of Syndicate Managers and were never reported to the Board and no reference whatsoever to them appears in the Minutes of the Meetings of the Board.

11. That the Defendant-in-Warranty did not by any of the agreements referred to in the action in warranty, assume the obligation of the Syndicate or Syndicates therein referred to and in particular did not assume the obligation sued upon herein. 20

12. That at the time the Plaintiff-in-warranty wrote the letter of June 11th, 1932, produced as Plaintiff's Exhibit No. P-8, he was no longer connected with the Beauharnois enterprise, having resigned as an officer and director of the Beauharnois Companies, including the Defendant-in-Warranty, in the month of November, 1931.

13. That moreover even if the Plaintiff-in-Warranty had assumed to be acting for the Defendant-in-Warranty or the Syndicates at the time that he wrote the letter, Exhibit P-8, the Corporation Defendant would not have been obliged to indemnify him, inasmuch as any obligation thereby undertaken by him would have been occasioned by his own wilful act and default, inasmuch as it was well known to him that the late Winfield Sifton had died in the month of June, 1928, long prior to any approval of plans, and by reason of his death he had been prevented from using his best endeavours to procure said approval, and further inasmuch as it was well known to the Plaintiff-in-Warranty that the plans therein referred to were never definitely passed and approved by the Dominion Government. 30 40

WHEREFORE Defendant-in-Warranty prays that the action in warranty taken herein be dismissed with costs.

Montreal, 1st March, 1934.

Brown, Montgomery & McMichael,  
Attorneys for Defendant-in-Warranty.

No. 4

Plaintiff-in-Warranty's Answer to Plea

In the  
Superior Court  
District of  
Montreal  
—  
No. 4  
Plaintiff-in-  
Warranty's  
Answer  
to Plea  
13 Mch. 1934

10 For answer to the Plea of the Defendant-in-Warranty herein, the Plaintiff-in-Warranty says:—

1. That he joins issue with the Defendant-in-Warranty on the denials contained in paragraphs 2 and 3 thereof.

2. That he joins issue with the Defendant-in-Warranty upon the denials contained in paragraphs 6, 7 and 8 thereof.

20 3. As to paragraph 9 thereof, that the agreements therein referred to speak for themselves and except in so far as the allegations of the said paragraph conform thereto, the same are denied.

30 4. As to the averments of paragraph 10 thereof that the same are expressly denied and the Plaintiff-in-Warranty reasserts that any undertaking entered into by him with the said C. W. B. Sifton was entirely within the scope of his powers as one of the managers of the Syndicate and was authorized and ratified by the Board of Managers thereof in addition to which the said Beauharnois Syndicate and/or the Beauharnois Power  
33) Syndicate and/or the Defendant-in-Warranty did in conformity with the said undertaking from time to time either directly or through the Marquette Investment Corporation make payments to the said late C. W. B. Sifton.

5. That paragraph 11 of the said Plea is denied.

40 6. That paragraph 12 of the said Plea is denied as drawn, but the Plaintiff-in-Warranty admits that he had resigned as an officer and director of the Beauharnois Companies prior to June 11th, 1932.

7. That paragraph 13 of the said Plea is denied as drawn. The Plaintiff-in-Warranty does not maintain or suggest that by writing the letter, Exhibit P-8, he created or undertook any obligation, whether on his own behalf or on behalf of any other person or corporation, the said letter merely constituting an acknowledgment of an obligation previously contracted between the Beauharnois Power Syndicate and the late C. W. B. Sifton during the latter's lifetime and this in the view of the



In the  
Superior  
Court  
District of  
Montreal  
—  
No. 4  
Plaintiff-in-  
Warranty's  
Answer  
to Plea  
13 Mch. 1934  
(Continued)

Plaintiff-in-Warranty though it may be that in law the principal Plaintiffs owing to the premature death of the said late C. W. B. Sifton have no enforceable claim on behalf of his estate and the Plaintiff-in-Warranty reasserts that if there is any such right of action in favour of the principal plaintiffs it is enforceable against the Defendant-in-Warranty alone.

WHEREFORE the Plaintiff-in-Warranty prays for the dismissal of the Plea in Warranty with costs.

10

Montreal, March 13th, 1934.

E. Languedoc,  
Attorney for Defendant and  
Plaintiff-in-Warranty.

20

No. 5

In the  
Superior  
Court  
District of  
Montreal  
—  
No. 5  
Defendant-in-  
Warranty's  
Motion for  
Particulars of  
Plaintiff-in-  
Warranty's  
Answer  
15 Mch. 1934

Defendant-in-Warranty's Motion for Particulars  
of Plaintiff-in-Warranty's Answer

WHEREAS by his action in Warranty herein, Plaintiff-in-Warranty prays that Defendant-in-Warranty be condemned to warrant and indemnify Plaintiff-in-Warranty against any condemnation of Judgment which may be rendered against him in the principal action, in which the principal Plaintiffs pray for judgment against the Principal Defendant in the sum of \$53,972.61, alleged to be due for services rendered by the late Clifford W. B. Sifton, in his lifetime Solicitor;

30

WHEREAS Defendant-in-Warranty pleaded to the action in Warranty, alleging *inter alia* in paragraph 10 that certain letters fyled by principal Plaintiff and referred to in the Declaration in Warranty were never authorized by the Board of Syndicate Managers and were never reported to such Board;

40

WHEREAS, in answer to said paragraph 10 of the action in Warranty, Plaintiff-in-Warranty answers by paragraph 4 of his Answer to Plea, as follows:—

“4. As to the averments of paragraph 10 thereof  
“that the same are expressly denied and the Plaintiff-in-

10 “Warranty reasserts that any undertaking entered into  
“by him with the said C. W. B. Sifton was entirely within  
“the scope of his powers as one of the managers of the  
“Syndicate and was authorized and ratified by the Board  
“of Managers thereof in addition to which the said Beau-  
“harnois Syndicate and/or the Beauharnois Power Syn-  
“dicate and/or the Defendant-in-Warranty did in con-  
“formity with the said undertaking from time to time either  
“directly or through the Marquette Investment Corpora-  
“tion make payments to the said late C. W. B. Sifton.”

In the  
Superior  
Court  
District of  
Montreal  
—  
No. 5  
Defendant in-  
Warranty's  
Motion for  
Particulars of  
Plaintiff in-  
Warranty's  
Answer  
15 Mch. 1934  
(Continued)

20 without indicating how or when the undertaking referred to was  
authorized and ratified by the Board of Managers, and without  
stating how and when the Beauharnois Syndicate and/or the  
Beauharnois Power Syndicate and/or the Defendant-in-Warranty  
did from time to time make payment to the said late C. W. B.  
Sifton;

WHEREAS it is impossible intelligently to draft the  
Reply to the said Answer, and in particular to the said paragraph  
thereof, without having details with respect to the points referred  
to in the preceding paragraph of this present Motion;

30 WHEREFORE Motion on behalf of the Defendant-in-  
Warranty that Plaintiff-in-Warranty be ordered to furnish,  
within such delay as this Honourable Court may fix, with regard  
to paragraph 4 of his Answer to Plea of the Defendant-in-  
Warranty, details as to how and when the undertaking referred  
to was authorized and ratified by the Board of Managers, and  
as to how and when the Beauharnois Syndicate and/or the Beau-  
harnois Power Syndicate and/or the Defendant-in-Warranty did  
from time to time make payment to the said late C. W. B. Sifton;  
and that Defendant-in-Warranty's delays to reply to the said  
Answer to Plea do not begin to run until the said Particulars  
have been so furnished; Defendant-in-Warranty reserving its  
40 right in case the said Particulars are not so furnished — the  
whole with costs to follow suit.

Montreal, 15th March, 1934.

Brown, Montgomery & McMichael,  
Attorneys for Defendant-in-Warranty.

---

No. 6

Plaintiff-in-Warranty's Particulars in Compliance with Order  
of Mr. Justice Surveyer

In the  
Superior  
Court  
District of  
Montreal

No. 6  
Plaintiff-in-  
Warranty's  
Particulars  
in Compliance  
with Order  
of Mr. Justice  
Surveyer  
27 April 1934

In compliance with the Order of this Honourable Court  
hereinabove referred to the Plaintiff-in-Warranty provides  
particulars as follows:—

10

1. The Plaintiff-in-Warranty declares that he has not in  
his possession any letters, copies of letters, extracts from minute  
books, or resolutions tending to establish an acknowledgment of  
Plaintiff-in-Warranty's mandate by Defendant-in-Warranty or  
any of the syndicates that preceded it.

2. A verbal arrangement in substance the same in its  
conditions as that relied on by the principal action herein was  
entered into between the Plaintiff-in-Warranty, acting on behalf  
of the Beauharnois Syndicate and as one of its managers, and  
the late C. Winfield B. Sifton upon a date which the Plaintiff-  
in-Warranty is unable accurately to determine but to the best  
of his knowledge and recollection between the 6th and the 28th  
of September, 1927, and immediately it was concluded it was  
reported by the Plaintiff-in-Warranty to his fellow managers  
of the Beauharnois Syndicate and by them approved and it was  
only subsequently to his having secured his fellow managers'  
approval as aforesaid that the Plaintiff-in-Warranty became a  
party to the correspondence evidenced and produced in support  
of the principal action as P.3, P.4, P.5, P.6 and P.7. Thereafter  
to the day of his death the said C. Winfield B. Sifton was con-  
stantly in contact with the said Syndicate and its managers or  
the Beauharnois Power Syndicate and its managers, and both  
the said syndicates and their managers were constantly aware  
and kept informed of the terms upon which said C. Winfield B.  
Sifton had been retained.

20

30

40

3. The Plaintiff-in-Warranty is unable to state the date  
of the payments made from time to time to or for the benefit  
of the late C. Winfield B. Sifton as the accounts rendered by  
him and the cheques issued in payment thereof are in the hands  
of the Defendant-in-Warranty and under its control, but as far  
as the Plaintiff-in-Warranty is aware all payments made to the  
late C. Winfield B. Sifton during his lifetime were made in the  
form of cheques issued by Marquette Investment Corporation

10 in addition to which and after which payments were made to his widow to the extent of \$10,000.00 by Beauharnois Power Corporation Limited during the period February 25th 1930 to November 19th, 1931. These payments were made in good faith, the Beauharnois Power Corporation Limited assuming that the said Sifton's widow was his universal legatee or beneficiary or executrix, as she had threatened suit to recover, and furthermore because in the presence of the Plaintiff-in-Warranty the said Sifton had promised his wife that she should have any professional fees or emoluments earned by him as a result of his retainer in connection with the Beauharnois enterprise.

In the Superior Court District of Montreal  
—  
No. 6 Plaintiff-in-Warranty's Particulars in Compliance with Order of M.- Justice Surveyer  
27 April 1934  
(Continued)

Montreal, April 27, 1934.

20 E. Languedoc,  
Attorney for Plaintiff-in-Warranty.

**No. 7**

**Defendant-in-Warranty's Replication to Plaintiff-in-Warranty's Answer**

In the Superior Court District of Montreal  
—  
No. 7 Defendant-in-Warranty's Replication to Plaintiff-in-Warranty's Answer  
23 Oct. 1934

- 30 1. To paragraphs 1, to 3, that they require no answer.
2. To paragraph 4, Defendant-in-Warranty joins issue with the denial therein contained and denies the affirmative allegations, including the allegations of Particulars furnished with respect thereto.
3. To paragraph 5, Defendant-in-Warranty joins issue.
4. To paragraph 6, Defendant-in-Warranty joins issue with the denial therein contained and denies the balance of the allegations.

40

WHEREFORE Defendant-in-Warranty, reiterating the allegations and conclusions of its Plea, prays for the dismissal of the Answer to Plea, with costs.

Montreal, 23rd October, 1934.

Brown, Montgomery & McMichael,  
Attorneys for Defendant-in-Warranty.

No. 8

In the  
Superior  
Court  
District of  
Montreal

Judgment Granting Plaintiff-in-Warranty's Motion to Unite Cases for Trial

No. 8  
Judgment  
Granting  
Plaintiff-in-  
Warranty's  
Motion  
to Unite  
Cases  
for Trial  
4 Sept. 1934

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

10

SUPERIOR COURT

ON THIS 4th day of September 1934.

PRESENT:— The Hon. Mr. Justice Archambault.

THE COURT, having heard the parties by counsel on the 20  
motion for Defendant and Plaintiff-in-Warranty and praying  
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. O. Archambault,

30

No. 9

In the  
Superior  
Court  
District of  
Montreal

Plaintiff-in-Warranty's Evidence

No. 9  
Plaintiff-in-  
Warranty's  
Evidence  
Deposition of  
Loring C.  
Christie  
on Discovery

DEPOSITION OF LORING C. CHRISTIE

A witness examined on Discovery on behalf of Plaintiff 40  
in Warranty.

On this twenty-fifth day of October, 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 and Treasurer Beauharnois Power Cor-  
poration, Limited, aged 49 years, a witness produced and  
examined on behalf of the Plaintiff in Warranty on Discovery,  
who being duly sworn, deposes as follows:

Examined by Mr. Languedoc, K.C., of Counsel for Plaintiff in Warranty:—

In the  
Superior  
Court  
District of  
Montreal

Q.—What is your position with the Beauharnois Power Corporation, Limited, the Defendant in Warranty?

A.—Secretary and Treasurer.

10 Q.—As such you are, I presume, in charge of all their records and documents?

A.—Yes.

Q.—Have you with you the documents specified in the schedule attached to the subpoena?

A.—Yes.

Q.—Have you with you the agreement of May 12th, 1927, between R. O. Swezey and Marquette Investment Corporation, and, if so, will you please produce it as exhibit P-W-1?

20 A.—I have the originals here, and I also have copies.

(Subject to production of the originals in Court, if required, copies will be produced at this examination).

Witness:—I produce a copy as Exhibit P-W-1.

I also have copies of schedules A and B, which are mentioned in the agreement, being two agreements of February 3rd, 1927.

30 Q.—So, copies of the agreement referred to and schedules thereto, will be produced as Exhibit P-W-1?

A.—Yes.

Q.—Have you with you the agreement referred to as No. 2, of May 12th, 1927, between R. O. Swezey and Marquette Investment Corporation?

A.—Yes.

Q.—Will you, pro tem., produce a copy thereof, and any schedules attached, as Exhibit P-W-2?

40 A.—Yes.

Q.—Have you with you the agreement referred to in No. 3, between the Beauharnois Syndicate and Beauharnois Power Syndicate, of date April 4th, 1928, and schedules attached?

A.—Yes.

Q.—Will you produce them as Exhibit P-W-3?

A.—Yes.

Q.—Have you with you the two agreements referred to under No. 4, as of October 31st, 1929, and December 17th, 1929, between Beauharnois Syndicate and/or Beauharnois Power Syn-

No. 9  
Plaintiff-in-  
Warranty's  
Evidence  
Deposition of  
Loring C.  
Christie  
on Discovery  
(Continued)

In the  
Superior Court  
District of  
Montreal  
—  
No. 9  
Plaintiff-in-  
Warranty's  
Evidence  
Deposition of  
Loring C.  
Christie  
on Discovery  
(Continued)

dicate and Beauharnois Power Corporation? Have you two agreements of October 31st, and two agreements of December 17th?

A.—I have one agreement of October 31st 1929, between Beauharnois Power Syndicate and Beauharnois Power Corporation, Limited, and Marquette Investment Corporation; which was the one that was asked for.

Q.—Will you produce it as Exhibit P-W-4? 10

A.—Yes.

Q.—Have you the agreement, or agreements, of December 17th, 1929?

A.—I have one agreement of December 17th, 1929, between Beauharnois Power Syndicate and Beauharnois Power Corporation, Limited and Marquette Investment Corporation, which I produce as Exhibit P-W-5.

Q.—Have you any Minutes of the Beauharnois Syndicate — the first Syndicate?

A.—Yes. 20

Q.—Will you produce the Minute book, as Exhibit P-W-6?

A.—Yes.

Q.—Is Exhibit P-W-6 the only record you have of the proceedings of Beauharnois Syndicate?

A.—Yes.

Q.—Have you the Minute Book of Beauharnois Power Syndicate?

A.—Yes.

Q.—Is this the only record you have, or your Company 30 has, in your or its possession of the proceedings of Beauharnois Power Syndicate?

A.—Yes.

Q.—Will you please file it as Exhibit P-W-7?

A.—Yes.

Q.—In connection with Paragraph 7 of the Notice, have you any cancelled cheques made payable either to the order of the Plaintiff in the Principal Action in this case, or to his widow, or to his estate, made or drawn by Marquette Investment Corporation? 40

A.—Yes.

Q.—Are those cheques which you now hold in your hand all the cheques in your Company's possession, payable to Mr. Sifton, or his widow, or his estate?

A.—Yes.

They include cheques besides the Marquette Investment Corporation

Q.—Will you also produce, for the sake of convenience, a list of the cheques which you have just handed me; the bundle of cheques to be Exhibit P-W-8, and a list of those cheques prepared by yourself or your Company to be Exhibit P-W-9?

A.—Yes.

10 Q.—As far as the documents in your Company's possession are concerned, I take it Exhibit P-W-9 is an exhaustive list of all the payments you have been able to check and discover?

A.—Yes.

Q.—And you vouch for this list as being accurate?

A.—I told our Accounting Department to get out all the cheques, and they have provided me with those cheques and this list, and they told me that is all they could find.

20 Q.—Although this list speaks for itself I might direct your attention to the fact that down to the date of the death of the Principal Plaintiff all the payments were in the form of cheques from the Marquette Investment Corporation.

A.—Yes, that seems to be so, from the list. I have not actually verified it from the cheques themselves.

Q.—Subsequently to the death of the late Mr. Sifton the Principal Plaintiff, the first payment which was made by Beauharnois Power Corporation appears under date February 25th, 1930?

A.—Yes.

30 Q.—In addition to the documents you have already produced, have you any correspondence between Mr. Sifton or his widow, or his estate, and the Beauharnois Syndicate, the Beauharnois Power Syndicate, or Marquette Investment Corporation?

A.—I have an old file here, which was in the files of the Secretary Treasurer of the Beauharnois Power Corporation who preceded me, Mr. Griffith. It is correspondence with the late Mr. W. B. Sifton, and mainly, I think, Mr. Swezey and Mr. Griffith, who were officers of the Beauharnois Power Corporation.

Q.—For the moment will you produce it as Exhibit P-W-10?

40 A.—Yes.

Q.—Does that complete the list of documents you have been able to find in compliance with the list attached to the subpoena?

A.—I have a Syndicate Agreement of April 4th, 1928, between F. Stuart Molson and others and Marquette Investment Corporation, which, I understand, created the second Syndicate — Beauharnois Power Syndicate.

Q.—Will you produce it as Exhibit P-W-11?

A.—Yes.

In the  
Superior  
Court  
District of  
Montreal

No. 9  
Plaintiff in-  
Warranty's  
Evidence  
Deposition of  
Loring C.  
Christie  
on Discovery  
(Continued)



In the  
Superior  
Court  
District of  
Montreal  
—  
No. 9  
Plaintiff-in-  
Warranty's  
Evidence  
Deposition of  
Loring C.  
Christie  
on Discovery  
(Continued)

Q.—Is there anything else?

A.—Yes. I have an old file, which I also found in the files when I took over. It seems to consist of some notes by the late Mr. Sifton.

Q.—When you say notes, you mean memoranda?

A.—Yes. And various expense accounts, and hotel bills, etc.

Q.—Will you produce it as Exhibit P-W-12?

10

A.—Yes.

Q.—Have you anything else and, if so, will you please identify it as Exhibit P-W-13?

A.—There is a banking agreement, which is referred to as Schedule A in Exhibit P-W-4.

Q.—Will you produce it as Exhibit P-W-13?

A.—I have not it here.

Q.—Will you please secure it, and produce it through the Company's Solicitors?

A.—Yes.

20

Q.—Is there anything else in your possession which comes under the general request contained in Paragraph 7 of the Notice?

A.—It is a pretty big request, and it might be extended to cover a mountain of documents we have.

There was a reference to payments to Mrs. Sifton in the Minutes of the Beauharnois Power Corporation, Limited.

Q.—Would not that be in the Minute Book?

30

A.—Not this. It is the Beauharnois Power Corporation, Limited. I have a certified extract of it here. It is the only reference in any of the Company Minute Books.

Q.—Is there anything else you have?

A.—The only other thing I could think of as coming within this definition of yours, since the Action refers to the contract, related to the approval of the plans of the Company, or copies of the Orders in Council referring to the plans. Otherwise I cannot think of anything.

Q.—Are those certified copies of the Orders in Council issued by the King's Printer?

40

A.—No. They are not certified.

Mr. Languedoc:—I have no further questions.

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

(And further Deponent saith not).

J. H. Kenehan,  
Official Court Reporter.

No. 10

Judgment of the Privy Council in Appeal of Sifton v. Sweezy

In the  
Privy Council

No. 10  
Judgment  
in Appeal  
of Sifton  
v. Sweezy  
1 Feb. 1938

10 JUDGMENT OF THE LORDS OF THE JUDICIAL  
COMMITTEE OF THE PRIVY COUNCIL,  
*Privy Council Appeal No. 14 of 1937*

Clifford Sifton and another - - - - *Appellants*

*v.*

Robert Oliver Sweezy - - - - *Respondent*

20 FROM  
THE COURT OF KING'S BENCH FOR THE PROVINCE  
OF QUEBEC (APPEAL SIDE).  
DELIVERED THE 1ST FEBRUARY, 1938.

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*Present at the Hearing:*

30 LORD ATKIN.  
LORD THANKERTON.  
LORD RUSSELL OF KILLOWEN.  
LORD WRIGHT.  
LORD MAUGHAM.  
[*Delivered by* LORD THANKERTON.]

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40 In this action the appellants, as executors of the late Clifford Winfield Burrows Sifton (hereinafter referred to as Winfield Sifton), seek to recover from the respondent the sum of \$50,000 with interest of \$3,972.61, or \$53,972.61 in all, as due in respect of an agreement made between the respondent and Winfield Sifton in 1927.

By judgment of the Superior Court of the Province of Quebec, District of Montreal (Mackinnon J.), dated the 15th January, 1935, the respondent was condemned to pay to the appellants the said sum of \$53,972.61. On appeal by the respondent, this judgment was annulled and the action was dismissed

In the  
Privy Council  
No. 10  
Judgment  
in Appeal  
of Sifton  
v. Sweezey  
1 Feb. 1938  
(Continued)

by judgment of the Court of King's Bench (Appeal Side), dated the 9th June, 1936. The present appeal is from that judgment.

In the year 1927, the respondent, who is a civil engineer and a financier and carried on business under the firm name of Newman, Sweezey & Company, Investment Bankers, was engaged in a plan to develop hydro-electric power from a series of rapids in the St. Lawrence River between Lake St. Francis and Lake St. Louis in the Province of Quebec; this involved the construction of a ship canal near the Village of Beauharnois on the south bank of the river, to provide for navigation between the two lakes, and the diversion of waters from the St. Lawrence River. This rendered it necessary to obtain the approval of the Governor-General in Council in terms of the Navigable Waters Protection Act, R.S.C. 1927, cap. 140; the material provisions of which are as follows:—

“4. No work shall be built or placed in, upon, over, under, through or across any navigable water unless the site thereof has been approved by the Governor in Council, nor unless such work is built, placed and maintained in accordance with plans and regulations approved or made by the Governor in Council . . .

“7. The local authority, company or person proposing to construct any work in navigable waters, for which no sufficient sanction otherwise exists, may deposit the plans thereof and a description of the proposed site with the Minister of Public Works, and a duplicate of each in the office of the registrar of deeds for the district, county or province in which such work is proposed to be constructed, and may apply to the Governor in Council for approval thereof . . .

“12. Parliament may, at any time, annul or vary any order of the Governor in Council made under this Part.

2. Any action of Parliament in that behalf shall not be deemed an infringement of the rights of the local authority, company or person concerned.”

The respondent first approached Winfield Sifton in September, 1927. It appears from the evidence that the respondent, in February, 1927, had secured control of all the issued shares of a company known as the Beauharnois Light, Heat & Power Company and had acquired certain rights in the site of the proposed undertaking, and, further, that in May 1927, he had formed a syndicate in connection with the matter, of which there were

five managers, vizt., the respondent, two of his firm partners, Henry Newman and Hugh B. Griffith, Robert W. Steele and, fifthly, William Robert, who resigned at the first meeting. The respondent had also formed a depositary company to hold the assets of the syndicate and make the necessary disbursements called the Marquette Investment Corporation.

In the  
Privy Council  
No. 10  
Judgment  
in Appeal  
of Sifton  
v. Sweezy  
1 Feb. 1938  
(Continued)

10

Having been informed that Winfield Sifton had had experience which would be of advantage in the promotion of the application to the Dominion Government under the Navigable Waters Protection Act, the respondent decided to engage his services, and, after an interview between Winfield Sifton and Griffith, who was secretary of the syndicate, arranged by the respondent, the respondent had a meeting with Sifton, at which an arrangement was come to, which was subsequently embodied in certain letters which are the evidence of the contract founded on by the appellants. These letters are as follows:—

20

Montreal, 15th Oct. 1927.

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.

30

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.

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 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,  
"R. O. Sweezy".

In the  
Privy Council  
No. 10  
Judgment  
in Appeal  
of Sifton  
v. Sweezy  
1 Feb. 1938  
(Continued)

Oct. 17/27.

R. O. Sweezy, Esq.  
136, St. James St.,  
Montreal.

Dear Bob,

I beg to acknowledge your letter of Oct. 15th confirming 10  
arrangement between us, and agree and approve same as stated  
by you.

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 20  
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.

Yrs. Tly.,  
(Sgd.) "W. B. S."

Montreal, 19th Oct. 1927.

W. B. Sifton, Esq.,  
Mallorytown, Ont.

30

Dear Sir,

I have your letter of October 17th, which for purpose of  
clearer understanding I quote herewith:—

"It is of course, understood that I shall use my best en-  
deavours on your behalf, and shall act subject to your instruc-  
tions. 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 40  
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 there-  
fore it would clarify our understanding if this phrase were eli-  
minated."

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".

After the verbal arrangement had been come to, the respondent had sent Winfield Sifton the retaining fee of \$5,000 by his own cheque on the 28th September, 1927.

In the  
Privy Council  
—  
No. 10  
Judgment  
in Appeal  
of Sifton  
v. Sweezy  
1 Feb. 1938  
(Continued)

10 In January, 1928, the plans and description of the site were deposited with the Minister of Public Works in terms of section 7 of the Navigable Waters Protection Act, along with a formal application to the Governor-General in Council for approval in terms of section 5.

Winfield Sifton died on the 13th June, 1928, and the first Order in Council relative to the application was made on the 8th March, 1929, after a formal hearing on the application in January, 1929, by the Minister of Public Works.

20 Though there is no competent evidence as to the nature of the services performed by Winfield Sifton, there is no dispute that he performed his part of the contract up to the date of his death. Various payments were made to him in respect of expenses and other matters such payments being made by the Marquette Corporation.

30 Two questions arise for decision on construction of the contract, vizt, (a) whether the respondent was personally liable under the contract, or whether it was only a syndicate liability, and (b) whether the plans have been passed and approved by the Dominion Government within the meaning of the contract. In the third place, assuming that the plans were so approved, and, in view of the death of Winfield Sifton 15 months prior to such approval, the question arises whether the contract had been terminated by his death, and any liability for the fee of \$50,000 had been discharged.

40 If matters had rested there, the decision of the question of the respondent's liability and of the effect of Winfield Sifton's death might have presented some difficulty, but, in the opinion of their Lordships, any need for consideration of these questions is superseded by the subsequent admissions of the respondent, which must be referred to.

About a month after Winfield Sifton's death, the appellant Victor Sifton, not being aware of the letters of October, 1927, had asked the respondent to confirm his agreement with Winfield Sifton; the respondent replied that he would call on him on his next visit to Toronto, but had then delayed the matter. In April, 1932, the Appellant, Clifford Sifton, took the matter

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up again with the respondent; within a few days later Clifford Sifton found the series of letters and wrote the respondent on the 27th April of his discovery, and asking the respondent to settle the matter without delay. On the 12th May Clifford Sifton wrote to the respondent, expressing disappointment at his failure to call, and stating "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 . . . 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." The respondent replied on the following day expressing the difficulties of his then situation and asking the appellants to leave the matter in abeyance for the time, and stating that he would call if he should be in Toronto soon. In fact a meeting took place between Clifford Sifton and the respondent on the 11th June, 1932, following on which the respondent wrote the following letter:—

June 11th, 1932.

Mr. Clifford Sifton,  
Executor Estate Winfield Sifton,

Dear Sir,

In consideration of the executors' undertaking not to press this matter for six months from to-day, 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".

To this letter Clifford replied as follows:—

13th June, 1932. 40

Mr. R. O. Sweezey,  
c/o Newman, Sweezey & Co.,  
210, St. James St. West,  
Montreal, Quebec.

Personal and Confidential.

Dear Mr. Sweezey,

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.





In the  
Privy Council  
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submission by the Committee of the Privy Council, which was approved by the Governor-General, was as follows:—

“The Committee, on the recommendation of the Minister of 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 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.”

The agreement referred to was drawn up, and by the second Order in Council, dated the 22nd June, 1929, it was approved and the Minister was authorised to execute it. The agreement was executed on the 25th June, 1929. The conditions embodied in this agreement related to the execution of the works, and provided for the supervision of its construction by the Minister through his engineers, as also for the submission of detailed plans.

Their Lordships, in agreement with Mackinnon J., who tried the case, and St. Germain J., who dissented in the Court of King’s Bench, are clearly of opinion that the approval of plans referred to in the contracts was the statutory approval of the Governor-General in Council under section 4 of the Act of the plans deposited under section 7 of the Act, and that the plans were “passed and approved by the Dominion Government” within the meaning of the contract when the Orders in Council of the 8th March and the 22nd June, 1929, were passed. Thereafter the matter stood upon the agreement, and became a Department concern. Accordingly, the additional fee of \$50,000 became due in June, 1929. The subsequent annulment of the Orders in Council by Parliament in 1931 cannot affect this liability. Their Lordships agree with St. Germain J., who says:—

10 “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.”

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Privy Council  
—  
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(Continued)

20 Their Lordships are accordingly of opinion that the judgment of the Superior Court was correct and should be restored, except as to the respondent's action in warranty against the Beauharnois Power Corporation in which no appeal is before the Board, and their Lordships will humbly advise His Majesty accordingly. The respondent will pay the appellant's costs of this appeal and in the Court of King's Bench.

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No. 11

Decree of the Privy Council in Appeal of Sifton v. Sweezy

In the  
Privy Council  
—  
No. 11  
Decree  
in Appeal  
of Sifton  
v. Sweezy  
24 Feb. 1938

L.S.

30

AT THE COURT AT BUCKINGHAM PALACE

The 24th day of February, 1938

PRESENT

THE KING'S MOST EXCELLENT MAJESTY

40 THE LORD PRESIDENT            SIR PHILIP SASSOON  
EARL OF LUCAN                 SIR JOHN ANDERSON  
LORD SOUTHBOROUGH         MR. HUDSON  
MR. SECRETARY ELLIOTT       SIR CHARLES CLAUSON

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 1st day of February 1938 in the words following, viz.:—

“Whereas by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee the matter of an Appeal from the Court of King's Bench for the Province of Quebec (Appeal

In the  
Privy Council  
No. 11  
Decree  
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24 Feb. 1938  
(Continued)

Side) between Clifford Sifton and W. Victor Sifton Appellants and Robert Oliver Sweezey Respondent (Privy Council Appeal No. 14 of 1937) and likewise a humble Petition of the Appellants setting forth that on the 12th January 1934 the Appellants brought an Action in the Superior Court for the Province of Quebec against the Respondent claiming \$53,972.61 as the amount (with accrued interest) due and payable by the Respondent to the Appellants under an agreement between the Respondent and the late Clifford Winfield Burrows Sifton entered into in September 1927: that on the 15th January 1935 judgment was given condemning the Respondent to pay to the Appellant \$53,972.61 with further interest thereon at 5 per cent. *per annum* from the date of service of the Action: that the Respondent appealed to the Court of King's Bench and on the 9th June 1936 that Court by a majority gave judgment allowing the Appeal and dismissing the Action: that the Appellants obtained leave to appeal to Your Majesty in Council: And humbly praying Your Majesty in Council to take their Appeal into consideration and that the Judgment of the Court of King's Bench dated the 9th June 1936 may be reversed or for further or other belief:

“THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the Appeal and humble Petition into consideration and having heard Counsel on behalf of the Parties on both sides Their Lordships do this day agree humbly to report to Your Majesty as their opinion that this Appeal ought to be allowed the Judgment of the Court of King's Bench for the Province of Quebec (Appeal Side) dated the 9th day of June 1936 set aside with costs and the judgment of the Superior Court for the Province of Quebec, dated the 15th day of January 1935 restored except in respect of an Action in Warranty brought by the Respondent against the Beauharnois Power Corporation Limited in which no Appeal to Your Majesty in Council has been presented:

“And in case Your Majesty should be pleased to approve of this Report then their Lordships do direct that there be paid by the Respondent to the Appellants their costs of this Appeal incurred in the said Court of King's Bench and the sum of £460 1s. 4d. for their costs incurred in England.”

HIS MAJESTY having taken the said Report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the Lieutenant-Governor of the Province of Quebec for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

(Sgd.) M. P. A. HANKEY.

No. 12

Respondent's Motion to the Court of King's Bench for Leave to Appeal  
to the Privy Council

In the  
Court of  
King's Bench  
—  
No. 12  
Respondent's  
Motion  
for Leave  
to Appeal  
to the Privy  
Council  
25 April 1938

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WHEREAS this Respondent, Plaintiff-in-Warranty in the Superior Court desires to appeal to His Majesty in His Privy Council from the judgment of this Honourable Court rendered herein the 9th day of June 1936, in so far as it maintained the appeal of the above named Appellant from the judgment of the Superior Court in the action in warranty rendered the 15th day of January 1935; and

20

WHEREAS in and by the said judgment of the Superior Court:

(1) this Respondent was condemned, as Defendant in the principal action, to pay Clifford Sifton et al. es qual., as Plaintiffs in the principal action, the sum of \$53,972.61 with interest and costs, and

30

(2) the above named Appellant, as Defendant-in-Warranty, was condemned in the action in warranty to acquit and indemnify this Respondent, as Plaintiff-in-Warranty, against the said judgment and condemnation, in capital, interest and costs, and to pay the costs of the said action in warranty;

and

WHEREAS the said judgment of this Honourable Court, rendered the 9th day of June 1936:

40

(1) maintained the appeal of this Respondent, as Appellant and Defendant in the principal action, and cancelled and annulled the said judgment of the Superior Court in the principal action and dismissed the said principal action against this Respondent with costs, and also

(2) maintained the appeal of the above named Appellant as Defendant in the action in warranty and cancelled and annulled the said judgment of the Superior Court in maintaining said action in warranty and dismissed the said action of this Respondent as Plaintiff-in-Warranty with costs against this Respondent; and

In the  
Court of  
King's Bench  
—  
No. 12  
Respondent's  
Motion  
for Leave  
to Appeal  
to the Privy  
Council  
25 April 1938  
(Continued)

WHEREAS the said principal Plaintiffs appealed to His Majesty in His Privy Council from said Judgment of this Honourable Court, in so far as it maintained the appeal of this Respondent in the principal action, and the Judicial Committee of said Privy Council, by Decree dated the 24th February 1938, allowed the appeal of said principal Plaintiffs and set aside the judgment of this Honourable Court in the principal action, and restored the said judgment of the Superior Court, in so far as it condemned this Respondent as Defendant in the principal action; and

10

WHEREAS no appeal was taken by this Respondent from the said judgment of this Honourable Court dismissing his said action in warranty against the above named Appellant and this Respondent was advised by counsel, at the time, that such an appeal was unnecessary and would be redundant in any event, as the said judgment had discharged him from any and all liability for which he could claim indemnity from the above named Appellant and this Respondent was then seeking to maintain the said judgment to that extent, before His Majesty as aforesaid; and

20

WHEREAS this Respondent was unable, in any event, to pay and assume the costs and expenses of maintaining an additional appeal to His Majesty, at that time; and

WHEREAS the reasons given by this Honourable Court for maintaining the appeal of the above named Appellant and dismissing the action in warranty of this Respondent were the same as those for which the said Court maintained the said appeal of this Respondent against the principal Plaintiffs; and

30

WHEREAS the said reasons were not accepted by the said Judicial Committee and the reasons given by said Judicial Committee for restoring the judgment of the Superior Court against this Respondent as aforesaid would justify the restoration also of the said judgment of the Superior Court in favour of this Respondent against the above named Appellant in the said action in warranty; and

40

WHEREAS this Respondent is unable to pursue or obtain indemnity from the above named Appellant in respect of the said condemnation against him while the said judgment of this Honourable Court on the appeal in the said action in warranty remains of record; and

WHEREAS this Respondent is unable to satisfy and discharge said judgment in favour of said principal Plaintiffs, unless he can obtain a reversal of the judgment of this Honourable Court in said warranty action and a restoration of the judgment of the Superior Court in his favour against the above named Appellant; and

In the  
Court of  
King's Bench  
—  
No. 12  
Respondent's  
Motion  
for Leave  
to Appeal  
to the Privy  
Council  
25 April 1938  
(Continued)

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WHEREAS the said Decree of His Majesty was only registered in the Office of this Honourable Court the 18th day of March, 1938, and was only transmitted to the Office of the Prothonotary of the Superior Court the 21st day of March 1938, and since said time this Respondent has been diligent in preparing for the appeal and has made the present application to this Honourable Court within the least possible delay; and

20 WHEREAS this Respondent is advised by counsel that he has good grounds now for appealing to His Majesty as aforesaid:

30 MOVED THAT this Respondent be permitted to appeal to His Majesty in His Privy Council from the said judgment rendered herein the 9th day of June 1936, in so far as it maintained the appeal of the above named Appellant with costs, and dismissed this Respondent's said action in warranty with costs, and that a delay be fixed by this Honourable Court within which this Respondent may furnish good and sufficient security as required 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 said judgment being confirmed, the whole with costs reserved.

Montreal, 25th April 1938.

(Sgd.) Campbell, Weldon, Kerry & Bruneau,  
Attorneys for Respondent.

40

Record approved: \_\_\_\_\_

CAMPBELL, WELDON, KERRY & BRUNEAU,  
*Attorneys for Appellant.*

BROWN, MONTGOMERY & McMICHAEL,  
*Attorneys for Respondent.*

In the  
Court of  
King's Bench  
—  
No. 13  
Judgment  
Admitting  
Appeal  
to the Privy  
Council  
30 April 1938

No. 13

Judgment Admitting Appeal to the Privy Council

COURT OF KING'S BENCH (Appeal Side)

10

Montreal, 30th April, 1938.

Present: Hon. Mr. Justice St. Germain (in Chambers)

Having heard the parties by their respective Counsel on the petition of the respondent (plaintiff in warranty in the Superior Court) for leave to appeal to His Majesty in his Privy Council from the final judgment pronounced in this case by the Court of King's Bench (Appeal Side), at Montreal, on the 9th day of June 1936, in so far as it maintained the appeal of the above-named appellant from the judgment of the Superior Court in the action in warranty rendered the 15th day of January 1935, and to fix a delay within which security on the said appeal should be furnished;

CONSIDERING that an appeal lies as of right from the said judgment to His Majesty in his Privy Council, in virtue of article 68 of the Code of Civil Procedure of the Province of Quebec, and that the said Code of Civil Procedure fixes no time within which an appeal must be taken;

CONSIDERING that the question of acquiescence raised by the appellant is one to be decided by the tribunal to which it is sought to appeal, and not by the Court appealed from;

I, the undersigned, one of the Judges of this Court of King's Bench, do fix a delay expiring on the 18th day of May 1938, within which the respondent (plaintiff in warranty in the Superior Court) may give, in conformity with the provisions of article 1249 of the said Code of Civil Procedure, and in the manner and for the purpose therein mentioned, the security required by the law governing the said appeal, costs to follow.

(Signed) P. St-Germain,  
J.C.K.B.

**Certificate of Clerk of Appeals.**

In the  
Court of  
King's Bench  
Certificate  
of Clerk  
of Appeals

10 We, the undersigned Alphonse Pouliot and Clovis Laporte,  
K.C., Clerk of Appeals of His Majesty's Court of King's Bench,  
for the Province of Quebec, do hereby certify that the foregoing  
transcript, from pages one to thirty-two contains

20 True and faithful copies of all the original papers, docu-  
ments, proceedings and judgments of His Majesty's Superior  
Court for the Province of Quebec, sitting in the City of Montreal  
transmitted to the Appeal Office, in the said City of Montreal,  
as the Record of the said Superior Court in the cause therein  
lately pending and determined between Henry Sifton, et al, es  
qual, Plaintiffs; Robert Oliver Sweezey, Defendant; The said  
Robert Oliver Sweezey, Plaintiff-in-Warranty and Beauharnois  
Power Corporation Limited, Defendant-in-Warranty; with the  
exception of the original papers, documents, proceedings and  
judgments heretofore printed and forming part of the Record  
of Proceedings in the Appeal of Clifford Sifton et al vs. Robert  
Oliver Sweezey, in the Privy Council, No. 14 of 1937.

30 And also true copies of all the proceedings of the said  
Court of King's Bench (Appeal Side) on the appeal in said  
cause and in the present appeal instituted by the Plaintiff-in-  
Warranty to His Majesty in his Privy Council (with the ex-  
ceptions above mentioned) and also true copies of the Judgment  
and Decree of the Privy Council in said appeal of Sifton v.  
Sweezey.

In faith and testimony whereof, we have, to these presents,  
set and subscribed our signature and affixed the seal of the  
said Court of King's Bench, (Appeal Side).

40 Given at the City of Montreal, in that part of the Domi-  
nion of Canada, called the Province of Quebec, this 26th  
day of August in the year of Our Lord one thousand nine  
hundred and thirty-eight.

POULIOT & LAPORTE,  
Clerk of Appeals.



In the  
Court of  
King's Bench  
—  
Certificate  
of Chief  
Justice

**Certificate of Hon. Mr. Justice Walsh**

I, the undersigned Honorable Joseph C. Walsh, one of the Justices of the Court of King's Bench of the Province of Quebec (Appeal Side) do hereby certify that the said Alphonse Pouliot and Clovis Laporte, K.C., are the Clerks 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" on the certificate above written, is their proper signature and hand writing. 10

I do further certify that the said Pouliot & Laporte as such Clerks are the Keepers of the Record of the said Court, and the proper Officers to certify the proceedings of the same, and that the seal above set is the seal of the said Court, and was so affixed 20 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 twenty-sixth day of August in the year of Our Lord one thousand nine hundred and thirty eight and of His Majesty's Reign, the second.

30

L.S.

**JOSEPH C. WALSH,**  
Justice of the Court of King's Bench  
(Appeal Side).

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# In the Privy Council

No. 74 of 1938

On appeal from the Court of King's  
Bench for the Province of  
Quebec (Appeal Side)  
CANADA

BETWEEN

**Robert Oliver Sweezey,**

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

(Plaintiff-in-Warranty in the Superior Court  
and Respondent in the Court of King's Bench)

APPELLANT,

and

**Beauharnois Power**

**Corporation Limited,**

Beauharnois Power Corporation Limited, a body politic  
and corporate, duly incorporated and having its head  
office and chief place of business at the City and  
District of Montreal,

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

RESPONDENT.

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## RECORD OF PROCEEDINGS

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

**LAWRENCE JONES & Co.,**  
Solicitors for Respondent.